

MINUTES
South Carolina Auctioneers' Commission
Board Meeting

10:00 a.m., February 23, 2015
Synergy Business Park
110 Centerview Drive, Kingtree Building Room 108
Columbia, South Carolina

Monday, February 23, 2015

1. Meeting Called to Order

Victor Avendano, Chairman, of Mt. Pleasant, called the regular meeting of the SC Auctioneers' Commission to order at 10:04 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, Interim Administrator; George Barr, Inspector, Office of Investigations and Enforcement; Molly Price; Charlie Ido, Assistant Deputy Director, Office of Board Services; and, Sharon Wolfe, Chief Investigator, Office of Investigations and Enforcement.

Members of the public attending the meeting included: Lee Nettles, Esq., of Nettles Law Firm; Roy Nettles, Esq., of Nettles Law Firm; Chuck Easler, of Worldnet Auctions; and, Rafe Dixon, of J. R. Dixon Auctions.

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 November 10, 2014

MOTION

Mr. Burns made a motion on that the Commission accept the meeting minutes for the November 10, 2014, as written. Mr. Holiday seconded the motion, which carried unanimously.

4. Chairman's Remarks – Victor Avendano

Mr. Avendano thanked everyone for attending and welcomed Ms. Holleman.

5. Administrator's Remarks – Amy Holleman

Ms. Holleman stated that she is the Interim Administrator for the Auctioneers' Commission. She stated the Administrator position was posted, and she applied for the position. She stated she has been with the agency for nine years.

Ms. Holleman stated she will defer to Ms. Price for a moment before resuming her remarks.

Ms. Price stated she has enjoyed working with the Auctioneers' Commission for the past year. She stated she has moved on to two new boards.

She stated that she will still be here to assist Ms. Holleman in her new role. She stated that one of the things they have not forgotten about is the special work group for statute and regulation changes and working with the exam changes.

Ms. Holleman stated she wanted to draw their attention to a letter received from the South Carolina Auctioneers Association. It is a thank you letter from Rafe Dixon and the association for the disbursement from the Recovery Fund for continuing education.

Ms. Holleman wanted to remind all Commission members that they have until March 30, 2015 to submit the economic interest forms if they haven't already done so. She asked all members email her when they complete the forms, or email her if they have already completed them to make sure that all are completed by the deadline so no one will face a penalty.

Currently the Auctioneers' Commission has a total of 1,176 licensees; 167 firms; two apprentices; 1,006 auctioneers. The recovery fund balance as of January 2015 is \$145,463.14.

The Auctioneers' Commission balance as of January 2015 is \$967,025.26.

6. Board member inquiries response protocol and authority – Advice Counsel

Ms. Lewis stated that she isn't going anywhere, and, with the changes within the agency, the agency wanted to reassure the Commission members that even though the Auctioneers' Commission has new staff they do work well together and previous staff are still with the agency and they will be used if needed.

7. Reports

A. Investigative Review Committee (IRC) Report – Sharon Wolfe

February 10, 2015 IRC report

Ms. Wolfe stated that the IRC recommendation is to dismiss case number 2014-32.

MOTION

Mr. Burns made a motion that the Board approve the IRC recommendations. Mr. Holiday seconded the motion, which carried unanimously.

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

Ms. Wolfe stated that there are currently one active investigation, and one do not open case, from January 1, 2015 through February 18, 2015. There are four active cases.

C. Office of Disciplinary (ODC) Counsel

Mr. Billimoria stated that ODC opened seven cases, five cases are pending action, and two are pending final orders hearings.

8. Continuing Education Instructor Approval Request

A. Carole Hoskins – Southeastern School of Auctioneering

MOTION

Mr. Holiday made a motion the Commission approve Ms. Hoskins as a continuing education instructor. Mr. Marchant seconded the motion, which carried unanimously.

B. M. Bryan Meares – Southeastern School of Auctioneering

MOTION

Mr. Holiday made a motion the Commission approve Mr. Meares as a continuing education instructor. Mr. Burns seconded the motion, which carried unanimously.

C. Teresa H. Meares – Southeastern School of Auctioneering

MOTION

Mr. Burns made a motion the Commission approve Ms. Meares as a continuing education instructor. Ms. Pinkney seconded the motion, which carried unanimously.

9. Disciplinary Hearing – Tracey Perlman

1. Case No. OIE – 2013-7 Charles R. Easler, II, AUC 1966

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

Mr. Nettles, Esq. appeared on behalf of the respondent Charles R. Easler, II.

Ms. Lewis stated for the record that she attended law school with Mr. Nettles son, Mike Nettles.

Mr. Billimoria notified the Board that they have entered into a Memorandum of Agreement (MOA).

Respondent admitted and stipulates to the following:

1. In or around 2009, Complainant, a licensed Auctioneer in the State of Louisiana and former business partner of Respondent, contracted with Respondent for Respondent to sell travel trailers at auction on Complainant's behalf.
2. In or around March 2010, Complainant bought a large number of travel trailers at a government auction. Complainant then contracted with Respondent for Respondent to sell the travel trailers at auction on Complainant's behalf.
3. Complainant sent the trailers to Respondent in advance of the auctions at which they were sold.
4. Respondent maintains that he sold four hundred, fifty-five (455) of the travel trailers on Complainant's behalf. However, Respondent's record-keeping was lacking and, as a result, Respondent was late in paying Complainant on at least two occasions:
 - a. On or about July 13, 2010, Respondent sold approximately two hundred, twelve (212) of Complainant's travel trailers at auction. Respondent remitted payment for one hundred, ninety-five (195) of the travel trailers within thirty (30) days. Proceeds of the remaining seventeen (17) trailers were not paid over to Complainant within thirty days.
 - b. On or about November 12, 2010, Respondent sold twelve (12) of Complainant's travel trailers at auction. Respondent failed to pay over to Complainant all of the proceeds of that auction within thirty (30) days.
5. On or about November 11, 2011, Respondent sold fifty-nine (59) of Complainant's travel trailers. Respondent maintains that he sold the trailers and kept the proceeds in order to recover advances and loans made to Complainant. Respondent asserts he informed Complainant the travel trailers would be sold and the proceeds would be applied to prior debts. However, Complainant denies being informed of this and asserted she was subsequently led to believe the proceeds were to cover storage costs.

6. Mr. Nettles submitted that Respondent has retained the service of an accountant to take over the supervision of his accounts and make sure that there is proper documentation of auction related transactions.
7. Respondent testified that he has paid the Complainant all amounts owed from the auctions. He admitted to holding the payment after the allotted time, but he was holding the proceeds to collect a debt from the Complainant. He testified that he has not had contact with the Complainant for the ten (10) remaining travel trailers on site. He testified that he has possession of the titles to these travel trailers, but there is no contract to sell these travel trailers.

Executive Session

MOTION

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

Return to Public Session

MOTION

Mr. Burns 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. Marchant made a motion that the Commission accept the MOA and felt that the appropriate sanction was to issue a public reprimand and a fine of One Thousand Dollars (\$1,000) for each violation 40-6-110(A)(3) and 40-6-290(B), for a total of Two Thousand Dollars (\$2,000), which should be paid within thirty (30) days of the effective date of the Commission's Order. Mr. Burns seconded the motion, which carried unanimously.

2. Case No. OIE – 2014-24 James Wesley Flynn, AUC 3842

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

Mr. Billimoria stated based upon the preponderance of the evidence on the whole record, the facts of the case are found to be as follows:

1. At all times relevant to the charges herein, the Respondent was duly licensed as an Auctioneer by the Commission to engage in the business of auctioneering in South Carolina. The Commission has jurisdiction over the Respondent and the subject matter contained herein.
2. The State submitted that Respondent was duly served January 21, 2015, at Respondent's address of record, but the Notice of Hearing and the Formal Complaint were returned unclaimed.
3. George Barr, LLR Investigator, testified that he was assigned to investigate the initial complaint against Respondent. Investigator Barr testified that he spoke to Respondent via telephone one time, and Respondent was to provide documentation and additional information. Respondent did not provide the requested information. Investigator Barr testified that he attempted further telephone and mail contact with Respondent, but Respondent was not responsive.
4. Investigator Barr testified that in March 2014, Respondent orally contracted with Complainant to sell certain items on Complainant's behalf at auction. There was not a formal written auction contract.

5. Investigator Barr testified to text messages between Respondent and Complainant between March and July 2014 which indicated the existence of an agreement for Respondent to sell items on Complainant's behalf at auction.
6. Investigator Barr testified that the text messages reflected that Respondent paid Complainant for some items sold at auction, but there were items Respondent acknowledged he sold at auction, but Complainant was not paid despite numerous requests by Complainant and promises to pay by Respondent.
7. Respondent has been unresponsive to all contact attempted as a result of this initial complaint, investigation and disciplinary hearing notice.

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. Ms. Pinkney 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 that the Commission find the Respondent in violation of all five violations, Sections 40-6-110(A)(2), 40-6-110(A)(3), 40-6-110(A)(5), 40-6-110(A)(12), and 40-1-110(1)(f). The Commission feels that the appropriate sanctions are to Revoke Mr. Flynn's license, a public reprimand, pay a One Thousand Dollar (\$1,000.00) fine for each violation, for a total of Six Thousand Dollars (\$6,000), which should be paid within thirty (30) days of the effective date of the Commission's Order and to cease and desist engaging in the practice of auctioneering effective immediately. Ms. Pinkney seconded the motion, which carried unanimously.

10. Public Comments (no votes taken)

No public comments at this time.

11. Adjournment

MOTION

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

The February 23, 2015, meeting of the SC Auctioneers' Commission adjourned at 1:30 p.m.

The next meeting of the SC Auctioneers' Commission is scheduled for August 17, 2015.