

MINUTES
South Carolina Auctioneers' Commission
Board Meeting

10:00 a.m., August 17, 2015
Synergy Business Park
110 Centerview Drive, Kingtree Building Room 108
Columbia, South Carolina

Monday, August 17, 2015

1. Meeting Called to Order

Victor Avendano, Chairman, of Mt. Pleasant, called the regular meeting of the SC Auctioneers' Commission to order at 10:13 a.m. Other Board members present for the meeting included: Matthew Holiday, Vice Chairman, of Spartanburg; Joe Burns, of Swansea; Jamison Marchant, Isle of Palms; and Michelle Pinkney, of Irmo.

Staff members participating in the meeting included: Georgia Lewis, Advice Counsel, Office of Advice Counsel; Zubin Billimoria, Office of Disciplinary Counsel; Wendi Elrod, Program Assistant; Amy Holleman, Administrator; John Sowell, Investigator, Office of Investigations and Enforcement; Rodney Pigford, Investigator, Office of Investigations and Enforcement; and Sharon Wolfe, Chief Investigator, Office of Investigations and Enforcement.

Members of the public attending the meeting included: Chad Holland; James Quinn; Robert Roberson; James Flynn; Evelyn Flynn; John W. McMillan; Sam Parker; David J. Meares, of the South Carolina Auctioneers Association (SCAA); Mesle Sharick, of the South Carolina Auctioneers Association (SCAA); Brandon Howe, of the South Carolina Auctioneers Association (SCAA); and William Gunnells.

a. Public Notice

Mr. Avendano announced that public notice of this meeting was properly posted at the SC Auctioneers' Commission office, Synergy Business Park, Kingtree Building, and provided to all requesting persons, organizations, and news media in compliance with Section 30-4-80 of the South Carolina Freedom of Information Act.

b. Pledge of Allegiance

All present recited the Pledge of Allegiance.

2. Approval of Excused Absences

There are no absences at this meeting.

3. Approval of Minutes for the May 18, 2015 meeting

Ms. Lewis pointed out for the record that the agenda stated May 18, 2014, but should have been May 18, 2015, which seems to be a scrivener's error.

MOTION

Mr. Burns made a motion that the Commission approve the minutes for the May 18, 2015, meeting with the correction. Ms. Pinkney seconded the motion, which carried unanimously.

4. Chairman's Remarks – Victor Avendano

Mr. Avendano thanked everyone for attending.

Ms. Wolfe introduced Mr. Sowell and Mr. Pigford, which are the Commission's new investigators.

5. Funding for Continuing Education Program

Ms. Holleman stated that currently there is \$153,007.14 in the Auctioneers' Commission Recovery fund.

1. David Meares

Mr. Meares introduced Brandon Howe to speak on behalf of the South Carolina Auctioneers Association (SCAA).

Mr. Howe stated that the SCAA, is requesting \$15,000 for a continuing education course that will be through the National Auctioneers Association (NAA). He stated that this course will be available to all licensees.

Mr. Howe stated that the \$15,000 is for the instructors, room and board, course material, the program and any updates.

Executive Session

MOTION

Mr. Burns made a motion that the Commission enter into executive session for legal advice. Mr. Marchant seconded the motion, which carried unanimously.

Return to Public Session

MOTION

Mr. Holiday made a motion that the Commission return to public session. Ms. Pinkney seconded the motion, which carried unanimously.

Mr. Avendano stated, for the record, that no votes were taken during executive session.

MOTION

Mr. Burns made a motion that the Commission approve the request for \$15,000 from the Recovery Fund for a continuing education course as is allowed by Section 40-6-330(C). Mr. Burns added it should be accredited through the Accredited Auctioneer, Real Estate (AARE) 1/19/2016. Mr. Holiday seconded the motion, which carried unanimously.

6. Consideration for Licensure

1. James D. Quinn

Ms. Holleman stated on June 1, 2015, Mr. Quinn submitted an auctioneers' apprentice license application. However, in reviewing his file, it was discovered that Mr. Quinn had served an apprenticeship before which was administratively suspended on September 24, 2013, for failure to meet the conditions of the August 27, 2012 Order. Where the Commission approved the apprenticeship license provided that he satisfy all judgements, liens, and claims or provide written evidence of payment arrangements with any debtors within 12 months.

Ms. Holleman stated that staff proceeded in processing the 2015 application but found that the credit report ran on June 1, 2015, had several unpaid medical collection accounts exceeding \$32,174. Ms. Holleman contacted Mr. Quinn stating that she is unable to approve his application due to the amount of unpaid bills, although he was able to reduce the total amount owed by \$22,400. However, Mr. Quinn's July 30, 2015, credit report still shows he still owes \$9,774 on his collection accounts.

Ms. Holleman provided exhibits to the Commission members, which included the minutes from the August 20, 2012, meeting, the suspension order dated September 24, 2013, and a credit report from July 30, 2015.

Executive Session

MOTION

Mr. Burns made a motion that the Commission enter into executive session for legal advice. Mr. Holiday seconded the motion, which carried unanimously.

Return to Public Session

MOTION

Ms. Pinkney made a motion that the Commission return to public session. Mr. Burns seconded the motion, which carried unanimously.

Mr. Avendano stated, for the record, that no votes were taken during executive session.

MOTION

Mr. Holiday made a motion the Commission allow Mr. Quinn to retake and pass the apprentice exam, complete 80 hours of training, proof that the \$9,774 has been paid and a new credit report. Mr. Marchant seconded the motion, which carried unanimously.

Mr. Marchant suggested that Mr. Quinn may want to attend an auctioneer school.

2. Chad Nelson Holland

Ms. Holleman stated that staff has received a complete licensure application by reciprocity from North Carolina for Mr. Holland.

Ms. Holleman informed the Commission that on February 15, 2001, Mr. Holland's North Carolina licensed was disciplined.

Ms. Holleman provided exhibits to the Commission members, which included the application and a letter of good standing from North Carolina.

Mr. Holland stated he made a mistake and since 2001 he has had no further infractions.

MOTION

Mr. Holiday made a motion the Commission grant Mr. Holland's request for licensure by reciprocity. Mr. Marchant seconded the motion, which carried unanimously.

7. Consideration for Renewal

1. Martin Davis

Ms. Holleman stated that Mr. Davis submitted his license renewal but the license couldn't be renewed at the staff level because he had a Yes answer due to discipline by another state for advertising. The disciplinary action taken on the license was probation. He is currently still actively licensed in 5 other states.

MOTION

Mr. Burns made a motion the Commission table this issue until further in the meeting. Ms. Pinkney seconded the motion, which carried unanimously.

The Commission considered ruling on this matter in Mr. Davis' absence.

MOTION

Ms. Pinkney made a motion the Commission table this issue until Mr. Davis can appear before the Commission or via conference call, noting that a notary must be present. Mr. Burns seconded the motion, which carried unanimously.

2. Sanford Parker

Ms. Holleman noted that staff has received a complete renewal application for Mr. Parker. However, on his May 14, 2013, renewal he failed to disclose a pending conviction charge, but did notify the Commission on his June 24, 2015, renewal.

Mr. Parker thanked the Commission for hearing him. He explained that he has been in law enforcement in South Carolina for over 40 years. He was indicted and found guilty on several counts. He stated that recently he was released from serving a year of incarceration and is seeking a livelihood. He stated that he always has and remains steadfast in maintaining his innocence.

He asked that the Commission consider the following:

- None of the charges were related to his role as an auctioneer.
- Although he made mistakes in office, none were conducted with malicious or illegal intent. The non-violent crimes of which he has been charged are the only ones in a long reputable career.
- He believes in the law and due process and will maintain a high standard of morality in any profession of which he is a member.

Mr. Parker assured the Commission that should they chose to renew his license; he will uphold the principles of the profession with the utmost of his ability and will pledge to be fair, just and equitable in all of his duties as an auctioneer.

Mr. Burns asked when Mr. Parker's probation ends. Mr. Parker stated that the probation ends in 2018.

Mr. Robinson spoke on behalf of Mr. Parker's moral character.

Mr. Parker stated he doesn't owe any restitution.

Mr. Marchant asked if Mr. Robinson would put his license on the line for Mr. Parker. Mr. Robinson stated yes he would.

Executive Session

MOTION

Ms. Pinkney made a motion that the Commission enter into executive session for legal advice. Mr. Burns seconded the motion, which carried unanimously.

Return to Public Session

MOTION

Mr. Burns made a motion that the Commission return to public session. Mr. Marchant seconded the motion, which carried unanimously.

Mr. Avendano stated, for the record, that no votes were taken during executive session.

MOTION

Mr. Marchant made a motion the Commission place Mr. Parker's license on probation and receive a public reprimand for violating §40-6-110(7) and §40-6-110(8). Mr. Holiday seconded the motion, which carried unanimously.

8. Motion for Reconsideration of Commission Order

1. James Wesley Flynn

This proceeding was recorded by a court reporter in order to produce a verbatim transcript should one be necessary.

Mr. Flynn requested reconsideration for revoking his license even though he didn't attend the hearing on February 23, 2015.

MOTION

Mr. Holiday made a motion the Commission deny Mr. Flynn's motion to reconsider. Mr. Burns seconded the motion, which carried unanimously.

9. Disciplinary Hearing – Zubin Billimoria

1. Case No. OIE – 2014-19, 2014-28, 2014-29, 2014-31, and 2014-34 Raymond Thomas, AUC 4280

This proceeding was recorded by a court reporter in order to produce a verbatim transcript should one be necessary.

The witnesses for these cases were: Joan Cornelison via conference call, sworn in by Anessa Weddinton.

Other witnesses were: Leonard DiAsio, Lorine Diasio, Christopher Ray Wilson, Medford Chason, John W McMillian, II, William Gunnells and Amy Holleman.

Respondent has engaged in certain conduct in the business of auctioneering that violates Section 40-6-05, including the commission of the following acts:

1. On or about June 2, 2010, the Commission issued an order conditionally granting Respondent's request for licensure with conditions placed upon the license's issuance related to Respondent's credit history and pending legal matters, both civil and criminal, as these issues relate to Respondent's character and fitness.

2014-19

1. On or about May 5, 2014, Leonard DiAsio (Complainant 1) signed a contract with Respondent's business, Thomas Auction Group (TAG), to sell certain items on Complainant 1's behalf at auction, with Complainant 1 receiving 65% and Respondent receiving 35% of the auction proceeds.
2. On or about June 22, 2014, TAG provided a consignor settlement statement to Complainant 1, which included an itemized list of Complainant 1's goods sold at an auction by Respondent on or about June 14, 2014. The consignor settlement statement provided that the total invoice sales price was \$1,217.50, of which \$791.28 was due to Complainant 1.
3. Respondent failed to pay Complainant 1 for the items sold at auction. This is despite Complainant 1 meeting with Respondent regarding receiving his money from the auction sales. At this meeting, Respondent stated that he already cut a check for the amount owed to Complainant 1 to a William Gunnells, an employee of TAG.
4. On or about June 20, 2014, Complainant 1 filed a complaint with the South Carolina Department of Labor, Licensing and Regulation (LLR). LLR assigned Tony Sandoval (Investigator Sandoval) to review and investigate Complainant 1's allegations.

5. On or about August 11, 2014, Investigator Sandoval spoke with Respondent regarding Complainant 1's allegations. Respondent reiterated what he had told Complainant 1 earlier during their meeting regarding payment from the auction sales. Subsequent attempts to contact Respondent by telephone and in person at both his listed residence and TAG's listed place of business were unsuccessful.
6. On or about September 3, 2014, Investigator Sandoval received a letter from Tammy Brown of Holcombe, Fair and Lane, the property manager for the building in which TAG leased space. In her letter, Ms. Brown stated that Respondent had abandoned the building in late July, leaving behind debris, furniture, and other assorted items.
7. On or about December 10, 2014, Complainant 1 submitted an Auctioneer Recovery Fund Proof of Claim Application for the amount of \$791.28.

2014-28

1. In or around May 2014, Respondent orally contracted with Chris Wilson (Complainant 2) to sell certain items on Complainant 2's behalf at auction following a recommendation for Respondent's services from Ladonna Watt (Ms. Watt), one of Complainant 2's employees. The parties did not memorialize their agreement in a formal contract.
2. Complainant 2 asserts that Respondent agreed to take a 25% commission on the sales of Complainant 2's items. Complainant 2 estimated that the total value of the items provided to Respondent was approximately \$2,000.00
3. Respondent failed to pay Complainant 2 for the items sold at auction. This is despite numerous requests from Complainant 2 and promises to pay made by Respondent.
4. On or about July 25, 2014, Ms. Watt visited Respondent regarding Respondent's failure to pay Complainant 2 for the items auctioned by Respondent. During this visit, Ms. Watt stated that Respondent was reluctant to pay Complainant 2 the proceeds from the auction and made numerous excuses as to why he had not paid Complainant 2.
5. On or about August 11, 2014, Complainant 2 filed a complaint with LLR. LLR assigned Investigator Sandoval to review Complainant 2's allegations.
6. Investigator Sandoval attempted to contact Respondent by telephone, email, and by visiting in person at both his listed residence and TAG's listed place of business, but was unsuccessful.
7. On or about December 23, 2014, Complainant 2 submitted an Auctioneer Recovery Fund Proof of Claim Application for the amount of \$2,500.00.

2014-29

1. On or about June 9, 2014, John W. McMillan, III (Complainant 3) and his wife signed a contract with TAG to sell certain items on their behalf at auction, with Complainant 3 receiving 70% and Respondent receiving 30% of the auction proceeds.
2. Respondent failed to pay Complainant 3 for the items sold at auction. This is despite numerous requests from Complainant 3 and Complainant 3's wife and promises to pay made by Respondent on the limited occasions that Complainant 3 and Complainant 3's wife were actually able to make contact with Respondent.
3. On or about August 15, 2014, Complainant 3 filed a complaint with LLR. LLR assigned Investigator Sandoval to review and investigate Complainant 3's allegations.

4. Investigator Sandoval attempted to contact Respondent by telephone, by email, and by visiting in person at both his listed residence and TAG's listed place of business, but was unsuccessful.
5. On or about September 3, 2014, Investigator Sandoval received a phone call from Detective Andrew Miller with the Charleston County Sheriff's Office (Detective Miller), during which Detective Miller advised Investigator Sandoval that Respondent was a suspect in a criminal investigation for felonious breach of trust with fraudulent intent for an amount greater than \$2,000.00 but less than \$10,000.00. During the course of his investigation, Detective Miller requested LLR's assistance in obtaining records from So-Lina Auction Market, Inc. (So-Lina) in Darlington, South Carolina, as he believed Respondent auctioned off some of Complainant 3's items at this location without providing the sales proceeds to Complainant 3.
6. On or about September 4, 2014, following his conversation with Detective Miller, Investigator Sandoval served a subpoena on So-Lina for any records pertaining to Respondent selling Complainant 3's items at the auction house.
7. On or about September 4, 2104, employees of So-Lina provided Investigator Sandoval with a consignor settlement statement dated July 14, 2014, that showed Respondent had sold a number of Complainant 3's items. So-Lina employees confirmed that some of the items depicted in photographs provided by Complainant 3 were similar to items sold by Respondent at auction on July 14, 2014, and that the items matched the descriptions provided for in the consignor settlement statement.
8. On or about September 11, 2014, an arrest warrant was issued against Respondent for felonious breach of trust with fraudulent intent for an amount greater than \$2,000.00 but less than \$10,000.00, based upon information provided by LLR related to Complainant 3's items that were in Respondent's possession.
9. On or about December 17, 2014, Complainant 3 submitted an Auctioneer Recovery Fund Proof of Claim Application for the amount of \$10,000.

2014-31

1. On or about June 25, 2014, Medford Chason (Complainant 4) signed a contract with TAG to sell certain items on Complainant 4's behalf at auction, with Complainant 4 receiving 25% and Respondent receiving 75% of the auction sales.
2. On or about June 28, 2014, Respondent auctioned off some of Complainant 4's items. Complainant 4 was present at the time of the auction. Complainant 4 provided that after noticing irregularities in how Respondent was conducting the auction, including ignoring minimum bids and grouping items in lots that Complainant 4 did not intend to be grouped, Complainant 4 removed the items that had yet to be sold and took them home.
3. Respondent failed to pay Complainant 4 for the items sold at auction. This is despite numerous requests from Complainant 4 and promises to pay made by Respondent.
4. On or about August 26, 2014, Complainant 4 filed a complaint with LLR. LLR assigned Investigator Tony Sandoval to review Complainant 4's allegations.
5. Investigator Sandoval attempted to contact Respondent by telephone, by email, and by visiting in person at both his listed residence and TAG's listed place of business, but was unsuccessful.
6. On or about September 15, 2014, Investigator Sandoval received an email from Detective Miller, in which Detective Miller advised Investigator Sandoval that Respondent was a suspect in a criminal investigation for felonious breach of trust with fraudulent intent for an amount greater than \$2,000.00 but less than \$10,000.00. On or about September 23, 2014, an arrest warrant was

issued against Respondent for felonious breach of trust with fraudulent intent for an amount greater than \$2,000.00 but less than \$10,000.00.

7. On or about December 23, 2014, Complainant 4 submitted an Auctioneer Recovery Fund Proof of Claim Application for the amount of \$4,500.00.

2014-34

1. On or about September 12, 2013, Joan Cornelison (Complainant 5) signed a contract with TAG to sell the contents of Complainant 5's home on her behalf at auction. A 35% consignment rate was applied to the sale.
2. Between late 2013 and July 2014, Complainant 5 attempted to contact Respondent on multiple occasions for a status update regarding the items she had given to Respondent to sell at auction. Finally, on or about July 18, 2014, Respondent emailed Complainant 5 and informed her that he had finished the sale of her items, but was having computer troubles and was attempting to sort out the details of the alleged sale.
3. On or about September 23, 2014, after numerous failed attempts to contact Respondent, Complainant 5 filed a complaint with LLR. LLR assigned Investigator Sandoval to review and investigate Complainant 5's allegations. As part of her complaint, Complainant 5 included a list of the items to be auctioned.
4. On or about October 7, 2014, Investigator Sandoval received an email from Detective Nicholas Santanna with the Summerville Police Department that had attached a copy of an arrest warrant issued against Respondent, dated September 18, 2014, that charged Respondent with felonious breach of trust with fraudulent intent for an amount valued at \$10,000 or more, as Respondent failed to provide Complainant 5 proceeds from the alleged sale or return Complainant 5's belongings.
5. On or about December 12, 2014, Complainant 5 submitted an Auctioneer Recovery Fund Proof of Claim Application for the amount of \$10,000.00

Respondent has not complied with the following codes and standards that govern the practice of auctioneering in South Carolina (the following allegations are regarding Cases 2014-19, 2114-28, 2014-29, 2014-34, and 2014-34):

- a. Respondent is in violation of statute 40-6-110(A)(2), in that he engaged in a continued and flagrant course of misrepresentation or made false promises or authorized an agent of the licensee to make misrepresentations or false promises.
- b. Respondent is in violation of statute 40-6-110(A)(3), in that he failed to account for or to pay over within a reasonable time, not to exceed thirty days, money belonging to another which has come into the licensee's possession through an auction sale.
- c. Respondent is in violation of statute 40-6-110(A)(5), in that he engaged in conduct in connection with a sales transaction, which demonstrates bad faith or dishonesty.
- d. Respondent is in violation of statute 40-6-110(A)(12), in that he demonstrated a lack of financial responsibility.
- e. Respondent is in violation of regulation 14-7, in that he evidences incompetence or unprofessional conduct and is thus subject to disciplinary action, suspension, or revocation by the Commission.

- f. Respondent is in violation of statute 40-1-110(1)(f), in that he committed a dishonorable, unethical, or unprofessional act that is likely to deceive, defraud, or harm the public.
- g. Respondent is in violation of statute 40-1-110(1)(g), in that he lacks the professional or ethical competence to practice the profession or occupation.

Executive Session

MOTION

Ms. Pinkney made a motion that the Commission enter into executive session for legal advice. Mr. Marchant seconded the motion, which carried unanimously.

Return to Public Session

MOTION

Mr. Burns made a motion that the Commission return to public session. Mr. Marchant seconded the motion, which carried unanimously.

Mr. Avendano stated, for the record, that no votes were taken during executive session.

MOTION

Ms. Pinkney made a motion that since the state has proven all violations against Mr. Thomas the Commission feels that the appropriate sanctions are a public reprimand, permanent revoking Mr. Thomas' license, issuance of a cease and desist order to not engage in the practice of auctioneering and a fine of Ten Thousand Dollars (\$10,000). Mr. Marchant seconded the motion, which carried unanimously.

10. Recovery Fund Claim Request

1. Case No. OIE – 2014-19, 2014-28, 2014-29, 2014-31, and 2014-34 Raymond Thomas, AUC 4280

This proceeding was recorded by a court reporter in order to produce a verbatim transcript should one be necessary.

The following complainants filed claims against the recovery fund in the following amounts.

- Joan Cornelison requested \$6,500
- Leonard and Lorine DiAsio requested \$791.28
- Chris Wilson requested \$2,500
- Medford Chason requested \$4,500
- John W McMillian, III requested \$7,000

The total requested from the recovery fund is \$21,291.28.

Mr. Billimoria stated that Section 40-6-360(3) allows "the liability of the fund may not exceed in the aggregate twenty thousand dollars for one licensee in one calendar year. He stated that the amount allowed for Recovery Fund award is 93% of the amount requested. Mr. Billimoria suggested that each complainant be awarded 93% of the amount they requested. Each complainant would be awarded in the following amount.

- Joan Cornelison should receive \$6,105.77
- Leonard and Lorine DiAsio should receive \$773.28
- Chris Wilson should receive \$2,348.37
- Medford Chason should receive \$4,227.07
- John W McMillian, III should receive \$6,575.45

The total requested from the recovery fund is \$19,999.94.

MOTION

Ms. Pinkney made a motion that the Commission grant the requested amounts from the recovery fund. The amounts will be awarded in the following amounts, case # 2014-19, will get \$743.28; case # 2014-28, will get \$2,348.37; case # 2014-29, will get \$6,575.45; case # 2014-31, will get \$4,227.07; and, case # 2014-34, will get \$6,105.77, for a total of \$19,999.94.

11. Administrator's Remarks – Amy Holleman

Ms. Holleman stated that the Auctioneers' Commission balance as of July 2015 is \$1,157,458.54.

The recovery fund balance as of July 2015 is \$153,007.14.

Ms. Holleman stated that the Auctioneers' Commission has a total of 1,195 licensees; 136 firms; one apprentice; 846 auctioneers have renewed. We currently have 39 firms and 173 auctioneers left to renew.

Ms. Holleman informed the Commission that staff will do a continuing education (CE) audit for five (5) percent of the licensees at the staff level.

Ms. Holleman stated that she, Mr. Burns, and Mr. Broadwell are currently reviewing the exams for any changes.

12. Reports

A. Office of Investigations and Enforcement (OIE) Report – Sharon Wolfe

Ms. Holleman presented the OIE report since Ms. Wolfe was unable to stay to present the report. She stated that there are currently ten active investigations, two closed cases and five do not open cases, from January 1, 2015 through August 11, 2015.

B. Office of Disciplinary (ODC) Counsel

Mr. Billimoria stated that ODC has five open cases and five pending final order hearings. He stated that the cases are the same and after today's hearings all cases are clear.

Mr. Billimoria stated that he will be leaving the agency in October 2015. He stated he has enjoyed working with the Commission.

13. Public Comments (no votes taken)

No public comments at this time.

14. Advice Counsel Review

MOTION

Mr. Burns made a motion that the Commission table the advice counsel review to the next meeting. Ms. Pinkney seconded the motion, which carried unanimously.

15. Adjournment

MOTION

Mr. Burns made a motion the Board adjourn. Mr. Marchant seconded the motion, which carried unanimously.

The August 17, 2015, meeting of the SC Auctioneers' Commission adjourned at 5:28 p.m.

The next meeting of the SC Auctioneers' Commission is scheduled for November 16, 2015..