

Meeting of
The Florida Board of Auctioneers
The Department of Business and Professional Regulation
Hilton Historic Bayfront
32 Avenida Menendez
St. Augustine, Florida
Friday, March 23, 2012 @ 9:00 a.m.

MINUTES

I. CALL TO ORDER

Mr. Moecker, Chair, called the meeting to order. Mr. Dietrich gave an invocation and asked everyone to stand to recite the Pledge of Allegiance.

II. BOARD MEMBER PRESENT

Michael Moecker, Chair
H. Fred Dietrich, III

STAFF PRESENT

Anthony Spivey, Executive Director
Mary Alford, Government Analyst
LeChea Parson, Prosecuting Attorney
David Flynn, Assistance Attorney General

OTHER ATTENDEES

Lee Thaxton
Carol Thaxton
Gayle Dietrich

COURT REPORTER

Volusia Reporting Company
432 South Beach Street
Daytona Beach, FL 32114
386.255.2150

III. REVIEW AND APPROVAL

A. Minutes from January 27, 2012

Motion: Fred Dietrich made a motion to approve the minutes with no changes.

Second: Chairman Moecker seconds the motion. Motion passes unanimously.

B. Ratification List

Anthony Spivey presented ratification list.

January 10, 2012 – March 1, 2012

AUCTIONEER LICENSED BY APPRENTICE

4801 AE 433 CLARK, BRADLEY AUSTIN GRAND RIDGE FL
4801 AE 428 HARRIS, JOHN ANTHONY VALRICO FL
4801 AE 429 HARRIS, MICHAEL VALRICO FL
4801 AE 427 MCEACHIN, COURTNEY ANN TALLAHASSEE FL
4801 AE 430 PATTON, TONIA KAY YULEE FL
4801 AE 431 PAUL, ELI D CRAWFORDVILLE FL
4801 AE 432 VICKERS, ASHLEY PEARL TARPON SPRINGS FL

AUCTIONEER LICENSED BY EXAM

4802 AU 4345 BENDIX, LAURA BOYNTON BEACH FL
4802 AU 4352 CAMPBELL, GARY M FORT MYERS FL
4802 AU 4344 COLLINS, BRIAN MICHAEL ORLANDO FL
4802 AU 4342 COOMER, CHRISTOPHER ALLEN PALATKA FL
4802 AU 4350 LUONGO, DANIEL M HOLLYWOOD FL
4802 AU 4340 RAMER, MATTHEW DADE CITY FL
4802 AU 4343 RICE, MICHAEL G SR JUPITER FL
4802 AU 4341 STRICKLAND, GREGORY ARNOLD DAYTONA BEACH FL
4802 AU 4333 SWICKARD, DEAN OWEN INVERNESS FL
4802 AU 4347 TRESCOTT, JACK N ORMOND BEACH FL
4802 AU 4348 TUTTLE, IAN LEE CRAWFORDVILLE FL
4802 AU 4339 VICHOT, DUNYA ZEENAT NAPLES FL
4802 AU 4338 MCGLOTHLEN, ROBERT LEROY OSKALOOSA IA

AUCTIONEER LICENSED BY ENDORSEMENT

4802 AU 4353 KELLY, PATRICK J FORT LAUDERDALE FL
4802 AU 4335 LEE, WILLIAM CHARLES ATLANTA GA
4802 AU 4336 LOFTIN, JAMES MICHAEL ROME GA
4802 AU 4351 WALCHER, JOHN P CHICAGO IL
4802 AU 4334 SWALLS, JOHNNY LEE FARMERSBURG IN
4802 AU 4337 EASLER, CHARLES RAYMOND II GREELEYVILLE SC
4802 AU 4332 CUNNINGHAM, RONALD D NEW BRAUNFELS TX
4802 AU 4346 GARNER, WILLIAM MONTE ROANOKE TX

LICENSED BY AUCTIONEER BUSINESS

4803 AB 3161 ANYTHING PAWN & AUCTION, INC. FORT WALTON BEACH FL
4803 AB 3150 AUCTION HOUSE 66 CLEARWATER FL
4803 AB 3157 AUCTIONS OF BREVARD LLC TITUSVILLE FL
4803 AB 3154 BLACKWELLS AUCTION CO. NORTH PALM BEACH FL

Motion: Fred Dietrich moved that the applications be approved as submitted.

Second: Chairman Moecker seconded the motion.

Chairman Moecker: I have one question about Auctioneer license by endorsement Patrick J. Kelly, Ft. Lauderdale. Why would that be an endorsement if he is already in Florida? I am thinking that it is an out of state auctioneer that is coming to do business in Florida.

Mary Alford: He may live in Florida now, but had a license in another state before moving to Florida.

Chairman Moecker: He has a license somewhere else and now he is living in Florida. Okay.

Motion carries unanimously

C. Application for approval

Lee Ray Thaxton
Application # 14770

Lee Ray Thaxton sworn in by Court Reporter.

David Flynn: Let me briefly explain this. This application was placed on here due to prior discipline listed in the application along with a prior crime. The Board needs to consider if they want to grant the license, deny the license based on prior discipline after looking at that or you have the option to grant with conditions such as form of probation or monitoring, something in that nature. Then I would turn it over to you and you are welcome to ask any questions or have Mr. Thaxton make a statement regarding the criminal or disciplinary history.

Chairman Moecker: Do you have anything, Mr. Spivey, to add to this application?

Anthony Spivey: No, Sir.

Chairman Moecker: Mrs. Alford do you?

Mary Alford: No, Sir.

Chairman Moecker: Mr. Thaxton it would appear you have had some difficulty. You disclosed in your application that you had an issue and that you ultimately settled that issue.

Mr. Thaxton: Yes I did.

Chairman Moecker: Further investigation indicates that there were other issues that you did not disclose.

Mr. Thaxton: That I did not disclose?

Chairman Moecker: That you did not disclose in your application process. Other offenses, other issues.

Mr. Thaxton: As far as, try to explain to me what you are asking because I am not sure what you are asking. Other issues regarding, criminal or regarding problems with the DBPR.

David Flynn: He marked yes on that actual application. He marked yes that he did in fact have a prior conviction which was the false statement. He went to court, plead out, adjudication was withheld. Looks like he went on very minimum period of probation just to pay the money back. That was resolved and it reflects it was resolved in that manner.

Mr. Thaxton: Essentially what happened was between having mismanaged my business and the economy it got to the point I had to go bankrupt personally and with the business. After one of the jobs we finished I took the customers final payment and that final payment money went to pay off other bills, it didn't pay off that bill. Then, when we went bankrupt his bill was left outstanding with a lien from the supplier, so after we went bankrupt, he went to the State Attorneys. I found out a couple of years later, when I got a knock at the door, literally at 7 o'clock in the morning saying I made a false statement so that is when I got an attorney and took care of it immediately. It was definitely my fault, I should not have co-mingled funds, it was definitely my fault. That is the only problem I have ever had legally, prior or since, that is the only legal issue I have ever had.

David Flynn: He did mark yes that he had a license that was revoked or suspended. I did not see an explanation sheet for that, but we did have a history ran as far as the cases you have before you for certified building contractor and certified roofing and there are approximately 11 cases, ultimately both of those licenses were revoked. Correct?

Mr. Thaxton: Yes, basically at the time going bankrupt I also included the DBPR in my bankruptcy. I also mailed back my license. It took an additional year and half or so after all of that happened, before I guess it went through all of the government processes, then it officially became suspended. But I long since turned in my stuff prior to that.

Chairman Moecker: Prior to that, it would appear in '07.

Mr. Thaxton: '07 is when I went bankrupt.

Chairman Moecker: There are a couple of fines, best I can tell about sixty (60) some thousand in fines and cost for various cases from '06 through 2010. Where they attributed to the roofing?

Mr. Thaxton: Anything that we would have had, it would be attributed to roofing and building contracting. Essentially, when I started in 04 when I became a building contractor a month before Charlie hit. After Hurricane Charlie hit I got overwhelmed with too much business and too many sales people and too many things. It just got out of

control. We never had issues as far as taking deposits or taking anyone's money. It was quality control issues having to go back and repair and fix. That was our primary issue.

Chairman Moecker: These fines are of record with your previous license. I don't believe they were disclosed on your application.

Mr. Thaxton: They were disclosed, I didn't know about all of them. I just said that I had issues and I knew about my license being suspended. I tried to disclose what I knew about.

Fred Dietrich: I look at these records and it looks like you had over sixty (60) thousand in fines that were never paid. You had a business license revoked which deals with the public and we deal with the public. I think we have some legal obligation that when we deal with the public, we are talking about you having an occupation license in Florida to deal with the public that's been revoked and then you are coming to us to get another occupation license to deal with the public. Our job is not to protect auctioneers, our job is to protect the public. I am very concerned about your previous record and previous licenses that you have held with this State that were already revoked and you never paid the fines.

Anthony Spivey: If you look in the memorandum, it does show the fines and costs were written off at collections. He was given the authorization to write them off.

Chairman Moecker: The point is the fines were there, the fines came as a result of complaints and against his license in the roofing and construction business. So when he filed for bankruptcy those were discharged. Did you file a corporate bankruptcy?

Mr. Thaxton: Corporate and personal both.

Chairman Moecker: So there is no discharge for corporate, but since the company is liquidated, that is not a personal obligation that is listed here in this memorandum with these fines.

David Flynn: That is the question you might want to ask. Here are all the cases for the license. I don't even think from what I have heard that Mr. Thaxton followed the complaints himself. From what I am hearing, I don't believe he actually knows what all these cases are about. Which would indicate to me that potentially he did not respond at all? Did you know what was going on with your own licenses?

Mr. Thaxton: Probably back at the time I knew about a couple of them. Most of them I probably would not because by that time we shut our business down and I went bankrupt. If I heard the case number or the case number I might remember a couple but, overall I would say no. For me, it was a situation I allowed myself to get too big too fast with too many people. My wife and I went to class together to do auctioneering so she and I could do something together as a couple. Prior to that when I was a building contractor and since, her and I have been working together and have had no issues. My issue was I

couldn't handle managing too many people. In the construction business particular in roofing and construction, it is a wild babysitting business. You have to sometimes trust a lot of people and I did not manage that well.

Fred Dietrich: I don't know if eleven cases were filed against you it seems like you would know something about some of them. You had eleven cases that were filed against your license from public complaints and you are telling us you really don't know anything about them?

Mr. Thaxton: I am saying they were five, six, seven years ago I don't recall all of the names. You are talking about something that was at least six years old. I just don't remember all of the names. If some of the names came up and we could go over some of them. I guess I kinda got past that, which may not be a good word. I just don't remember, I guess I could if you brought up some names.

Chairman Moecker: Unfortunately, we just have numbers we don't have names so we can't discuss that with you. There were multiple cases and fines. I understand if you didn't respond, you were out of business and you probably felt I am out of business.

Mr. Thaxton: When we filed I also physically took my cards and mailed them back to the State. I knew at that point in May of 2007 that we were done done, May 4, 2007 to be exact. I think it took another year and half before all these things even showed up and came up and said your license has been revoked. I am not really sure, I just know mistakes were made and hopefully this will be a nice sideline business my wife and I can do as a couple this is not something that we are looking to do as our primary business. I also do consulting work that is basically what I do now and it is what I have been doing for the last few years. I also just got trained to do equipment and machinery appraisals with banks and lenders. I am just trying to retrain myself to do something different.

Chairman Moecker: I certainly appreciate that, I think all of us would understand that. The question Mr. Dietrich raises is the most important question of all that is the danger to the public. We have here eleven cases previously and I understand the circumstances, but obviously there were people that were grieved. How do we know that will not happen again if we issue or approve an auction license that is the crux of it? If you can give us some assurances for us to consider instead of just sitting here saying I am not going to do it again, I have learned my lesson.

Mr. Thaxton: I think the only thing I can do is to offer my assurances. With it just being small, with it just being my wife and I it is something I can physically control. I don't have a problem if there was a conditional period of saying I want to give you an x period of time, we will give you a license, but we will keep an eye on you. One of the things when you go through hardship, it makes you a better person. No one likes to go through bankruptcy. That was the worse period of my life. Nobody wants to go through your stuff and start over. No one wants to do that, but I am better man for it. I am a better husband, I manage my money better. I look at life a lot differently. I respect the process a lot better.

I am not willing to go out there and start blowing it again. Believe me, once in a lifetime is all you want to do. I don't want to do this again.

Chairman Moecker: Do you have any tax issues?

Mr. Thaxton: I have zero tax issues.

Chairman Moecker: Zero tax issues, No obligations to the State of Florida for sales tax.

Mr. Thaxton: No obligations to the State of Florida to the Federal government. Literally, if I could take those two years out of my life it would be no problem. It was two years of chaos that got out of control. I am not proud of it, when the economy hit everything just compounded. I am asking for a do over. Basically that is all I can do.

Chairman Moecker: I would like to make a motion that we conditionally approve your license based on your testimony today. We understand the circumstances; anybody can get into tough circumstances. I don't think it is up to us to sit here and suggest you possibly would do it again. If we can set up a method by which we can watch your performance and make sure people are getting their money the way they are suppose to get it, you have a Trust account set up and they get their money in 30 days and we have no complaints, I think a conditional period of time of a couple of years with some sort of reporting requirement. Do you have any suggesting on reporting?

LeChea Parson: We can do it like the disciplinary cases where you do quarterly reports that would be sent to Mary and come before you for what ever you require his contracts, bank trust account records, what ever else you might want to see on a quarterly basis.

Chairman Moecker: The first order of business would be complete copies of the bank statements the trust account to make sure there is no comingling of funds. The funds that are there are used for the purposes they are supposed to be used for similar to what the investigation brought out in the San Marco case. Can you think of anything else besides the bank records?

LeChea Parson: I think the contracts would be good so you know there is a written agreement for each and everything he is doing and that way you can match it up. It doesn't do you any good to have the bank records if you don't know what is going on in the business. So if you have the contracts he has entered into for that reporting period then you can see he has a written contract for everything he has done the money from this person or on these dates match up with these dates over here on the bank statement. Another issue you run into in a disciplinary case is that people don't do the written contract before they accept consignments. So we make sure he is doing the written contracts and maintaining the escrow account. That is the most trouble we run into.

Chairman Moecker: And also a copy of the advertisement, to show the license number on any advertisement. That would be the motion to conditionally approve the license for a

period of two years and every quarter you submit copies of your bank statements, copies of your contracts that you have and also copies of advertisement and ship them off to.

Mr. Thaxton: Send it to Mary.

Chairman Moecker: Yes, that is the way I would approach it.

Motion: Chairman Moecker made a motion to approve the license with conditions.
No complaints.

Fred Dietrich: No sir, general discussion of the other alternative is you could get an apprentice license and work under a license auctioneer for the apprentice period and then apply the licensing after you serve an apprenticeship that way you are under the direct supervision of a license auctioneer. Our job is to protect the public in the State of Florida. It is amazing the cases we have had of people that have ripped millions of dollars from consumers in the State of Florida. Our job isn't to protect auctioneers. When I first got on this Board I was very sympathetic with the situations people had and I have been burned so many times. I think a simple solution if you applied for an apprentice license which doesn't require a background and that way you are working under a licensed auctioneer and you are operating under his license. Eleven complaints is a lot of complaints

Anthony Spivey: He has given some mitigating information to the Board and a suggestion has been made to monitor him for two years of his performance. The information on the eleven complaints was not an auctioneer and I am not saying approve or disapprove. I just want to put more discussion into it the information regarding the eleven complaints was in a different industry which doesn't say he will have the same results in this profession because they are two different professions. Given the fact that recommendations have been given to allow him to conditionally be license with monitoring for two years take that into consideration. He his just one example of individuals that have been harmed in this economy because what has happened from higher ups.

LeChea Parson: Would he have to fill out a different application to be an apprentice?

David Flynn: Yes he would, it wouldn't be possible right now. You have an application for auctioneer before you so you can not allow him to do what you are requesting. You would have to rule on this one today.

Mr. Thaxton: Also too, like I said earlier in January my wife, Carol, and I both went to Florida Auction Academy. Carol has already received her license so we would be working hand in hand. The main reason we wanted to do that was she wants me to be the mouth piece, she wants me to be the guy that gets up there to call, but she is the organizational one. It's just the two of us. It's a great partnership, I have a great wife. I certainly support a two year, I have no problem with that at all, with reporting I think it is a great thing. I don't personally see the apprentice thing being a good option.

Chairman Moecker: As our Counsel points out you already made application for auctioneer. You can't go back to do the apprentice thing, I believe.

David Flynn: No, we couldn't as you can't as a Board. You still have this application. Even if he still applied as an apprentice, what you are doing is presuming that you will be here that Mr. Moecker will be here. You don't know what will happen in the future by the time he applies. Then he will justifiably rely upon what you are saying and you can't guarantee that they will grant the application at that time.

Fred Dietrich: If I understood it right, your saying your wife is a license auctioneer.

Mr. Thaxton: Yes. She just got her license, we went to school together.

Fred Dietrich: The solution you could apprentice under her and use her license. Like I say, I have been on this Board and I have heard a lot of sad stories. When I first got on this Board I was very sympathetic until we saw people coming back again after they had ripped thousands of dollars from people.

Mr. Thaxton: Mr. Dietrich, briefly touching back on those eleven cases. I can assure you if you look at any of those cases it was not because I took someone's money. I didn't take someone's deposit and go running off. They were complaints because there was workmanship issues and they wanted someone to come back to do additional repairs those type of things. Those were the type of complaints; it wasn't because Lee Thaxton took someone's money and took off and went to the Bahamas that's not any of those cases, I can assure you of that.

Chairman Moecker: I think we are handicapped in we don't know and we are assuming the worse. I wonder if it would be possible to move this to the June meeting. Obviously we are not going to get to a settlement of the issue because I made the motion and there is no second. Mr. Dietrich has his own view of where this ought to go. Perhaps were we could have a more thorough understanding of what these complaints are all about. Is that possible to do that?

Anthony Spivey: We would be able to do that if we did not pass the 90 day time period and he would have to waive his 90 days.

Chairman Moecker: We have the next meeting June 15th.

Mr. Thaxton: I am just trying to understand Mr. Dietrich in all sincerity. I am just trying to understand if the Board is putting conditions on me to make sure I abide by the letter of the law and report here. I am trying to understand why you wouldn't give a fair shot at being regulated to make sure I conform to the rules. I guess that is what I am trying to understand. I really am trying. I really am trying. I understand that you may have other cases in the past where people have burnt you and done things. That is putting it on me, I am not that guy, I am very willing to be put under a microscope and report to Mary on a

regular basis. I am just asking for your conditional second. So I can try to make a career here and make a living. I am trying to make a living.

Anthony Spivey: Also, putting him on conditionally requirements would be in line with the Governor's model of trying to get people back to work. Getting jobs into the State.

David Flynn: Mr. Dietrich if you want to monitor. What you are trying to do with the apprenticeship, I understand. But you really want somebody to be monitoring him. Well you got these reports that have to be filed a possibility of resolution here even though it may be his wife, if she is agreeable, you can require a monitor with all of these conditions and a monitor to submit these. That will link both people to the potential discipline in the future, both licensees are in this business together. Again, I am very hesitate and generally your wife is not your monitor, but I don't see anything wrong if you have two years probation, copies of your trust account, bank statements, copies of the contracts with the clients and copies of your advertisement and if there is also a monitor report someone who will monitor him during the two years with a small synopsis, that would be the monitor aspect, even though you can not do an apprenticeship.

Fred Dietrich: Mr. Chair, I will reluctantly second the motion.

LeChea Parson: Did we add additional thing with the monitor? Do we want to monitor?

Chairman Moecker: I think Mr. Dietrich in good faith has accepted, changed his mind and probably did so because of the monitoring requirement. Linking both licenses is not a bad idea and if Mrs. Thaxton agrees to that.

Mrs. Thaxton: I will definitely agree with that.

Mrs. Carol Thaxton sworn in by the Court Reporter.

Anthony Spivey: Will you state your name for the record, please.

Mrs. Thaxton: Carol Thaxton.

LeChea Parson: And your license number, Mrs. Thaxton, your AU number, do you know it?

Mrs. Thaxton: I don't know it, I have not even gotten my license yet.

Mary Alford: I can verify she is a licensed Auctioneer.

LeChea Parson: I was just going to put it on the record so we know what license number we are talking about. Mrs. Thaxton's AU license is good enough.

Mrs. Thaxton: I haven't gotten anything in the mail yet.

Mr. Thaxton: She just got it last week

Chairman Moecker: Previous meeting?

Mr. Thaxton: It just got approved a week or so ago. She may have missed the cut-off, I don't know.

Fred Dietrich: It would be in the minutes.

Mary Alford: Her application did not require going before the Board, it never did. It went through the process as normal and was approved.

Chairman Moecker: In any event you do have a license. We know Mrs. Thaxton does have a license. Mrs. Thaxton you have agreed with Counsel's request that you monitor and oversee the reporting. So, that the two of you are directly involved in this process.

David Flynn: They would be summary reports from the approved monitor. You are willing to be that approved monitor.

Mrs. Thaxton: Yes.

Motion: Chairman Moecker will amend my motion to include the monitoring.

Second: Fred Dietrich seconds the motion.

LeChea Parson: I found it, it is AU 4359

Chairman Moecker: Thank you.

Chairman Moecker: AU 4359, Congratulations on your license.

Motion carries unanimously.

David Flynn: You will receive an order from me outlining that and you should be getting some paperwork from the Department after I submit the order.

Chairman Moecker: Any issues feel free to come back to those of us who have been around for a while. Mr. Dietrich has a good memory too.

Mr. Thaxton: Thank you.

Fred Dietrich: I just want to clarify in previous situations; if someone calls me personally I just refer them back to the Board. I do not speak on behalf of the Board.

Chairman Moecker: I know you don't. Ok, now we move to disciplinary cases.

LeChea Parson: I have a handout that goes with these cases.

Chairman Moecker: Mary, In the Thaxton case, would you be able to review those and give us a summary of what those complaints might be about.

Mary Alford: Absolutely, I can tell you just from briefly reviewing some of them, majority of those were sent to the agency, if he did relinquish his license in May 2007 and I will check on that, majority of those cases were actually submitted after he relinquished his license before he was technically revoked by the Board. A lot of those dealt with permits expiring through the construction process, so the work was completed, but the permit was not updated. I will do a summary of all of those.

Chairman Moecker: I forgot to ask them if they have an AU license or AB license or are they two AU's.

Mary Alford: Two AU licenses. She is in the process of starting a business application.

IV. DISCIPLINARY CASES

Danny Eugene Wellham
Case # 2011-023919
OR 1098

LeChea Parson: In case anyone was wondering, an OR license is an owner / shareholder license of an auctioneer business. That's what an OR license is.

Chairman Moecker: Is there a way you can find out who has an OR license?

LeChea Parson: You can look them up just like any other license. You just put there name in and put Auctioneer just don't pick a license type. I will try it, but I think it should come up like any others.

Chairman Moecker: Who issues the license? The State of Florida.

LeChea Parson: The Department does. It is a Department issued license. What it does is ties a non-auctioneer owner with an auctioneer business.

Discussion of the OR license. (OR license is not required, but it is a way to officially tie someone to a business.)

The Department filed an administrative complaint on November 18, 2011. Respondent was served with the complaint by publication after mailing, certified mail and telephone attempts of service failed. The complaint charged the respondent violating Section 468.389(1)(c), Florida Statutes, failure to account, pay and return within a reasonable time. The respondent is owner / shareholder of San Marco Auctions. In May 2010 the

complainant, Mr. Besharim contracted with San Marco Auction Company to auction off four Persian rugs. In July 2010 the complainant shipped six additional rugs to San Marco for auction. To date, San Marco has only provided payment and accounting for three rugs. The complainant later retrieved all of his unsold rugs except for one in March of last year. Initially there were four rugs, he got paid for three of those. He then shipped six more rugs and he went to the warehouse and picked up the other six. There was one rug still missing, he doesn't know if it was sold or paid, he never got the rug back or paid for the unaccounted rug. The respondent has failed to file an Election of Rights form or otherwise establish any dispute of material facts in the complaint and pursuant to Rule 28-106.111, Florida Administrative Code, respondent has waived the right to request a hearing. Therefore, the Department believes it is appropriate at this time for the Chair to entertain a motion finding that the respondent was properly served and has waived his right to a hearing.

Motion: Chairman Moecker made a motion the respondent was properly served and waived his rights to a hearing.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

The Department believes it is appropriate at this time for the Chair to entertain a motion adopting the allegations of fact and conclusion of law in the complaint as those of the Board.

Motion: Chairman Moecker made a motion to accept the allegations of fact and conclusion of law as in the complaint.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

Recommendation as to penalty; fine in the amount of \$1,000, cost in the amount of \$333.18 and restitution in the amount of \$350 to Mr. Berharim and reprimand of license.

Motion: Fred Dietrich made a motion to accept the recommended fine, cost, restitution and reprimand.

Second: Chairman Moecker seconds the motion. Motion carries unanimously.

Danny Eugene Wellham
Case # 2011-023866

The Department filed an Administrative Complaint against the respondent on November 18, 2011. Respondent was served with the complaint by publication after mailing, certified mail and telephone attempts of service failed. The complaint charged the respondent violating Section 468.389(1)(c), Florida Statutes, failure to account, pay or return within a reasonable time and a violation of Section 468.389(1)(j), Florida Statutes, through a violation of Section 468.388(1), Florida Statutes, failure to execute a written

contract prior to an auction. Respondent is the auctioneer owner of San Marco Auction Company, LLC. In April 2010 complainant, Mr. Chatel contracted with San Marco Auction to auction jewelry, no written contract was executed prior to the consignment of the jewelry. In June and July 2010 complainant shipped additional jewelry to San Marco to auction. The total amount owed to Mr. Chatel was approximately \$11,935, San Marco has paid approximately \$9,630 in auction proceeds to the complainant. Some of the consigned jewelry remained unpaid for to the amount of at least \$2,305. The respondent has failed to file an Election of Rights form or otherwise establish any dispute of material facts in the complaint and pursuant to Rule 28-106.111, Florida Administrative Code, respondent has waived the right to request a hearing. Therefore, the Department believes it is appropriate at this time for the Chair to entertain a motion finding that the respondent was properly served and has waived his right to a hearing.

Motion: Chairman Moecker made a motion the respondent was properly served and waived his rights to a hearing.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

The Department believes it is appropriate at this time for the Chair to entertain a motion adopting the allegations of fact and conclusion of law in the complaint as those of the Board.

Motion: Chairman Moecker made a motion to accept the allegations of fact and conclusion of law as in the complaint.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

Recommendation as to penalty; fine in the amount of \$2,000, cost in the amount of \$396.70 and restitution in the amount of \$2,305 and a one year suspension of license.

Motion: Chairman Moecker made a motion to accept fine, cost, restitution and year suspension due to danger to the public, severity of this offense, no effort to rehabilitation or attempts to make payment and the number of offenses by either subject.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

Danny Eugene Wellham
Case # 2011-023969

The Department filed an Administrative Complaint in this case on November 18, 2011. Respondent was served with the complaint by publication after mailing, certified mail and telephone attempts of service failed. The complaint charged the respondent violating Section 468.389(1)(c), Florida Statutes, failure to account, pay and return within a reasonable time not to exceed thirty days. The respondent is owner / shareholder of San

Marco Auctions. In October 2012 the complainant, Ms. Draper contracted with San Marco Auction Company to auction a Persian wool rug, the rug was later sold at auction. The complainant was owed approximately \$325 in proceeds. No proceeds have been paid. The respondent has failed to file an Election of Rights form or otherwise establish any dispute of material facts in the complaint and pursuant to Rule 28-106.111, Florida Administrative Code, respondent waives the right to request a hearing. Therefore, the Department believes it is appropriate at this time for the Chair to entertain a motion finding that the respondent was properly served and has waived his right to a hearing.

Motion: Chairman Moecker made a motion the respondent was properly served and waived his rights to a hearing.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

The Department believes it is appropriate at this time for the Chair to entertain a motion adopting the allegations of fact and conclusion of law in the complaint as those of the Board.

Motion: Chairman Moecker made a motion to accept the allegations of fact and conclusion of law as in the complaint.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

Recommendation as to penalty; fine in the amount of \$1,000, cost in the amount of \$388.32, restitution in the amount of \$325.00 and licensure revocation.

Motion: Chairman Moecker made a motion to accept fine, cost, restitution and licensure revocation due to aggravating factors; length of time, approximately 18 months with no information of rehabilitation or the license to correct the offense, danger to the public and the number of times the licensee has been disciplined by the Board.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

David Flynn: Ms. Parsons, who is the restitution to?

LeChea Parson: Mrs. Gladys Draper.

Chairman Moecker: Have there been any claims filed with regard to the Trust Fund for any of this stuff?

Anthony Spivey: No.

Danny Eugene Wellham
Case # 2011-023892

The Department filed an Administrative Complaint in this case on November 18, 2011. Respondent was served with the complaint by publication after mailing, certified mail and telephone attempts of service failed. The complaint charged the respondent violating Section 468.389(1)(c), Florida Statutes, failure to account, pay and return within a reasonable time not to exceed thirty days. The respondent is owner / shareholder of San Marco Auctions. In May 2010 the complainant, Mr. Wambold contracted with San Marco Auction Company to auction a bronze statue called "Swing Kids." The statue was later sold in auction for approximately of \$1,590.00 so the complainant is owed approximately \$1,350.00 in proceeds. As to date, the proceeds have not been paid. The respondent has failed to file an Election of Rights form or otherwise establish any dispute of material facts in the complaint and pursuant to Rule 28-106.111, Florida Administrative Code, respondent waives the right to request a hearing. Therefore, the Department believes it is appropriate at this time for the Chair to entertain a motion finding that the respondent was properly served and has waived his right to a hearing.

Motion: Chairman Moecker made a motion the respondent was properly served and waived his rights to a hearing.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

The Department believes it is appropriate at this time for the Chair to entertain a motion adopting the allegations of fact and conclusion of law in the complaint as those of the Board.

Motion: Chairman Moecker made a motion to accept the allegations of fact and conclusion of law as in the complaint.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

Recommendation as to penalty; fine in the amount of \$1,000.00, cost in the amount of \$338.04 and restitution in the amount of \$1,350.00 and revocation of license.

Motion: Chairman Moecker made a motion to accept fine, cost, restitution and revocation of license due to aggravating factors; the number of time licensee has been disciplined by the Board, danger to the public, number of repetition of offenses and lack of effort for rehabilitation by the licensee.

Second: Fred Dietrich seconds the motion. Motion carries unanimously

Danny Eugene Wellham
Case# 2011-026505

The Department filed an Administrative Complaint in this case on November 17, 2011. Respondent was served with the complaint by publication after mailing, certified mail and telephone attempts of service failed. The complaint charged the respondent violating Section 468.389(1)(c), Florida Statutes, failure to account, pay and return within a reasonable time not to exceed thirty days. The respondent is owner / shareholder of San Marco Auctions. In April 2010 the complainant, Ms. Isakov contracted with San Marco Auction Company to auction off various merchandise. The reserved price for the items was \$950.00, complainant delivered the merchandise to San Marco, no accounting was provided regarding the items and only some of the items have been returned and no proceeds have been paid. The respondent has failed to file an Election of Rights form or otherwise establish any dispute of material facts in the complaint and pursuant to Rule 28-106.111, Florida Administrative Code, respondent waives the right to request a hearing. Therefore, the Department believes it is appropriate at this time for the Chair to entertain a motion finding that the respondent was properly served and has waived his right to a hearing.

Motion: Chairman Moecker made a motion the respondent was properly served and waived his rights to a hearing.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

The Department believes it is appropriate at this time for the Chair to entertain a motion adopting the allegations of fact and conclusion of law in the complaint as those of the Board.

Motion: Chairman Moecker made a motion to accept the allegations of fact and conclusion of law as in the complaint.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

Recommendation as to penalty; fine in the amount of \$1,000.00, cost in the amount of \$400.22 and licensure revocation. We don't have enough information to determine the restitution amount.

Motion: Chairman Moecker made a motion to accept fine, cost and revocation of licensure due to danger to the public, number of offenses, number of times the licensee has been disciplined by the Board and lack of effort for rehabilitation by the licensee.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

Danny Eugene Wellham
Case# 2011-023716

The Department filed an Administrative Complaint in this case on November 18, 2011. Respondent was served with the complaint by publication after mailing, certified mail and telephone attempts of service failed. The complaint charged the respondent violating Section 468.389(1)(c), Florida Statutes, failure to account, pay and return within a reasonable time. And violating Section 468.388(10)(a), Florida Statutes, failure to keep auction proceeds in a separate escrow account. The respondent is owner / shareholder of San Marco Auctions. In August 2010 the complainant, Mr. Shaham, contracted with San Marco Auction Company to auction various merchandise. These items from August 2010 were later auctioned, complainant delivered additional merchandise in September 2010 with a reserve amount of \$2,160.00 and two additional shipments were sent in October 2010. The reserve prices for these three shipments total \$23,410.00. Complainant delivered all the merchandise to San Marco. A partial accounting was provided and some of the items were returned to Mr. Shaham and no proceeds have been paid. San Marco attempted to pay auction proceeds in September and November 2010, but both checks were returned for insufficient funds. The account from which these checks were written also show activity for personal expenses and was not a separate escrow account. The respondent has failed to file an Election of Rights form or otherwise establish any dispute of material facts in the complaint and pursuant to Rule 28-106.111, Florida Administrative Code, respondent waives the right to request a hearing. Therefore, the Department believes it is appropriate at this time for the Chair to entertain a motion finding that the respondent was properly served and has waived his right to a hearing.

Motion: Chairman Moecker made a motion the respondent was properly served and waived his rights to a hearing.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

The Department believes it is appropriate at this time for the Chair to entertain a motion adopting the allegations of fact and conclusion of law in the complaint as those of the Board.

Motion: Chairman Moecker made a motion to accept the allegations of fact and conclusion of law as in the complaint.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

Recommendation as to penalty; fine in the amount of \$2,000.00, cost in the amount of \$409.94 and licensure revocation. I don't have a firm restitution number because we are not sure which items were returned, what wasn't returned, or what was sold.

Motion: Chairman Moecker made a motion to accept fine, cost and revocation of licensure due to danger to the public, number of offenses, number of times the licensee has been disciplined by the Board and lack of effort for rehabilitation by the licensee.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

Danny Eugene Wellham
Case# 2011-023842

The Department filed an Administrative Complaint in this case on November 18, 2011. Respondent was served with the complaint by publication after mailing, certified mail and telephone attempts of service failed. The complaint charged the respondent violating Section 468.389(1)(c), Florida Statutes, failure to account, pay and return within a reasonable time not to exceed thirty days. The respondent is owner / shareholder of San Marco Auctions. In August 2010 the complainants who are sisters, Ms. Rauhofer and Ms. Hardie contracted with San Marco Auction Company to auction the contents of a residents. Items were later auctioned over the course of three auctions. Only partial accounting was provided for the three auctions. Complainants picked up some of the unsold items in December of 2010, but some items remained unaccounted for. The partial accounting that was provided shows the complainants were owed \$941.85. No proceeds have been paid. The respondent has failed to file an Election of Rights form or otherwise establish any dispute of material facts in the complaint and pursuant to Rule 28-106.111, Florida Administrative Code, respondent waives the right to request a hearing. Therefore, the Department believes it is appropriate at this time for the Chair to entertain a motion finding that the respondent was properly served and has waived his right to a hearing.

Motion: Chairman Moecker made a motion the respondent was properly served and waived his rights to a hearing.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

The Department believes it is appropriate at this time for the Chair to entertain a motion adopting the allegations of fact and conclusion of law in the complaint as those of the Board.

Motion: Chairman Moecker made a motion to accept the allegations of fact and conclusion of law as in the complaint.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

Recommendation as to penalty; fine in the amount of \$1,000.00, cost in the amount of \$502.93 and restitution in the amount of \$941.85 and licensure revocation.

Motion: Chairman Moecker made a motion to accept fine, cost, restitution and licensure revocation due to aggravating factors; danger to the public, number of offenses, number of times the licensee has been disciplined by the Board and lack of effort for rehabilitation by the licensee.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

Danny Eugene Wellham
Case# 2011-023739

The Department filed an Administrative Complaint in this case on November 17, 2011. Respondent was served with the complaint by publication after mailing, certified mail and telephone attempts of service failed. The complaint charged the respondent violating Section 468.389(1)(c), Florida Statutes, failure to account, pay and return within a reasonable time not to exceed thirty days. And violating Section 468.389(1)(h), Florida Statutes, commingling of funds and failure to keep proceeds in a separate escrow account. The respondent is owner / shareholder of San Marco Auctions. In May 2010 the complainant, Mr. Shwarz contracted with San Marco Auction Company to auction furniture and various other merchandise, these items were later sold in May and June of 2010. The items sold for \$5,957.50 and with the complainant being owed \$4,766.01. The complainant has received \$1,235.40 in proceeds so far. The complainant later delivered additional furniture and merchandise to San Marco for auctioning. No payment or accounting was received from the auctions on the later merchandise. The account for which the partial payment of \$1235 was drawn also showed personal expenses, it was not a separate escrow account. The respondent has failed to file an Election of Rights form or otherwise establish any dispute of material facts in the complaint and pursuant to Rule 28-106.111, Florida Administrative Code, respondent waives the right to request a hearing. Therefore, the Department believes it is appropriate at this time for the Chair to entertain a motion finding that the respondent was properly served and has waived his right to a hearing.

Motion: Chairman Moecker made a motion the respondent was properly served and waived his rights to a hearing.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

Fred Dietrich: Hopefully these people aren't still around in business, are they?

LeChea Parson: From what my investigators in Jacksonville have told me, they are no longer in business.

The Department believes it is appropriate at this time for the Chair to entertain a motion adopting the allegations of fact and conclusion of law in the complaint as those of the Board.

Motion: Chairman Moecker made a motion to accept the allegations of fact and conclusion of law as in the complaint.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

Recommendation as to penalty; fine in the amount of \$1,000, cost in the amount of \$418.48 and restitution in the amount of \$3,530.61 and revocation of license.

Motion: Chairman Moecker made a motion to accept fine, cost, restitution and revocation of licensure due to aggravating factors; danger to the public, number of offenses, number of times the licensee has been disciplined by the Board and lack of effort for rehabilitation by the licensee

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

LeChea Parson: Our Jacksonville office investigated these complaints and the Jacksonville investigators worked with the Sherriff's Office here in St. Johns' County. That is how some of the people got some of their merchandise back. They worked with the Sherriff to get the warehouse opened and contacted the people and said if you can find your items you can take them back. They worked very closely with them. In addition, as you know, we refer cases to the State Attorney's Office and to the Sherriff's Office through our investigators if possible and one of the parties involved here was arrested and charged with felonies related to these instances. There may still be outstanding warrants for the other person and other issues involved. I don't believe any trial has started, but there was arrested related to these cases and the business is no longer able to operate.

V. REPORTS

A. Prosecuting Attorney – LeChea Parson

1. Case Load Status (Handout)

6 (six) cases received in legal, 1 (one) case for supplemental investigation, 1 (one) pending formal hearing at DOAH, 8 (eight) ready for default, 5 (five) formal hearing requested, 1 (one) settlement negotiation, 9 (nine) set for board presentation, most of which we heard today, 3 (three) cases awaiting final order.

Chairman Moecker: Formal hearing requested on San Marco Auctions?

LeChea Parson: I am seeing that the same time you are. I will have to check into that and see about that. I don't think it has come back across my que yet. It looks like it was just done recently.

Chairman Moecker: Mr. Scott now wants to go to DOAH?

LeChea Parson: Yes, these are additional cases. They are not the cases that went before you previously. These are two separate cases. Two related cases, but separate from the ones you heard last year were he has requested a formal hearing. We are working on that to see if a settlement can be reached or if it actually needs to go to DOAH.

Chairman Moecker: So he wants to by pass the Board.

LeChea Parson: It's not really by passing the Board. It will still have to come before you even if it goes to DOAH. It will just come to you after DOAH's finished with it and you still have final order authority.

Chairman Moecker: I thought we dealt with Kielstock? Is this another?

LeChea Parson: This is the same Kielstock with the case status should actually have been changed to a different status. If you recall you said there might be facts in disputes so it should go to DOAH. I neglected to tell my assistant to change the status to the appropriate status.

Chairman Moecker: What are we likely to have for the June meeting?

Fred Dietrich: Hopefully we have an exciting agenda for the conference.

LeChea Parson: One would hope, right now it is looking kinda slim. We are not receiving a lot of new cases. Which is good or bad.

Fred Dietrich: What does ULA mean?

LeChea Parson: ULA means Unlicensed Activity.

Chairman Moecker: Are we likely to have another Wellham type situation at the June meeting?

LeChea parson: Possibly, the 8 defaults might be ready for the June meeting.

Chairman Moecker: Kliemister, who is he associate with?

LeChea Parson: San Marco.

Chairman Moecker: That's the other partner?

LeChea Parson: Yes.

Chairman Moecker: That you heard from?

LeChea Parson: Yes.

2. Recommendation for violations allowable for mediation

LeChea Parson: At your last meeting I mentioned the mediation rule may need to be revised. Rule 61G2-8.030 is the mediation rule. That rule is authorized by Florida Statute, 455.2235. This is just a suggestion and you can mull it over and think about it. I believe we should add your failure to account or pay to the mediation rule. Only because the

suggestion in 455 is that the complaints were harm is caused by the licensee is economic in nature and can be remedy by the licensee. So lets say, it is day 45 and someone hasn't been paid, they file a complaint with the Department. If both parties agree you go to mediation and they can say maybe the person needs a payment plan, if they can work something out and only if it is worked out then that will close the case. If the issue is not resolved, if both parties do not want to do mediation or whatever the case may be, it would be investigated like a regular disciplinary case. Since a failure to pay, by its definition, is economic in nature I thought it could be a good fit. We also have people who feel they should have gotten more money then they actually got, if you give the parties a chance to sit down and talk about it, you might resolve the problems before it gets to us. Just a suggestion. They told us to look at some, our ADR (Alternative Dispute Resolution) department wants to do more, they have some success with this stuff. They do it in construction sometimes. Maybe they say, I will pay you back, but I need three months to pay you and if the person agrees, only if the compliant agrees, then the case is settled that way. If the person doesn't want to settle it that way it will be investigated like a regular disciplinary case. It will go through the regular channels.

Chairman Moecker: My problem with that is that you are dealing with the public's money. An auctioneer takes the money at auction, collects the money and doesn't remit in full because of whatever reason. They sit down, they mediate and work it out and pay it out over three months or four months or what ever the number is. That doesn't spank the auctioneer for violating the most serious rule we have of dealing with trust fund money. Obviously something happened to the trust fund money, it was used for something else. It wasn't paid to the consigner or the contracted party. I would have to think seriously about that.

LeChea Parson: It was just a suggestion. If you don't think it is appropriate for mediation. It is the Board's authority. If you don't think it is appropriate, we won't add it. It's fine.

Anthony Spivey: I can see two sides of it where if you are doing the mediation what it does is takes the burden of the case load work off the Board in one situation. On the other hand, like Mr. Moecker just alluded to, if you are doing the mediation then the information is not coming in front of the Board so the auctioneers aren't given a system of deterrence.

LeChea Parson: There is no discipline against them.

Anthony Spivey: Nothing to deter them from doing it again.

Chairman Moecker: Then they are going to mediation.

LeChea Parson: According to the rule it is up to three times they can go through mediation, so that is a lot.

Chairman Moecker: I don't think you should give the person that is handling the money three bites of the apple. As far as I am concerned they need to come before the Board for using trust fund money other than paying who is entitled to it.

LeChea Parson: Okay, not a problem. I do think, however, we should take out the failure to display licenses as a mediation offense because what is there to mediate. Either you displayed your license or you didn't. There is no economic harm.

Fred Dietrich: That's the easiest thing to determine.

Chairman Moecker: You either did or you didn't.

LeChea Parson: I don't think it is appropriate for mediation. It is over here in your minor violations section. So I don't think it needs to be in the mediation rules.

Fred Dietrich: It is the easiest thing to determine.

LeChea Parson: There is no remedy for it. You can't fix it later by saying lets go through mediation because you didn't have your license displayed.

Chairman Moecker: The rule is the rule.

LeChea Parson: I would suggest that if we could suggest to Mr. Flynn that he get that deleted out of the rule. I don't know if anyone has tried to use it, just to make things neat and tidy.

Chairman Moecker: I would like to look at this between now and the next meeting. I don't know how Mr. Dietrich feels, but I feel like there is no need to mediate the issue over the license.

Fred Dietrich: I think from the standpoint of the first person you pay out of proceeds is the consigner. But, recently last year we had a case before us where the guy went to the auction bought a bunch of stuff, gave a bad check and then declared bankruptcy. The auctioneer was trying to make good on the buyers bad check. That's kind of a weird situation. The Auctioneer got a bad check then the guy that gave him the bad check declared bankruptcy. The auction involved a bunch of plants or something. Bought a lot of plants, wrote a bad check for the plants then declared bankruptcy.

Chairman Moecker: Mediation won't help that.

Fred Dietrich: In that situation the auctioneer was making good on the bad check he got.

Chairman Moecker: That issue would not necessarily. If he went to the consigner and said listen I got a bad check from this guy, the guy is now gone. I am going to work this out with you and he or she does it privately. This will never come to DBPR in any circumstance. It is only when the parties are not communicating, right?

LeChea Parson: Or sometimes people say no that is not good enough. I don't want to work it out with you I want my money back. So they might file a complaint anyway.

Fred Dietrich: In that case they did.

LeChea Parson: That would be something that should come out in the investigation so that would be a mitigator.

Fred Dietrich: That is where it came out. When he came before the Board and it came out that he got a bad check from this guy and then the guy declared bankruptcy.

Chairman Moecker: Are we in agreement?

Fred Dietrich: Yes, in general I am in an agreement. In some situations a person figures I rather get my money slow then not at all.

Chairman Moecker: Why don't we look at the mediation issue, get a chance to look it over. I agree with you, and I think Mr. Dietrich would as well, take out the advertisement issue because that is black and white. And the business with the trust fund.

LeChea Parson: If you all see any rules that you think would be appropriate for mediation we can talk about that in June as well. If you see any, if you don't see any then we won't change it. If you see any other statute or rules that you think would be appropriate for mediation.

Chairman Moecker: When you are talking about that, specifically you are talking about 61G-20 when you re talking about rules.

LeChea Parson: Yes, even in the statute 468 part VII.

Chairman Moecker: We are talking about the 468 part?

LeChea Parson: Yes, the disciplinary part under 468 or any rules that someone might violate that might get them charged with a violation of 468.

Chairman Moecker: I typically would look to you guys for that because you are the ones that have the experience with the bad activity. If you think the rules are not working so you can do your job then we need to hear about it.

LeChea parson: Okay. I will look into further and see if there is anything else I need to bring back for June. I think that is all for me.

B. Board Counsel – David Flynn

1. Rules Report

David Flynn: We had 8 (eight) rules. All of the repeals are now effective. If you remember gentleman, from we started a clean up of all the rules went back through each of them, took a look at them, Mrs. Parson's did along with Mr. Spivey and I had to look at them as far as the Governor's Office of Fiscal Accountability and Regulatory Reform and executive order. We have identified these, four are now completed and four are in process with no concerns as far as proceeding forward smoothly. I haven't gotten any letters from OFARR with concerns and I have not gotten any letters back from the Joint Administrative Procedures Committee which would let me know if they had any concerns with it. Looks like we will be able to proceed forward. All the time and effort has been put in now, we just have to do a couple more publications. That's it.

Chairman Moecker: What is, Mr. Flynn, the 5.001?

David Flynn: Requirement of conducting an auction.

Chairman Moecker: Oh, conducting. What did we change there?

David Flynn: We cut out the part that was in statute. I have it with me.

LeChea Parson: You can see what the rule looks like now on page 8 of 15 in your blue book. I believe the issue was that most of this stuff was in 468.388, so most of it didn't need to be in here.

David Flynn: Right, anything that was in statute already we would have deleted.

Anthony Spivey: Some of the information is duplicate.

Chairman Moecker: Duplicate, that's right.

David Flynn: That's all it was on every single one of those rules. And the repeals were simply because the entire rule was already in here. We had to delete out, one of the repeals was 5.003 and that was listed in the requirements of conducting an auction so we had to strike that out. Nothing is really changing as requirements, we are just meshing the statute with the rule and making sure none of them are duplicative.

C. Board Chair – Chairman Moecker

Chairman Moecker: I have nothing to report except for we are meeting with the Florida Auctioneers Association at our next meeting in June, June 15th which you all know about. Hopefully all of us can encourage participation from the profession at that meeting. It would be very nice to have some of the folks there that have questions and concerns about what the Board does and why they don't do certain things that they do. Hopefully

Mr. Flynn you will be there to keep me out of trouble from saying something I should have of said.

David Flynn: Absolutely.

Fred Dietrich: I know you won't mention it, but I would like everyone to know that a person from your staff was just appointed as Vice President of the Florida Auctioneers Association.

Chairman Moecker: Yes, I am very proud of her. She is a good colleague.

Discussion of the Auctioneer Convention events in June.

D. Executive Director Report – Dr. Anthony Spivey

1. Monthly Board Report – Quarterly complaint report.
2. Quarterly Financial Statements. (Period ending December 31, 2011)

Unlicensed Activity Account balance = \$32,799

Chairman Moecker: I am curious about two things, three things. A \$5 refund, who would we give a refund to out of that account? What would that be? Is it someone's license that was returned?

Anthony Spivey: It could be a similar situation where the person applied for the license and just decided not to do anything. We would refund that money. I very seldom see anyone request a \$5 refund.

Mary Alford: It is usually an overpayment that is done in the original check they send in.

Chairman Moecker: The two other questions; The DOAH charge of \$717 and the Service Charge to General Revenue, what's that?

LeChea Parson: DOAH charges us if we send cases to them.

Chairman Moecker: And an unlicensed activity case would go.

LeChea Parson: Any, an unlicensed person can select DOAH just like a licensed person can. If they select to go to DOAH and it is sent to DOAH, even if it doesn't go all the way through we still have to pay DOAH something.

Chairman Moecker: That is not an assessment by DOAH every quarter?

LeChea Parson: No.

Anthony Spivey: That is an actual direct charge.

Chairman Moecker: A direct charge, okay. Then service charge to general revenue? Is that like an administrative fee?

Anthony Spivey: That is a fee for every Board that pays an 8% charge to the balancing account and goes to general fund account.

Operating account balance = (\$10,157) negative

Chairman Moecker: Do we bill in 2012? For fees?

Anthony Spivey: The amount goes out 90 days before the renewal period. So you will start to see money coming in to the account before the actual renewal period.

Chairman Moecker: So we will build that balance back up. This year, 2012. I noticed again the DOAH \$717, that is what made me think there may be some sort of admin charge.

LeChea Parson: If it is the same \$717 it should not be charge twice.

Anthony Spivey: I can check that, it may be an error in accounting. It is unusual to see the same figure there.

Chairman Moecker: The service charge to General Revenue was much higher then the previous year?

Anthony Spivey: That is because, if you look at your revenue column for 2010 (\$48,000) and the revenue column for 2011 (\$414,000) then there is an 8% service charge fee. That is why that charge is so much higher. So as you accrue more money into the account the service charge will fluctuate up and down.

Chairman Moecker: Central Intake and Licensure, I assume is the same thing.

Anthony Spivey: Right, that is a direct charge to the Board for the applications that are processed or any items addressed for this particular Board.

Chairman Moecker: Admin, same thing?

Anthony Spivey: Right, the Departments Administrative Cost, for example the Secretary's Office, Office of General Counsel, those particular sections in the Department do not accrue funds the way the Department does. For example this Board makes money by license fees charged through the Board so that money comes in as a service for the work done by the Secretary's Office. A portion of those fees are transferred for the administrative portion to run that Secretary's office. That would be an indirect charge to all of the Boards. Everyone pays into that.

Recovery Fund account balance = \$362,328

Chairman Moecker: Is there a threshold we have to approve for an assessment to Auctioneers to put money back into that?

Anthony Spivey: Right, if the account goes below \$200,000 in the statute says an assessment shall be made. I watch the balance and notify the Department when it starts getting low. It is not at that point right now, but they are aware if it gets too low there are possible assessment could be made.

Chairman Moecker: The downside is if we put too much money in there then they may sweep it.

Anthony Spivey: It is a possibility.

Chairman Moecker: I don't have any problem with an assessment, but on the other hand if you are putting it out there to be swept like we have had two sweeps since I have been around, at least. It seems terribly unfair to the honest auctioneers. I don't know if we need to think of doing things differently, but. We talked about that when Don Shearer was on, they were going to look at discussing with the Florida Auctioneers Association. That issue if we should go to bonding again or go back to bonding.

Anthony Spivey: That would be a good item to invite the Auctioneers in June to discuss with the Board.

Fred Dietrich: I was not in favor of the Recovery Fund when we went to it. But after we went to it and part of it is that realtors have a Recovery Fund. Right now we have all this money in the Recovery Fund and if we go back to bonding the question is, what is going to happen to the Recovery Fund then? I assume it would be consumed by State government. Sometimes there is a saying if it ain't broke don't fix it. One time I talked to bonding companies we felt if people have to get bonded if they have a problem and can't get bonded then we don't have to license them. I spoke with a bonding company and basically anyone that pays the money they bond them. I guess they figure that on the average it is a group of good guys. I know the State and National Auctioneer Associations have deals with bonding companies and basically if someone is a member they bond them.

Chairman Moecker: If we put it on the agenda and bring it up, are we opening a can of worms at that meeting.

Fred Dietrich: In the past we have had some legislative proposal that we thought nobody would be against. After five years it went through the House unanimously and then the Governor Veto it. Working on legislative matters over a long period of time, it is not an easy task to get through the legislature.

Chairman Moecker: That in particular the Governor may view that as a hindrance of getting into business. You spend on all that time and effort trying to get a bonding requirement passed. I think we take the position that we have the Recovery Fund, stay with the Recovery Fund and if it runs low replenish it and hope it doesn't get swept. I would love to have some discussion. Can we put that in the agenda to ask those in attendance what their view is for Recovery Fund versus bonding?

Anthony Spivey: It would just be there for discussion.

Chairman Moecker: FYI type of thing.

Anthony Spivey: Yes

3. Apply Now! Project

Anthony Spivey: The Department is going through a process where we are reviewing all the applications for all professions. The project is called Apply Now. What the goal is to revamp all the applications so when an individual applies for a license in the Department it is much easier for them to go through the process. We have identified some areas where the applications may be cumbersome, asking for information that is not necessary or it may be hard to find what they are looking for. At our last meeting in January we talked about this a little bit and the Board requested that we bring back the discussion to the Board at this meeting and show what the old applications looked like versus the new one as a proposal.

Anthony Spivey directed the Board through all applications for Auctioneers; old v. new. Minor edits needed for formatting of instructions. Copies of new applications will be provided at the next meeting.

VI. OLD BUSINESS

A. Discipline Report (Handout)

Anthony Spivey: At the last meeting you were asking about the different cases for discipline and the result of the compliance for the individual. Mary has presented here for you showing what the status of the compliance of some of these individuals are.

Chairman Moecker: So, we actually do get some money in. I am looking at the collection report and it does not look like there is much success with the collection effort. I have a general rule if you are personally responsible you should be chased anyway. Is this something that would be hard to keep up on an FYI type thing every meeting?

Mary Alford: No. I am going to continue doing this moving forward keeping track of compliance. Basically for each Final Order all the conditions, so when you do put different conditions as in the case with Mr. Thaxton conditions of sending in copies of

contracts, bank statements stuff like that I will have a spread sheet set up so I can keep it checked off and each Board meeting I can bring it so we can see who is complying and who is not.

Chairman Moecker: I was told earlier by Ms. Parsons that we have to notice somebody if they are not compliance with the rule or what we have set up for them, for example the gentleman from today we would have to notice them to give them an opportunity to appear before the Board and give his explanation. But at least we won't loose sight of these things.

Mary Alford: Mr. Dietrich, you said you had a question when we came to this report.

Fred Dietrich: On the very bottom of the page, Venus Small Animal Auction. There are some areas of grey that exempt live stock auctions that are licensed by the Department of Agriculture. I have had the Department of Agriculture inspectors call me and I have referred them to Tony. Sometimes they run into situations were people say it is a live stock auction they are exempt and they are not really exempt if they are not licensed with Department of Agriculture. USDA has licenses and Florida Department of Agriculture has livestock license. Some people think if they are selling something besides live stock that doesn't go beyond our auction license laws. Some of these are junk auctions, they may sell some rabbits and some chickens and if somebody has a piece of furniture to sell or something they bring it. Those things do not exempt them from our law. The USDA their bonding is over \$100,000 for livestock auction. We couldn't come up with a penalty that would be stronger then what the USDA has. The Florida Department of Agriculture licenses other livestock auctions. It is actually from the Florida Department of Agriculture that they were giving me some complaints of these people who are selling a couple of armadillos and gofers or something and say they have a livestock small animal auction and they were exempt. A lot of those auctions they sell all kinds of things. That does not exempt them from auction licensing laws.

Mary Alford: And that is exactly why that case is on this report is because they said they were doing a livestock auction and they started auctioning off other things.

Fred Dietrich: The exemption is if they are licensed by the Department of Agriculture so if they are not licensed by the Department of Agriculture then they need to be licensed by the Board of Auctioneers.

David Flynn: Also, if you are selling livestock and the owner is present or government agency is present or if it is under the auspice of an auctioneer trade association. So you just have one of those livestock, auctioneer and if the owner was present. If I own livestock apparently, how I read the statute, I am there. That would be weird. It doesn't seem like there is a lot of regulation.

Fred Dietrich: People in agriculture are very confident in the auction system. Anytime livestock is being sold I'm there. There are a lot of people that drop them off at the livestock auction and then the livestock auction sends them a check. They figure

whatever the price is was what their animal will bring that day. Packers and Stockyards Act their bonds are over a hundred thousand dollars we don't have to worry about situations like that. Somebody is selling a few goats and rabbits and one thing or another and say they are holding livestock auctions then the Florida Department of Agriculture have a license that they license and bond livestock auctions.

Anthony Spivey: When I do receive those types of calls I will point them to the Statute Section 468.383(4). As far as whether or not they have the requirements of the USDA I can not enforce that.

Fred Dietrich: Or if it is the Livestock Trade Association. The Florida Angus Association they do an auction for their members. Somebody that specializes in selling livestock. Most livestock auctioneers are going to be licensed. It may sound weird today, but most of the leading horse auctioneers of America are also our auctioneers. I would starve to death if I only sold livestock and my specialization is livestock. If they are trying to say they are a live stock auctioneer or a livestock auction they need to have one of those other qualifications.

LeChea Parson: our unlicensed activity unit investigates, that is why it was on here because it was an unlicensed activity case. They will get it and make sure all things were present to make sure it fits the exemption or it doesn't.

Chairman Moecker: So that case did not come before us?

LeChea Parson: Unlicensed cases do not come before you.

Fred Dietrich: I was getting complaints from the inspectors with the Department of Agriculture they say these people are crooks and are trying to say they are a livestock auction. It is actually the Florida Department of Agriculture calling me and I tell them to call Tony to see what the requirements were. These people are trying to say they are livestock auctions so they are exempt, but they are not exempt. They are either licensed by the Department of Agriculture or by us. A lot of them are called small animal auctions. When I saw that on there that was the only reason I asked about it. The inspectors were complaining to me that they thought it was a problem. They either meet one requirement or the other and just because they call themselves a livestock auction doesn't mean they are exempt. A lot of those livestock auctions will sell anything that someone brings in.

B. Collections Process

Chairman Moecker: The collection report shows that there is nothing coming in. Again, I look at things like this Caballero guy and anybody who is an individual; I don't know why we don't go after these people individually trying to get a judgment against them. For some reason I was under the impression when Barbara Edwards was the Board Counsel that we did that.

David Flynn: I believe it is going to depend on the Department, their procedures, but when it goes to collections certainly you can pursue something on this on the fine and cost, you have a right to do it. They send it to collections just like any company does and if they feel it is not worth their time they are just going to write off the two hundred dollars. But could you go and attempt to get a judgment on that and force that judgment and then try and get a lien on something.

LeChea Parson: The cost might out way the benefits.

Chairman Moecker: I understand. You set a threshold and that is where I was going with that earlier conversation. If this San Marco thing winds up being the principal's on the hook for thirty thousand dollars each jointly or what ever the case may be. Why wouldn't we get a judgment personally and try to collect it. Same things as Jay Sugerman Auctioneers when you pay out a bond.

David Flynn: If you pay out on the Trust fund that may be a different question because technically when we do the paperwork and subjugate any of the claims back to the Board or Department in the Statute. Then that is something else for me to look at, I need to look at to see if the Board itself can pursue on those claims. If we pay out then any rights of the person we are paying are subject to the Board. Then it would lie within the jurisdiction of the Board to proceed versus the Department. I need to look at that. That would be two different situations.

Chairman Moecker: I understand exactly what you are saying. If you total the claims here they only total forty-three thousand dollars. It doesn't make a lot of sense to file a lawsuit, get a judgment, get it recorded and then try and chase somebody for thirty items that total fort-three thousand. However, a bigger number is what we are chasing especially if it is an individual. If the Recovery Fund, for example, can get money back into it without assessing the auctioneers then we are doing them a service. We are doing the auctioneers a service by looking after their money a little better. Can you look at that to see what we can do, especially on the recovery fund thing?

David Flynn: I will. I will ask around. I will look at it and see if there is a history. I want to look at the history with the Board and go back through some old orders and see.

C. Recovery Fund report

Report is part of the Financial Report presented earlier.

VII. NEW BUSINESS

No new business.

VIII. ADJOURNEMENT

Motion: Fred Dietrich made a motion to adjourn.

Second: Chairman Moecker seconds the motion.

Meeting was adjourned at 12:08 p.m.