

MINUTES
South Carolina Auctioneers' Commission
Meeting

10:00 a.m., February 25, 2013
Synergy Business Park
110 Centerview Drive, Kingstree Building Room 108
Columbia, South Carolina

Meeting Called to Order

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

Staff members participating in the meeting included: Lenora Addison-Miles, Administrator; Georgia Lewis, Advice Counsel; Holly Beeson, Counsel to the Office of Communications and Governmental Affairs; Princess Hodges, General Counsel; Kristina Baker, General Counsel; DeLeon Andrews, OIE; and Theresa Garner, Program Assistant.

Public Notice

Mr. Blocker 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. The invocation was given by Mr. Blocker.

Approval of Excused Absences

All members were present for the meeting.

Approval of the November 19, 2012 Meeting Minutes

MOTION

Mr. Holiday made a motion to approve the November 19, 2012 meeting minutes as presented. Mrs. Pinkney seconded the motion which carried unanimously.

Chairman's Remarks – James Blocker

Mr. Blocker welcomed everyone to the meeting. He extended congratulations to Mr. Darron Meares on being elected President of the South Carolina Auctioneers' Association. He thanked Mrs. Miles for getting everything ready for the meeting and providing board members with their information folders. Mr. Blocker informed board members that former board member, George Martin, passed away. He said that Mr. Martin made many contributions to the commission, and to his profession.

Holly Pisarik, LLR Director

Due to illness, Ms. Pisarik was not able to attend the meeting.

Legislative Changes – Annual / Biennial Licensing

Holly Beeson, Counsel to the Office of Communications and Governmental Affairs, appeared before the board. She stated LLR Director, Holly Pisarik, went through the statutes and regulations of all the boards last year to ensure that LLR was in full compliance with the boards' renewal language. She said specifically with the Auctioneers', if the language said you renew annually, Mrs. Pisarik wanted to make sure the Commission was in fact renewing annually, and the language in the regulations should reflect the license fees. However, the regulations that were submitted did not pass, they timed out in the legislation session, and LLR was required to re-file this year. Ms. Beeson stated when they re-filed they realized statute Section 40-6-240 still reflects annual licensure. She said it was her understanding the commission had biennial licensure, and LLR was attempting to show the fees in regulations to reflect biennial licensure. She stated the board would be confirming in language what they are already doing in process.

MOTION

Mr. Holiday made a motion the board consider changing the statutory code section to reflect the biennial license fees that are reflected in the regulation section 14-14. Mr. Avendano seconded the motion which carried unanimously.

Administrator's Remarks – Lenora Addison-Miles

Mrs. Miles stated there were currently 1,058 Auctioneers, and 169 Auction firms licensed through June 30, 2013. The December 7, 2012 examination results included 12 Auctioneer candidates, ten passed the exam, and the average score was 80. There were two Auctioneer Apprentice candidates, one passed the exam, and the average score was 67. The next exam is scheduled for March 8, 2013.

The Cash Balance report for January 1, 2013 showed a balance of \$879,404.03, and a Recovery Fund balance of \$127,426.48.

Mrs. Miles informed board members that the mileage reimbursement rate had increased to 56.5 cents per mile, effective January 1, 2013.

She reminded board members to electronically file their statement of Economic Interest forms prior to April 15, 2013.

Mrs. Miles provided Board members with a copy of the January 10, 2013 NALLOA Teleconference Meeting Minutes, as information only. She stated that Mr. Holiday and Mr. Avendano participated in the meeting.

Office of Investigations and Enforcement (OIE) Report

Mrs. Miles presented the Office of Investigations and Enforcement Case Report (OIE). She stated they received a total of 28 cases in calendar year 2012, ten active and 13 closed, three were designated as Do Not Open, and two are pending board action. They closed 28 cases in 2012, 25 were closed and three were Do Not Open. For the calendar year 2013, OIE has received two cases, they have a total of 12 active cases, and no cases have been closed this year.

Office of General Counsel (OGC) Report

Kristina Baker, Office of General Counsel, introduced herself to board members, and presented the report. She stated they currently have four open cases, two cases that have pending action, and no cases with any consent agreements or memorandums of agreement. She said they do have two pending hearings, no pending final order hearings, and no final orders. Three cases were closed as of January 1, 2013, and currently they have no appeals

Unfinished Business

There was no unfinished business.

Hearing in the Matter of Clarence M. Fogle

This proceeding was recorded by a court reporter in order to produce a verbatim transcript, if requested, in accordance with the law.

Executive Session

MOTION

Mr. Burns made a motion to enter into executive session for legal advice. Mrs. Pinkney seconded the motion which carried unanimously.

Return to Public Session

MOTION

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

MOTION

Mrs. Pinkney said the state did not meet the burden of proof of section 5a, violation of section 40-6-110 (A)(3), nor section 5b, 40-6-110(A)(8), or section 5c, 40-1-110. The state did prove 5d, 40-1-110 1(f), that Mr. Fogle did commit an unprofessional act to harm the public because of poor record keeping for payment at auctions. Ms. Pinkney made a motion to issue a public reprimand, with a fine of \$500, and require that Mr. Fogle attend a CE Auctioneer law class which would be in addition to the requirements of CE classes for his license. Mr. Holiday seconded the motion which carried unanimously.

New Business

Investigative Review Committee (IRC) Report – February 19, 2013

DeLeon Andrews, Investigator, for OIE, presented the IRC report. The IRC recommended two cases for dismissal, and one case for formal complaint.

Mr. Andrews also introduced the board's new investigator, Yolanda Rodgers.

MOTION

Mr. Burns made a motion to accept the IRC report as presented. The motion, which was not seconded, carried unanimously.

Reconsideration of Auction Firm Application

Amilia Marie Mattice – Community Consignments & Thrift

On September 7, 2012 the commission received an application from Ms. Mattice for licensure as an auction firm. Her credit report contained unpaid collection accounts that exceeded \$1,000. She answered "No" to question 15 on the application, which asks are there any unpaid judgments or debts now outstanding against the principal. Ms. Mattice is not a licensed auctioneer. She passed the online firm exam on September 19, 2012. The commission originally reviewed the application during the November 19, 2012 meeting. The applicant was not present to answer questions about her application. Therefore the commission dismissed the hearing until she could appear. She requested to appear before the commission today for reconsideration of her application.

Ms. Mattice waived her right for legal counsel. She stated that the two items listed on her credit report that exceeded \$1,000 stemmed from a motor vehicle accident she and her husband had five years ago, which was not their fault. They still have not settled the case. Her attorney submitted a letter stating that once the case is settled, Ms. Mattice will pay the remaining balance.

MOTION

Mr. Holiday made a motion to approve Ms. Mattice's request for a firm license. Mr. Avendano seconded the motion which carried unanimously.

Consideration of Reduction in Civil Penalty

Sidney T. Steen – Spanky's Auction

On November 13, 2012, the Commission received an Auction Firm application from Mr. Steen to operate Spanky's Auction. Mr. Steen fulfilled the application requirements. Prior to submitting the application he was issued a Cease and Desist Order for operating a firm without a valid license. Based on the Commission's complaint resolution guidelines, upon application for licensure, and prior to issuing the license, a Consent Agreement imposing a standard penalty of \$2,000 was issued. Mr. Steen failed to sign the consent agreement and requested to appear before the commission to seek a reduction of the penalty.

Mr. Steen was sworn in for testimony, and waived his right for legal counsel. Mr. Steen stated that he did not hold an auction at his place; however, he did rent his place to an auctioneer who held an auction. Mr. Steen said he had a signed contract with the individual to hold the auction there, and that he did not receive any proceeds from the auction sales, he was only paid rent. He stated that he had faxed a copy of the rental lease to Mr. Andrews on September 5, 2012.

DeLeon Andrews, Investigator for the Auctioneers' Commission, was sworn in for testimony. Mr. Andrews stated he had received a complaint that a licensed auctioneer was running an auction without a firm license. When he arrived at the auction site, he observed Mr. Steen and there was a lady collecting money. So, it appeared that the auctioneer had no involvement in the money being collected or the merchandise being sold, he was a bid caller.

A Cease and Desist Order was issued to Spanky's Auction since that was the name the auctions were being operated under. Mr. Andrews stated that the lease agreement came about after the fact. Mr. Andrews stated he never saw a copy of a rental lease agreement when he went to the auction site, and he did not receive a copy of the faxed agreement.

MOTION

Mr. Avendano made a motion to take the matter up in executive session. Mr. Holiday seconded the motion which carried unanimously.

Executive Session

MOTION

Mr. Burns made a motion to go into executive session for legal advice. Mrs. Pinkney seconded the motion which carried unanimously.

Mr. Blocker called the meeting back to order so that Mr. Andrews could enter some documents into the record for Mr. Sidney T. Steen's case.

The faxed copy of the rental agreement was omitted from Mr. Andrews's file, and it was discovered after hearing Mr. Steen's testimony. Mr. Andrews entered the faxed copy of the

rental lease agreement received on November 5, 2012, into evidence. The agreement was received November 5, 2012, not September 5, 2012 as previously stated by Mr. Steen

Return to Public Session

MOTION

Mr. Holiday made a motion to return to open 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

Mrs. Pinkney made a motion to dismiss the Order to Cease and Desist Unlawful Practice and grant Mr. Steen's Auction Firm license. The motion was seconded by Mr. Holiday which carried unanimously.

5 Day Method Sale

The Board reviewed a copy of an e-mail that was originally submitted to the Real Estate Commission regarding a 5 Day Method Sale for selling Real Estate, and the individual also contacted our office to see if this method was considered an auction by the Auctioneers' Commission. IRC representative, Mr. Ivan Broadwell, also reviewed the information.

Mr. Broadwell stated one of the things that concerned him was the statement that there are "many more nuances" to the process, but these are the basics. He said he looked it up online and found several web pages that were using information about the 5 Day Method and in all of those situations the word "Bidding," "Bid," "Final Bidder," and "Round Robin" all came up. After reading the ad, he came to the conclusion that it was certainly an auction in his opinion. He also said they had offers coming in that were non-binding, meaning the offers are not under contract. He said the middle person winds up getting between the seller and the buyer in negotiating bids.

MOTION

Mr. Holiday made a motion that the findings by the board's IRC representative, Ivan Broadwell, presented on this method of bidding, was in the board's opinion, an auction, and would require a licensed auctioneer to be part of the transaction. Mr. Avendano seconded the motion which carried unanimously.

Election of Officers

Mr. Burns nominated Mr. Blocker as board chairman. Mr. Holiday seconded the motion.

MOTION

Mr. Holiday made a motion to re-elect Mr. Blocker as board chair. Mrs. Pinkney seconded the motion which carried unanimously.

Mr. Holiday nominated Mr. Avendano as vice chairman. Mrs. Pinkney seconded the motion.

MOTION

Mr. Burns made a motion to re-elect Mr. Avendano as vice chair. Mrs. Pinkney seconded the motion which carried unanimously.

Public Comments

Mr. Darron Meares, President of the S. C. Auctioneers' Association, thanked the commission members for attending their convention in Myrtle Beach. He extended an invitation to all

members to attend the 40th anniversary in Columbia, in January of 2014. He reported the association was following up on scheduling a firearms safety gun day and would put together a proposal for the commission, to try and utilize some of the recovery fund money that is earmarked for education promoting the auction profession.

He stated that one of the biggest things that has come to the association's attention is estate sellers, meaning people that sell at organized yard sales or estate sales, where they go in and do an appraisal of the person's items and sell those to the public, through public or private sales, are now beginning to sell on the internet as auctions. The reason they are doing this is because of the loophole in the S. C. auction law that does not regulate online auctions. Companies such as ProxiBid allow them to sell. They take the person's items from an estate sale and list those at an internet auction, and list them on their website. Mr. Meares suggested the commission look at Kentucky's law regarding online auctions.

Adjournment

There being no further business, the meeting was adjourned at 2:50 p.m.

The next meeting of the SC Auctioneers' Commission is scheduled for May 13, 2013.