

**MEETING OF
THE FLORIDA BOARD OF AUCTIONEERS**
Department of Business and Professional Regulation
DoubleTree Hotel Tampa Westshore Airport
4500 West Cypress Street, Tampa, FL 33607
Friday, March 11, 2011, 9:00 a.m.

MINUTES

Call to Order

Mr. Moecker, chair called the meeting to order at 9:10 a.m., the Pledge of Allegiance was performed, and Mr. Dietrich provided an invocation.

Roll Call

Board Members Present:

Michael Moecker, Chair
Fred Dietrich
Billy Wayne Collins
Pat D'Angelo

Others Present:

Charlyne "Khai" Patterson, Board Council
LeChea Parson, Prosecuting Attorney
Anthony Spivey, Executive Director
Terri McEwen, Government Analyst
Yolanda Abadi
Ezra Abadi
Richard P. Peacock
Abraham Avi Asher
Margaret Matthews
Laura and Anton Karborani
Patty Farraro
Gayle Dietrich
Maya Thomas

Mr. Spivey requested that each individual should state their first and last name before speaking.

Review and Approval of Meeting Minutes and Ratification list

Minutes from September 23, 2010

The September 23, 2010 minutes were withdrawn for corrections and will be scheduled for review at the next meeting.

Minutes from December 10, 2010

Motion: Mr. Collins moved that the board approve the minutes as presented.
Second: Mr. Dietrich seconded the motion and it passed unanimously.

Ratification List of Licensees

Motion: Mr. Collins moved that the board approve the ratification list as presented.
Second: Mr. Dietrich seconded the motion and it passed unanimously.

Disciplinary Cases

Ms. Patterson provided the following instructions for reviewing disciplinary cases. She commented that the board should direct to her questions concerning the board's procedures, authority, or duty regarding the practice act. She commented that the board should direct questions to Ms. Parson regarding the facts of the cases, the manner in which the cases were investigated, and reasons for the department's recommendations.

Ms. Parson stated that the board was provided copies of the investigative files, administrative complaint, pleadings, correspondence, and election of right's forms.

Ms. Patterson requested that all board members answer the following questions:

1. Did you receive all materials regarding the proceedings in advance of today's meeting? All board members affirmed.
2. Did you have enough time to thoroughly review and familiarize yourself with the materials presented? All board members affirmed.
3. Were there any problems with the materials such as illegible pages, pages missing, or other problems? All board members replied in the negative.
4. Are there facts, reasons or situations that would disqualify any member from discussing the cases on today's agenda? All board members replied in the negative.

Informal Hearing

Dion Abadi d/b/a D & G Auctioneers, LLC

Case Number 2009-062890

Ms. Parson pulled this case due to the noticing letter being sent to an incorrect address.

Informal Hearing

Ronald Ray Kool, Sr. d/b/a A Plus Auctions

Case Number 2010-038146

Ms. Parson stated that Mr. Kool was ill and unable to attend the meeting and requested a continuance.

Motion: Mr. Collins moved that the board continue Mr. Kool's case until the next meeting.
Second: Mr. D'Angelo seconded the motion and it passed unanimously.

Motion for Waiver of Rights and Final Order
Pat N. Vitilio and Naples Auction Company
Case Numbers 2010-005152 and 2010-005165

Ms. Parson presented case #2010-005152 and 2010-005165, Pat N. Vitilio and Naples Auction Company, AU 1662 and AB1340. The respondent was not present or represented by counsel. The department filed an administrative complaint against the respondent on October 8, 2010. The administrative complaint was served by certified mail December 6, 2010. The respondent was charged with violating Section 468.389 (1) (c), for to pay or return items in a reasonable time. The complainant received a partial payment for funds due.

The respondent failed to submit an Election of Rights form disputing issues of material facts of the administrative complaint pursuant to Rule 28-106.111, F.A.C. By failing to request a hearing within 21 days of receipt of the agency pleading, the respondent has waived the right to request a hearing where there is a disputed issue of material facts. Ms. Parson stated that *"the department believes that it is appropriate for the chair to entertain a motion finding that the respondent was properly served and waived the rights to a hearing."*

Motion: Mr. D'Angelo moved that the board find the notice was properly served and the respondent waived their rights to a hearing.

Second: Mr. Dietrich seconded the motion and it passed unanimously.

Ms. Parson stated that *"the department believes that it is appropriate for the chair to entertain a motion adopting the findings of fact and conclusions of law contained in the administrative complaint as those of the board."*

Motion: Mr. Dietrich moved that the board adopt the findings of facts and conclusions of law contained in the administrative complaint as those of the board.

Second: Mr. D'Angelo seconded the motion and it passed unanimously.

Ms. Parson requested that the board disregard the prior case listed in the agenda materials. Ms. Parson stated that *"the department's recommendation is a fine in the amount of \$1,000 plus costs of \$744.90, restitution in the amount of \$8,201.11, and any license action the board deems appropriate."*

Based on the aggravating factor that the respondent was a danger to the public, damage caused, no rehabilitation by the licensee, and knowledge of the licensee the board discussed revoking the license. After discussion the following motion was made.

Motion: Mr. Dietrich moved that the board impose the \$1,000 fine plus \$744.90, restitution in the amount \$8,201.11 costs, and revocation of both the AU and AB licenses due to the aggravating factors.

Second: Mr. Collins seconded the motion.

The board discussed that the respondent opened another business and continued operating after the complaint. The question was called and the motion passed unanimously.

Informal Hearing

Patty Jo Ferraro d/b/a PH & PJ Company Inc. d/b/a Something More
Case Number 2009-040958

Ms. Parson presented case #2009-040958, Patty Jo Ferraro d/b/a PH & PJ Company Inc. d/b/a Something More, AU 3905. Ms. Ferraro was present and sworn in. The respondent was not present or represented by counsel. The department filed an administrative complaint against the respondent on September 21, 2010. The respondent was charged with violating Section 468.389 (1) (j) through a violation of Section 468.388 (1) and (10) for failure to execute a written agreement prior to conducting an auction and failure to provide auction escrow records when requested.

Ms. Ferraro returned an Election of Rights form requesting an Informal Hearing and did not dispute the facts.

Ms. Parson stated that *“the department believes that it is appropriate for the chair to entertain a motion adopting the findings of fact contained in the administrative complaint as those of the board.”*

Motion: Mr. Collins moved that the board adopt the finding of facts contained in the administrative complaint as those of the board.

Second: Mr. D’Angelo seconded the motion and it passed unanimously.

Ms. Ferraro commented that she had a verbal agreement with the complainant and tried to obtain a written contract prior to selling items. She commented that the money from the sale of the items was used for expenses storage, moving, etc. which explains why the money was not in escrow. She commented that the money was put into escrow but used for costs. She commented that she was not aware that the complainant filed bankruptcy.

Ms. Parson stated that *“the department believes that it is appropriate for the chair to entertain a motion adopting the conclusions of law contained in the administrative complaint as those of the board.”*

Motion: Mr. Collins moved that the board adopt the conclusions of law contained in the administrative complaint as those of the board.

Second: Mr. D’Angelo seconded the motion and it passed unanimously.

Ms. Ferraro commented that she lost a lot of money with this case, learned a valuable lesson and requested that the board be lenient regarding imposing a fine.

Ms. Parson reviewed the guidelines for the board and reminded the board that Ms. Ferraro had a prior violation for a different offense which imposed a reprimand, \$100 fine and costs.

Ms. Parson stated that *“the department’s recommendation is a fine up to \$1,000 plus costs of \$744.90, and probation based on the prior violation.”*

The prior violation occurred during the same time frame as the one the board was reviewing today. The board discussed that there appeared to be business practice issues.

Ms. Ferraro commented that she has a computerized inventory system in place and all contracts are signed and witnessed prior to any exchange of items. She commented that the violations were two years ago, there were issues, she dealt with them, and learned from the violations.

Motion: Mr. Dietrich moved that the board impose a fine in the amount of \$500.00 plus \$630.59 costs, and probation.

Second: Mr. D’Angelo seconded the motion and it passed unanimously.

Ms. Patterson read the following into the record for the board’s consideration during the penalty phase of the case review, *“Rule 61G2-7.030(1) (k) violating any provision of 468 Part VI, any rule of the board or department the usual penalty shall be selected from the full range of penalties available to the board and will be based upon the severity of the underlying offense.”*

Ms. Parson requested that the board identify the terms of the probation and timeframe for the payment of the fine and costs.

The board discussed a \$200.00 monthly payment plan and an appearance before the board prior to the last payment.

Motion: Mr. Dietrich moved that the board allow seven months to pay the fine and costs, an appearance before the board prior to the last payment, probation of the license until the last payment of the fines/costs, provide copies of contracts for auctions from September 2010 until today, and a monthly report regarding auction’s performed during probation.

Second: Mr. D’Angelo seconded the motion and it passed unanimously.

Settlement Stipulation

Stamper Auction

Case Number 2009-043534

Ms. Parson presented case#2009-043534, Stamper Auction, Auction AB196. The respondent was not present or represented by counsel. The department filed an administrative complaint against the respondent on October 22, 2010. The respondent was charged with violating Section 468.389 (1) (j) through a violation of Section 468.388 (7) if a sale is absolute and has been announced or advertised as such, an article or lot may not be withdrawn from sale once a bid has been accepted.

The settlement stipulation reflected a \$250.00 fine plus \$486.71 costs.

Motion: Mr. Collins moved that the board approve the settlement stipulation as presented.

Second: Mr. D'Angelo seconded the motion and it passed unanimously.

Reports

Prosecuting Attorney
Case Load Status

Ms. Parson provided the report reflecting 6 cases received in legal, one case where supplemental information was requested, and one case where supplemental information was requested. She reported that six administrative complaints were filed and sent for service, two cases ready for default, three cases for formal hearings, and eight cases set for board review.

Board Counsel

Recovery Fund Claim – Doreen Abbott
Margaret Matthews, Akerman Senterfitt Attorneys at Law, was present to represent Doreen Abbott.

Mr. Moecker disclosed that Akerman Senterfitt represents his business in various matters. He abstained from voting to avoid a conflict of interest.

The Recovery Fund Claim was for an auction performed by John P. Caballero (AU 3758) and John Caballero Auctions (AB2700) which was completed and the proceeds submitted to the Trustee. There is an outstanding amount.

Ms. Patterson reported that she reviewed the request and there may be a jurisdiction issue due to dates involving the agreement, the date the auction was held, and the date of bankruptcy. The Trustee received a final order judgment against the licensee.

Ms. Patterson reported that statute required that all post judgments collection proceedings be completed after the final order judgment. She reported that she was not aware of any post judgment collection proceedings in this case. She commented that this request does not meet the recovery requirements at this time.

Ms. Matthews commented that Mr. Brown submitted information regarding collections post judgment including discovery. She commented that they were unable to garnish an amount because they have not been able to locate the licensee. She submitted that the Chapter 468.395(4), Florida Statutes, does not require post judgment based on the language "the board shall not issue an order of payment from the Auctioneer Recovery Fund unless the claimant has reasonably established to the board that he or she has taken proper and reasonable action to collect the amount of his or her claim from the licensee."

Ms. Matthews commented that Mr. Brown submitted to the board a list of steps taken to recover the funds prior to the judgment was provided to the board, the final order, and

the discovery after the judgment. She requested that the board authorize the recovery payment or provide guidance for what is needed to comply with the recovery request.

Ms. Patterson referred the board to Chapter 468.395(1)(b), Florida Statutes, any aggrieved person who obtains a final judgment in any court against any licensee to recover damages for any actual loss that results from the violation, within this state, by a licensee of any provision of s. ~~468.389~~ or any rule adopted by the board may, upon termination of all proceedings, including appeals and proceedings supplemental to judgment for collection purposes, file a verified application to the board for an order directing payment out of the Auctioneer Recovery Fund of the amount of actual loss in the transaction that remains unpaid upon the judgment. The amount of actual loss may include court costs, but shall not include attorney's fees or punitive damages awarded.

Ms. Matthews commented that they tried to collect pre and post judgment but it was difficult when the licensee can't be found.

Mr. Dietrich requested that Mr. Moecker be allowed to participate in the review of the request. Mr. Spivey called a vote to allow Mr. Moecker to participate in the deliberation of the Recovery Fund Claim. Mr. D'Angelo, Mr. Collins, and Mr. Dietrich all voted to allow Mr. Moecker to participate in the review of the recovery request.

Mr. Dietrich commented that he was trying to establish that the licensee received the funds from the auction. The board was unclear as to the chain of events in the auction and wanted to make sure they were paying a claim on a licensee.

Ms. Matthews commented that the judgment addressed that Mr. Caballero violated the statute and he was responsible for the auction.

Ms. Patterson advised that based on the statute the post collection requirement had not been met.

Motion: Mr. Collins moved that the board table the Recovery Fund Claim application.

Second: Mr. Dietrich seconded the motion.

Mr. D'Angelo asked how the department could assist Ms. Matthews in contacting Mr. Caballero. Ms. Patterson replied that they have the contact information for Mr. Caballero and the Florida Auction Services was not licensed.

Ms. Patterson commented that the applicant had not exhausted all collections efforts post judgment. She commented that if the board denied payment that it would not prevent the applicant from curing the deficiencies. She commented that the board would put on record the deficiencies. The board requested that the Ms. Patterson and Ms. Matthews work together to cure the deficiencies.

The question was called and it passed unanimously.

Recovery Fund Claim – Richard A. Peacock

Mr. Peacock was present and sworn in by Mr. Spivey. Ms. Patterson commented that restitution had not been issued at this time because the complaint had not been heard by the board. She commented that there was no final order or judgment at this time.

Ms. Patterson reported that the reason this case was on the agenda was because there was a second claimant. The statute requires that if there are two claims for the same auction the dollar amount paid from the recovery fund must be apportioned. Ms. Patterson commented that the Sniders claim was approved but had not been paid.

Ms. Parson commented that there were four cases at issue. Two cases were related to Mr. Sniders claim against Kruse International and two cases were related to Mr. Peacock's claim against Kruse International. The Sniders claims had been before the board and received civil final order judgments. Mr. Peacock's claims will be presented to the board at the June meeting with no civil final order judgment.

Ms. Patterson commented that there was a civil case against Mr. Peacock by the Sniders. She commented that Mr. Peacock's claim was deficient because restitution had not been ordered to Kruse International and there has been not final order judgment.

Ms. Patterson commented that the board must determine how to apportion the funds between Snyder and Peacock.

Mr. Peacock commented that he decided to sell all contents due to health issues. He hired Kruse International and they sold a motor home to the Sniders. The auction was stopped and Kruse International took Sniders' money. The Sniders sued Mr. Peacock for money he never received from Kruse International.

Ms. Patterson commented that the board will order restitution against Kruse International in June or Mr. Peacock could receive a final order judgment against Kruse International and that would cure the deficiencies for this claim.

Mr. Peacock reported that he was in bankruptcy and he would not be able to pursue judgment with the Sniders.

Ms. Patterson commented that the board should determine the apportionment for the maximum \$50,000 recovery fund amount.

Motion: Mr. Collins moved that the board award \$25,000 each to the Sniders and Mr. Peacock.

Second: Mr. Dietrich seconded the motion and it passed unanimously.

Recovery Fund Claim – Anton Karborani

Laura and Anton Karborani were present and sworn in by Mr. Spivey. Ms. Patterson presented the claim against Kim Satz and the board did not order restitution during the disciplinary proceedings against Kim Satz at the last board meeting and the claimant has not received a final order judgment. The claim does not meet the statutory requirements and was considered deficient for recovery. Ms. Patterson advised the board to deny the claim and allow the claimant to cure the deficiencies.

Ms. Patterson commented that the only way for the claimant to receive a payment from the recovery fund would be to receive a final order judgment since restitution was not ordered during the disciplinary case.

Ms. Karborani read information from the department's web page regarding the recovery fund. She commented that she filed a complaint with the department and she was notified that probable cause was found but she was not notified about the disciplinary case being reviewed by the board. She commented that they would have appeared to request restitution but was aware of the meeting until after the final order was entered with no restitution imposed.

Ms. Parson commented that the board reviewed a settlement stipulation imposing a fine and probation against Kim Satz. The board did not impose restitution. Mr. Moecker apologized for the oversight by the board regarding restitution.

Ms. Patterson advised that the Karborani's should file in civil court for a final order judgment in order to receive payment from the recovery fund.

Motion: Mr. Dietrich moved that the board issue a \$10,000 payment from the recovery fund based on the harm in this case.

The motion died for a lack of second.

Motion: Mr. Moecker moved that the board deny the application.

Second: Mr. D'Angelo seconded the motion and it passed unanimously.

Board Application Review

Abraham Asher – Initial Application by Endorsement/Reciprocity

Mr. Asher was present and sworn in by Mr. Spivey. Mr. Spivey presented the application and stated that Mr. Asher's previous license was revoked by the board. Mr. Asher stated that his license was revoked and he was fined \$1,000 which he paid. Mr. Asher is licensed in Georgia and was requesting endorsement of that license. The board discussed his disciplinary case.

Motion: Mr. Dietrich moved that the board deny the application based on the prior offenses.

Second: Mr. Collins seconded the motion and it passed unanimously.

Mr. Asher commented that he never got an opportunity to defend himself in the previous cases. He commented that the case was based on allowing an unlicensed person to perform an auction. Ms. Patterson referred the board to the agenda materials where Mr. Asher did not dispute the facts in the disciplinary case.

Ezra Abadi – Initial Licensure

Yolando and Ezra Abadi were present and sworn in by Mr. Spivey. Mr. Spivey presented the application and stated that Mr. Abadi was previously disciplined for unlicensed practice. Ms. Abadi commented that Mr. Abadi had a license which lapsed and he performed an auction without of license. Ms. Abadi requested approval for a

business license and they would hire a licensed auctioneer to perform the auctions. She commented that they were not asking for a license for Mr. Abadi.

Motion: Mr. Dietrich moved that the board deny the application based on prior disciplinary action.

Second: Mr. Collins seconded the motion.

Ms. Abadi commented that Mr. Abadi would not perform the auctions they would hire an auctioneer. The board discussed holding the review of the application in order to pull the disciplinary action for review before taking action on the application. Mr. Dietrich commented that there were four disciplinary references and requested that the board vote on the motion.

The question was called and the motion passed with Mr. Moecker opposed.

Board Chair

No report.

Executive Director's Report

Quarterly Financial Statements (December 31, 2010)

Mr. Spivey reviewed the financial statements which reflected the board was in good financial standing. The board discussed that the recovery fund had three pending claims but it would still be in good financial standing. Mr. Spivey reported that he advised the department that an assessment may be needed in the future for the recovery fund.

The board discussed moving away from the recovery fund and returning to bonding. The board discussed that the change would require Legislative initiative. The board discussed bonding the business license not the individual.

Old Business

Mr. D'Angelo reported that he reviewed the auctioneer's test. He reported that there were no ethics' questions. He reported that five questions would be added on ethics that would not count against the candidate if they answered it wrong. The Bureau of Education and Testing was pleased that the board was interested in the testing process.

The board briefly discussed the maximum disciplinary fines be increased to \$5,000. Ms. Parson reported that it was presented to the department for the Legislative package.

New Business

Mr. Dietrich requested funding for the National Auctioneers License Law Officials Association (NALLOA) meeting July 12-16, 2011 in the Orlando area.

Motion: Mr. Dietrich requested funding for meeting since it was located in Florida.

Second: Mr. D'Angelo seconded the motion and it passed unanimously.

Mr. Spivey commented that the department was not approving attendance at national meetings but he would make the request.

Date & Location of Next Meeting

June 10, 2011 – Ft. Lauderdale, Florida

Proposed Meeting Dates – Fiscal Year 2011-2012

September 22, 2011 (St. Augustine/Orlando area)

December 9, 2011 (Tallahassee area)

March 16, 2012

June 15, 2012

Adjournment

Motion: Mr. Collins moved to adjourn the meeting.

Second: Mr. Dietrich seconded the motion and it passed unanimously.

The meeting adjourned at 12:45 p.m.