

MINUTES

**South Carolina Auctioneers' Commission Meeting
10:00 A.M., August 18, 2014
Synergy Business Park
110 Centerview Drive, Kingstree Building, Room 108
Columbia, South Carolina**

Meeting Called to Order

Chairman, Victor Avendano, of Mt. Pleasant, called the regular meeting of the Auctioneers' Commission to order at 10:02 a.m. Other members participating in the meeting included: Joe Burns, of Swansea; Matthew Holiday, of Spartanburg; Jamison Marchant, Isle of Palms; and Michelle Pinkney, of Irmo.

Staff members participating in the meeting included: Molly Price, Administrator; Georgia Lewis, Office of General Counsel; Zubin Billimoria, Office of Disciplinary Counsel; Sharon Wolfe, OIE; Yolanda Rodgers, Investigator, OIE; and Theresa Garner, Program Assistant.

Members of the public attending the meeting included: Ivan Broadwell.

Public Notice

Mr. Avendano announced that public notice of this meeting was properly posted at the S. C. Auctioneers' Commission Office, Synergy Business Park, Kingstree 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.

Pledge of Allegiance

All present recited the Pledge of Allegiance.

Mr. Burns delivered the invocation.

Approval of the May 19, 2014 Meeting Minutes

MOTION

Mr. Burns made a motion the Commission approve the May 19, 2014 meeting minutes with the following corrections: Under Called to Order: Line 1 change Mr. Avendano's location from Walterboro, to Mt. Pleasant, and Line 3, change Mr. Marchant's location from Spartanburg to Harleyville. Mr. Holiday seconded the motion which carried unanimously.

Administrator's Remarks-Molly Price

Ms. Price reported there are currently 975 Auctioneers', 154 Auction Firms, and 2 Apprentice Auctioneers' licensed in South Carolina.

June 20, 2014 Examination Results

Of the fourteen Auctioneer candidates; twelve passed the exam. The average score of those who passed was 78.

The next exam is scheduled for September 19, 2014.

The next board meeting is scheduled for November 10, 2014.

The cash balance report for July 2014 showed a balance of \$104,090.00. The Recovery Fund Balance is \$142, 181.83

The 2015 Board Meeting Schedule is as follows:

Monday, February 23, 2015

Monday, May 18, 2015

Monday, August 17, 2015

Monday, November 16, 2015

Legislative Updates, Legislative Liaison Office

Advice Counsel, Georgia Lewis, stated that if the commission wanted to update or make changes to their regulations or statutes, she would assist them in the process regarding updating the definitions, etc. She suggested, if they wanted to make changes to the statutes; it would be a good idea to get support from the associations, and they in turn could help with finding a sponsor for the bill.

OGC Report-Office of Disciplinary Counsel

Zubin Billimoria, OGC, reported the Office of Disciplinary Counsel (ODC) currently has 3 open cases, 2 pending, and one that was heard at this board meeting. Since the last board meeting ODC has closed 2 cases.

OIE Report-Office of Investigations and Enforcement

Sharon Wolfe, OIE, reported January 1, 2014 through August 13, 2014, the Office of Investigations and Enforcement (OIE) had ten active cases, two closed cases, four Do Not Open Cases, one online complaint, and ten pending board action cases, totaling 27. Sixteen cases were closed, and they had four Do Not Open Cases.

Online Auctions-Licensing Requirements

Ms. Price informed board members of the large volume of emails, and telephone calls staff is receiving regarding out of state auctions. She gave them a print out of some of the questions. A number of the questions are related to Real Estate, and a lot are two part questions. Staff's answer to the online auctions, is, if the auction is out of state and they have no presence in South Carolina; then the board does not have jurisdiction. The board's interpretation is, if you do any facets of auctioning in South Carolina, if someone has a store front in S.C., if you take consignments in S. C., if you write a contract in S.C., if you receive funds on behalf of the seller or pay a seller in S. C., if there is a physical presence of personal property, then they would need an auctioneers' license.

New Business

Investigative Review Committee (IRC) Report-August 11, 2014

Sharon Wolfe reported the IRC met on August 11, 2014 during which time, eleven cases were discussed. Nine cases were recommended for dismissal, one case was recommended for a Cease & Desist, and one case was recommended for a formal complaint.

MOTION

Mr. Holiday made a motion to accept the IRC Report as presented. Mr. Marchant seconded the motion, which carried unanimously.

Application Hearings

William Thomas Bradley, Jr.

On May 27, 2014, the commission received an application from Mr. Bradley for licensure as an Auctioneer by reciprocity with North Carolina. In the application Mr. Bradley answered "Yes" to question number nine which states "Have you ever had an auctioneering license reprimanded, suspended, revoked, surrendered or have you ever been disciplined by the licensing authorities in this or any other state or jurisdiction." Mr. Bradley provided documentation with his application regarding his disciplinary actions in North Carolina. His file was complete. This proceeding was recorded by a court reporter in order to provide a verbatim transcript should one be necessary.

Chairman Avendano, called the Application Hearing to Order. Mr. Bradley was sworn in, and waived his right to legal counsel. He did not have any witnesses appearing on his behalf. Mr. Bradley stated that his disciplinary problems were dated back fourteen years ago. He reported this information because of question nine on the application. Mr. Bradley stated his license is current, and that his auctions consist of personal property, and liquidations.

Executive Session

MOTION

Mr. Holiday made a motion to enter into executive session for legal counsel. Mr. Marchant seconded the motion, which carried unanimously.

Return to Public Session

MOTION

Mr. Holiday made a motion to return to public session. Mr. Burns seconded the motion, which carried unanimously. It was noted for the record that no votes or actions were taken while in executive session.

MOTION

Mr. Holiday made a motion to grant Mr. Bradley's request for Licensure via Reciprocity North Carolina. Ms. Pinkney seconded the motion, which carried unanimously.

Willie Ray Hester, Jr.

On May 19, 2014, the Commission received an application from Mr. Hester for licensure as an Auctioneer by examination. Mr. Hester answered "Yes" to question number eleven which states "Have you ever been convicted of any criminal offense or is there any criminal charge now pending against you"? Mr. Hester took and passed the Auctioneers examination on June 20, 2014. His file was complete.

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

Chairman Avendano, called the Application Hearing to Order. Mr. Hester was sworn in, and waived his right to legal counsel. He did not have any witnesses appearing on his behalf. Mr. Hester said he wanted to come before the board to answer any questions board members might have regarding the charges on his SLED Report. Mr. Holiday asked what licenses he had surrendered. Mr. Hester stated during his conviction in 2008, he surrendered his Federal Fire Arm License. He said to start off with he would like to do small sales, and later on, Live Stock Auctions. Mr. Hester presented a letter from his probationary officer, (entered into evidence as

Exhibit 1) and he stated he has four years left on his probation. Mr. Hester stated he was released from prison on December 11, 2013.

Executive Session

MOTION

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

Return to Public Session

MOTION

Mr. Burns made a motion to return to public session. Mr. Holiday seconded the motion, which carried unanimously. It was noted for the record that no votes or actions were taken while in executive session.

MOTION

Ms. Pinkney made a motion to grant Mr. Hester an Auctioneers' License with the following conditions. Mr. Holiday seconded the motion, which carried unanimously. 1)Based upon completion of his criminal probation, 2)Placed on probation for one year as an Auctioneer, supervised as an apprentice by a board approved licensed auctioneer.3)Upon renewal, will submit an updated SLED Report.

Hearing in the Matter of Aquilla Kinard (2013-3)

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

Chairman Avendano, called the Hearing to Order. It was noted for the record, that Mr. Kinard was not present.

Zubin Billimoria, represented the State in this matter. Mr. Aquilla M. Kinard was issued a Complaint on March 26, 2014, for writing a check on 2-20-2013, on a Closed Account. A Formal Complaint was issued on May 28, 2014. On May 9, 2013, Mr. Kinard was convicted of one charge of fraudulent check-1st Offense in Chesterfield County. On August 20, 2013, he received a 30 (thirty) day jail sentence for failure to comply in relation to a charge of fraudulent check-1st offense in Darlington County. In addition, he has approximately six (6) convictions for failure to pay traffic tickets between 7/10/12 and 3/17/14.

Mr. Billimoria distributed copies of the documents regarding Mr. Kinard's case to board members, and informed them; that Mr. Kinard was mailed a Notice of Hearing along with the

Certificate of Service, sent to his mailing address. The information was returned because Mr. Kinard failed to submit a change of address.

Mr. Billimoria presented the State's case, and called Ms. Yolanda Rodgers, Investigator for the Auctioneers' Commission, as a witness. She was sworn in by the Court Reporter. Ms. Rodgers stated she had spoken with Mr. Kinard on October 9, 2013, via telephone and by email, and he admitted to knowingly writing the check on a closed account.

Mr. Billimoria presented his closing statement to board members. He stated, that board members were given all the information they needed to make a decision regarding Mr. Kinard's violations. Mr. Kinard failed to update his address, and failed to appear before the board. The State met its Burden of Proof for imposing appropriate sanctions regarding Mr. Kinard's violations. Since the respondent did not comply with the following codes and standards that govern the practice of auctioneering in South Carolina he was in violation of:

- a. S.C. Code 40-6-110 (A) (5) (1976), as amended), in that he engaged in conduct in connection with a sales transaction, which demonstrates bad faith or dishonesty.
- b. S.C. Code 40-6-110(A) (7) (1976), as amended), in that he has been convicted of a felony or an act involving fraud or moral turpitude.
- c. S.C. Code 40-6-110(A) (12) (1976), as amended), in that he demonstrated a lack of financial responsibility.
- d. S. C. Code 40-1-110(1) (f) (1976), as amended), in that he committed a dishonorable, unethical, or unprofessional act that is likely to deceive, defraud, or harm the public.

MOTION

Mr. Holiday made a motion the State met its Burden of Proof for all four allegations, and that Mr. Kinard will be fined \$500.00 per violation, totaling \$2,000.00. His suspended license will be revoked, and he will be issued a Public Reprimand. Ms. Pinkney seconded the motion, which carried unanimously.

Old Business

Update on LLR On-Line Exams

Ms. Price reported she met with LLR's "IT" department regarding online exams. She was given a UserID and Password, to be able to access the system once the questions have been developed, and put together. Also; the board asked that she contact a testing center regarding prices and specifics, but until the exam has been updated, they would not be able to provide her a price estimate. She suggested the board go through the questions and develop the type

of exam they wanted, possibly multiple choice, that way if the Commission decided to go with LLR Online exams, they would have the option for randomizing the questions.

Molly asked for the board's input as to whether or not they all would like to be a part of the exam review or if they wanted to form a committee to review the questions. Mr. Burns suggested the board form a committee and develop at least 130 questions so they can be randomized.

Executive Session

MOTION

Mr. Holiday made a motion to go into executive session for legal advice. Ms. Pinkney seconded the motion, which carried unanimously.

Return to Public Session

MOTION

Mr. Burns made a motion to return to public session. Mr. Holiday seconded the motion, which carried unanimously. It was noted for the record that no votes or actions were taken while in executive session.

Board members stated they would like Mr. Broadwell to be a part of the exam review. The board asked that Ms. Price schedule a "Special Called Meeting", and invite the Auctioneering' School representatives to attend. They also asked that she contact North Carolina and get their course curriculum for the board to review. Ms. Price will find out how the commission has been tracking instructors, and their course criteria.

Public Comments

There were no public comments.

Adjournment

MOTION

There being no further business to be discussed at this time, Mr. Burns made a motion the meeting be adjourned. Mr. Marchant seconded the motion, which carried unanimously.

The next meeting of the S. C. Auctioneers' commission is scheduled for November 10, 2014, in room 108.