

MINUTES

South Carolina Auctioneer's Commission

Board Meeting

10:00 A.M., August 18, 2003

Synergy Business Park

110 Centerview Drive, Kingstree Building, Room 108

Columbia, South Carolina

Rebecca Frierson, Chairman, of Newberry, called the regular meeting of the S.C. Auctioneer's Commission to order at 10:00 a.m. Other Commission members present for the meeting included: Archie Moody, Vice Chairman, of Darlington; Harriett McCoy, of Hopkins; and Fred Mullis, of Lancaster.

Staff members participating during the meeting included: Lenora Addison-Miles, Administrator; Sharon Dantzler, Deputy General Counsel, LLR-Office of General Counsel; Sandra Dickert, Administrative Assistant; Larry Hall, Investigator; and Linda Holman, Administrative Specialist.

Members of the public attending the meeting included: Debra Harvey, Debra Jelonek, Troy Lawrence, and John Lowder.

Meeting Called to Order

Ms. Frierson announced that public notice of this meeting was properly posted at the S. C. Auctioneer Commission office, Synergy Business Park, Kingstree Building, Room 108 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. She noted that a quorum was present.

Pledge of Allegiance

All present recited the Pledge of Allegiance.

Approval of the May 19, 2003 Meeting Minutes

Ms. McCoy noted one change to the May 19, 2003 meeting minutes. She noted that on page six, paragraph six, regarding the reciprocity agreements, the last line should contain the word 'agreements' after license. The motion would read, "Ms. McCoy made a motion, seconded by Mr. Moody and unanimously carried, that the Commission carry this matter over so the members may discuss this with counsel and investigate the licenses agreements with other states before the Commission takes further action."

MOTION

Mr. Mullis moved the minutes be approved as amended. Ms. McCoy seconded the motion, which carried unanimously.

Chairman's Remarks - Rebecca Frierson

Ms. Frierson stated that Mr. Sidney Hursey's (a licensed South Carolina auctioneer) wife

was killed on Friday and that the funeral would be held this afternoon at Thompson's Funeral Home in West Columbia.

Interim Administrator's Remarks - Lenora Addison-Miles

Ms. Addison-Miles stated that since the previous meeting staff has issued 26 licenses, three of which were firms. She further stated that as of this date, 992 auctioneers and 152 auction firms have renewed and are currently licensed. She went on to say expired license letters and cease and desist orders were mailed to 18 auction firms on August 7, 2003 and 125 auctioneers on August 8, 2003 because the licenses have not been renewed for 2004.

Ms. Addison-Miles stated that the revised exam was administered on June 4, 2003. She further stated that of the 23 candidates, two were auction firm applicants and 21 were auctioneer applicants. She indicated that seven candidates failed the exam and the average score was 70.

Ms. Addison-Miles stated staff has one consent order to present to the members during executive session and that there are currently three open complaints.

Ms. Addison-Miles presented the members with the latest budget report, which showed information through June 30, 2003. (This report is herewith attached and becomes a permanent part of this record.) She noted that this report does not reflect the recovery fund balance, which is \$130,194.89.

Ms. Addison-Miles stated the agenda packages that were mailed to the members included items from NALLOA, Governor Sanford's formation of the Management Accountability Commission (MAP) and the agency's policy and procedure for renewal of licensees who are on active military duty. She noted that these items were for the Commission members' information.

Ms. Addison-Miles stated that the agency has entered into a new contract with Equifax. She noted that under the new terms of the contract all credit reports viewed by the members today must be returned to staff for destruction.

Advisory Opinions, If Needed, Office of General Counsel

There were no advisory opinions given during the August 18, 2003 meeting.

Legislative Update, If Needed, Legislative Liaison Office

There was no legislative update given during the August 18, 2003 meeting.

Action Items

Unfinished Business

Reciprocal Agreements

Ms. Addison-Miles stated staff had placed the reciprocal agreements on the agenda because Ms. Dantzler had some views in regard to this matter.

Ms. Dantzler stated reciprocal agreements require a Commission, such as the Auctioneer's Commission, to be in almost constant negotiations with other Boards or Commissions due to changes in the statutes and regulations, changes in administrators and are obsolete a good portion of the time. She went on to say that when the Commission's practice act was rewritten in 2000, Section 46-2-70 moved away from the traditional reciprocity language and gave the Commission the right to review the valid license in the other state, allows the Commission to go on the Internet to see if the other state's requirements are comparable to South Carolina's and to proceed without all of the reciprocity negotiation. She said that this new language is cleaner, much cheaper for staff to administer, and is more like the way most professions are handling the portability of licenses. She noted that most all of the states are moving away from the traditional reciprocal language. She stated that the statute compares the requirements of the date of initial licensure to what this Commission required on that same date. She recommended the Commission move away from the reciprocity agreements and that the Commission move toward a case-by-case comparison of qualifications to qualifications. She noted that applicants coming from states that do not have licensure would be unable to obtain licensure by endorsement because the individual would be unable to show valid licensure comparable to South Carolina's.

MOTION

Ms. McCoy made a motion, seconded by Mr. Moody and unanimously carried, that the Commission table this matter until such time that the Commission receives information from other states.

New Business

Auctioneer Exam - Troy Lawrence

Troy Lawrence appeared before the Commission at this time.

Mr. Lawrence stated he attended the Southeastern School of Auctioneering and one of the Commissioners indicated that the students would be taking the old exam. He further stated the new exam has nothing to do with what he learned during his attendance at auctioneer school. He said he received a letter indicating he did not know the auctioneer law.

Mr. Lawrence's application indicated credit issues which he mentioned to the Commission.

Ms. Frierson stated she paid a courtesy visit to the Southeastern School of Auctioneering and indicated she spoke with the students. She further stated she always informs the students, with force, that if they are not familiar with the law they will fail the exam.

Ms. Frierson stated Mr. Lawrence had indicated there were outstanding debts against him that remain unpaid. Mr. Lawrence stated one of the debts involved a hospital and indicated that matter is involved in litigation at this time. He noted the debts are a result of a wreck.

Ms. Frierson stated that Mr. Lawrence noted that he did not have a felony conviction,

however, his criminal history report indicates otherwise. Mr. Lawrence disputed he was the individual involved in the felony conviction. Ms. Frierson asked Mr. Lawrence if he has documentation he did not commit any of the crimes noted on the criminal history report. Mr. Lawrence replied he does not have the documentation, however, he would obtain the information and submit it to the Commission for their review.

MOTION

Ms. McCoy moved the Commission further consider this application in executive session. Mr. Mullis seconded the motion, which carried unanimously.

Review/Approval of Application by Exam

a. Henry Earnhardt

Ms. Addison-Miles stated Mr. Earnhardt has applied for licensure by examination. She noted he has passed the exam. She further stated his credit report shows an outstanding debt of \$5,012 to Oconee Memorial Hospital and noted there is a letter in the file indicating he has made payment on this account. She went on to say there is an outstanding \$498 collection account with Bell South and a \$255 collection account from Mountainview. She noted there are also three charged off I-9 accounts. She indicated Mr. Earnhardt's criminal history report indicates arrests for fraudulent checks. She said he has submitted two letters explaining the credit report and the criminal history report.

Ms. McCoy questioned Mr. Hall if he has any knowledge of Mr. Earnhardt conducting an auction or contracting auctions. She stated she is asking this question because of statements written in one of Mr. Earnhardt's letters. Mr. Hall stated he has not heard Mr. Earnhardt's name, however, an individual could have conducted an auction on Mr. Earnhardt's behalf.

MOTION

Ms. McCoy made a motion, seconded by Mr. Moody and unanimously carried, that the Commission further discuss this matter in executive session.

b. Debra Jelonek

Ms. Jelonek appeared before the Commission at this time.

Ms. Frierson stated it is her understanding Ms. Jelonek was wrongfully arrested and that she has a letter from the sheriff's office apologizing for the incident. She asked Ms. Jelonek if the Commission could have a copy of the letter for her file. Ms. Jelonek stated she had been arrested out of a store in Hartsville and taken to jail. She indicated once she was at the jail the sheriff's office discovered they had the wrong person.

Ms. Jelonek stated she had been an auctioneer for 12 years and had an accident while attempting to repair storm damage for an auction scheduled for that night (September 2, 2000). She further stated her attorney is Daryl Corbin. She indicated the letter she received from staff indicated her license could not be issued due to unpaid credit accounts on her credit report.

Ms. Dantzler asked Ms. Jelonek if there was any additional information not contained in the form she wished this Commission to consider while reviewing her application.

Ms. Jelonek stated the accident, which happened in September 2000, caused her to lose most every thing except her life. She further stated that in the accident she fell seventy feet and had been unable to renew her license. She indicated the accident resulted in memory lapse and she could only remember she was an auctioneer. She took the auctioneer course again in accordance with the law. She indicated she also held licenses in North Carolina and Florida.

She indicated if she were unable to obtain a license today she would submit an advertisement in the newspaper stating she still does not have her license. She said that she has a petition with over 400 names indicating she should be licensed. She noted she did not have the petition with her but would mail it to the Commission tomorrow.

MOTION

Ms. McCoy moved the Commission discuss this application in executive session. Mr. Moody seconded the motion, which carried unanimously.

Review/Approval of Application by Reciprocity

John Forrest Lowder

John Lowder appeared before the Commission at this time.

Mr. Lowder stated his credit report indicates several outstanding debts including banks, credit cards, etc. He further stated approximately three years ago he put together a consignment sale for construction equipment in Raleigh, North Carolina, which resulted in a loss of over \$100,000. He indicated that after he paid the bills, his employees and advertising, there was no money left. He went on to say he spent eight months putting the sale together and had a piece of equipment break on the day of the sale. He stated the total revenue, on sale commissions, etc., resulted in \$14,000.00. He further stated the difference between the \$47,000 and the \$14,000 was direct cash out of \$33,000 and approximately one year's worth of what he had hoped would be his income to get into the next spring's sale. He continued by saying that in the three years since, he continued to be a full-time auctioneer and is in industrial machinery appraisal. He is also a candidate member for the equipment appraisers association and he expects to sit for an exam in January 2004 to receive the certified senior designation. He has thirty years of heavy industrial experience. He was licensed in South Carolina initially in 1995 and was in the purebred cattle sale management business. He does not have any disciplinary actions against his license nor does he have any claims against his recovery funds or bonds in any state.

MOTION

Mr. Moody made a motion, seconded by Mr. Mullis and unanimously carried, that the Commission continue its discussion on this matter to executive session.

Robert Irvin Thompson

Ms. Addison-Miles stated Mr. Thompson's application is on the agenda today because his credit report has a \$431 collection account for Carolina Medical Center. She further stated Mr. Thompson has submitted documentation indicating payment of the collection account, however, the account number and dollar amount do not coincide. She indicated she and Mr. Thompson have been going back and forth on the matter and she determined she would bring the matter to the Commission for their review.

Mr. Thompson was not present for the meeting.

MOTION

Mr. Moody moved the Commission consider this matter in executive session. Mr. Mullis seconded the motion, which carried unanimously.

Randy Whatley

Ms. Addison-Miles stated Mr. Whatley is a reciprocity applicant from Texas. She further stated his credit report indicates a \$1,133 collection account from Nacogdoches Medical and a \$204 collection account from Shelby Regional. She indicated Mr. Whatley submitted a letter stating the accounts were not paid because an insurance company indicates an overcharge.

Mr. Whatley was not present for the meeting.

MOTION

Mr. Mullis moved the Commission discuss this matter in executive session. The motion was seconded by Mr. Moody and unanimously carried.

Virginia Fingleman

Ms. Addison-Miles stated Ms. Fingleman's credit report indicates four charged off 1-9 accounts and two involuntary repossessions. She went on to say Ms. Fingleman has a letter from her attorney stating the items would be taken care of in her chapter seven bankruptcy, which should be around October 15, 2003.

Ms. Fingleman was not present for the meeting.

MOTION

Mr. Moody moved the Commission discuss this matter in executive session. Ms. McCoy seconded the motion, which carried unanimously.

Review/Approval of Auction Firm Applicant by Exam

Debra Harvey

Debra Harvey appeared before the Commission at this time.

Ms. Harvey stated her credit report indicates collection accounts totaling \$2,023. She further stated she had received notification that she had passed the firm examination with a score of 82. She went on to say she is aware that she owes this money and indicated the accounts are doctor bills. She has contacted some of the doctor's offices to

make payment arrangements. She indicated she has been making payments on two of the accounts, NCO and Medical Data. She indicated she had planned on attempting to have more of these accounts paid down prior to coming before the Commission; however, due to an accident that broke her leg, she does not have much extra cash at this time. She noted she has been a widow for 29 years and has raised her two children on her own. She indicated she has been living in her home for 22 years and now owns the house. She also said she owned her own business, A-1 Ceramics, for 20 years. She has a teacher's certificate and has taught at a local college in North Carolina.

MOTION

Mr. Moody made a motion, seconded by Ms. McCoy and unanimously carried, to discuss this matter in executive session.

CE Provider Approval and Denial Procedures - William Barry Kelly

The Commission did not consider this matter, as Mr. Kelly was unable to attend the meeting.

National Auctioneers Association Convention Representation

Ms. Frierson stated she had made all of the arrangements to attend the convention as the Commission representative. She was denied at the last minutes due to budget restraints. She believes Mr. Mullis attended the convention at his own expense; however, he did not attend as the Commission representative.

Ms. Frierson stated she would like to see the funds included in the budget to allow for a representative to attend these meetings and asked the other members for suggestions. Ms. McCoy stated with the current budget and the efforts being made to reserve as much funds as possible, perhaps the Commission should designate one person a representative. Ms. Frierson stated when the funds allow more than one member to attend the convention then as many members as can attend should attend and when the funds do not allow many members to attend at least one person should attend as a representative. She indicated it would have been useful to see how the other states are handling the real estate and auctioneer licenses.

Ms. Dantzler stated there are some things she could assist the Commission with that would make it more likely that a member may attend. She further stated that if the travel request is presented and approved it is as a request to attend a national convention of organizations of licensing boards. She indicated the problem appears when the request is to attend an association meeting.

Ms. Frierson stated one of the objections she heard regarding the convention was that it would have been a personal convention instead of a Commission representation. She further stated that she had structured what she would be attending so that it would have reflected the law or NALLOA.

Ms. Dantzler stated the Commission could also review Section 40-1-50(B)(2) of the Engine Act and after the new officers are elected, those officers form themselves as

executive committee and produce a written list of activities the commission would like to achieve for next year. She indicated it would then be the agency's responsibility to inform the Commission whether it can do those initiatives on the Commission's existing budget or not. She said that if the agency cannot complete those initiatives the Commission would have to determine if it would want to strike an item or make an adjustment of the initiatives.

Auctioneer Examination Revision

Ms. Frierson stated the revision to the examination has been completed. She further stated the language was simplified as much as possible and the questions regarding the law were updated to reflect the current statute being used in the schools at this time. She indicated she would continue to work on the examination as the Commission receives feedback from the applicants. She went on to say she would like to have two separate exams so the Commission could eliminate the problem of cheating. She has structured the exam so that she could rearrange the questions.

Ms. McCoy asked staff if there have been other applicants or licensees who have taken the examination had similar complaints regarding the examination. Ms. Addison-Miles replied that of the seven that failed the examination staff has received complaints from two or three individuals. She indicated that the June 4th exam was the first time most of the 23 candidates had taken the exam. Ms. McCoy asked Ms. Addison-Miles to alert the Commission to any complaints regarding the new exam.

Ms. Holman stated she has reviewed the examination with some of the candidates who failed. She further stated those individuals have indicated they knew the information but could not bring the information to mind during the exam.

Newsletter

Ms. McCoy apologized to the members for not completing the newsletter article on the members' biographies, although she did receive the information.

Ms. Frierson suggested the articles be submitted by November 17, 2003.

Real Estate Commission Regulatory Policy RC 616

The Real Estate Commission's regulatory policy RC 616 states:

"Notwithstanding the provisions of S.C. Code Ann. §4057-30(A)(3)(b), 1976 as amended, a licensed auctioneer may call a real estate auction without a real estate license if a licensed real estate broker is engaged to handle the real estate transaction. If the auctioneer does not also have a real estate license, his duties must be limited to calling the bids for the auction. The real estate broker must render all agency disclosures, prepare all contracts and other real estate forms. The broker must place, into his real estate trust account, all earnest money received. All advertisements for the real estate auction must identify the name of the real estate broker's company."

Ms. Frierson stated she has spoken with Mr. Bill Lilley, of Iron Horse Auctions and the former chairman of the North Carolina Auctioneer's Commission. She further stated the

North Carolina Auctioneer's Commission is operating under the same rules as the South Carolina Auctioneer's Commission, but the Commission is uncomfortable with the rule because of the dual agency problem. She went on to say she has also spoken with a Tennessee auction firm that conducts an enormous amount of real estate auctions. She noted Tennessee is considered the most active auction state in terms of real estate. She indicated Tennessee does require an individual hold both licenses (real estate and auctioneer).

Ms. Dantzler stated the Real Estate Commission has said they would not discipline their own broker licensees for participating in a real estate auction with a licensed realtor handling all of the contracts and the real estate forms and a licensed auctioneer handling the bids.

Ms. Frierson stated the reason the Real Estate Commission did that is because the Auctioneer law reads that way but has been interpreted differently.

Southeastern School of Auctioneering Instructor Approval Request

The Southeastern School of Auctioneering is requesting the Commission's approval on Mr. Henry M. Stanley, Jr., owner and president of Carolina Auto Auction, as an instructor. Mr. Meares attached Mr. Stanley's resume with his request. (The request and resume are herewith attached and become a permanent part of this record retained at the Commission office.)

Ms. Frierson stated the Commission does not have an outline or description of the course Mr. Stanley is to teach.

Mr. Moody stated he knows Mr. Stanley well and indicated he believes Mr. Stanley is well qualified as an instructor.

Ms. Frierson stated it does not follow protocol to approve Mr. Stanley as an instructor without an outline or description of the course when there is another individual who is protesting the Commission's decision to deny his request as a provider when he has provided a course outline and description.

After a brief discussion the Commission determined it would approve Mr. Stanley as an instructor contingent upon receipt of the course outline Mr. Stanley would be teaching.

Discussion Items

There were no discussion items for the August 18, 2003 meeting.

Public Comments

There were no public comments made during the August 18, 2003 meeting.

Executive Session

MOTION

Mr. Moody moved the Commission enter executive session. Mr. Mullis seconded the

motion, which carried unanimously.

Return to Open Session to Report on Executive Session

MOTION

Mr. Moody made a motion, seconded by Ms. McCoy and unanimously carried, to return to public session.

Ms. Frierson noted for the record that no motions were made and no votes were taken during executive session.

Troy Lawrence

MOTION

Ms. McCoy moved the Commission issue Mr. Lawrence a probationary license for one year based upon him successfully completing the auctioneers' examination and at the end of that year he appear before the Commission with a credit report, obtained at his own expense, to show that his credit circumstances have improved. The motion was seconded by Mr. Moody and unanimously carried.

Henry Earnhardt

MOTION

Ms. McCoy moved the Commission deny Mr. Earnhardt's application that has come before the Commission based on the fact that he has not demonstrated character that is appropriate for the practice of the auctioneers' profession. Mr. Mullis seconded the motion, which carried unanimously.

Debra Jelonek

MOTION

Ms. McCoy made a motion, seconded by Mr. Moody and unanimously carried, that the Commission grant a probationary license again for one year based on her medical hardship circumstances, and that she appear before the Commission in one year and show that her credit circumstances have improved.

Virginia Fingleman

MOTION

Mr. Moody moved the Commission grant Ms. Fingleman a probationary license for one year, that she obtain a credit report at the end of that year at her own expense. Mr. Mullis seconded the motion, which carried unanimously.

John Forrest Lowder

MOTION

Mr. Moody made a motion, seconded by Ms. McCoy and unanimously carried, that the Commission grant Mr. Lowder a license for one year and that he submit a credit report to the Commission, at his own expense.

Robert Irvin Thompson

MOTION

Mr. Mullis moved the Commission grant Mr. Thompson a license with a one-year probation. The motion was seconded by Mr. Moody and unanimously carried.

Randy Whatley

MOTION

Mr. Moody moved the Commission grant Mr. Whatley a license for one year on probation and that a new credit report be obtained at the end of that year, at his own expense. The motion was seconded by Mr. Mullis and unanimously carried.

Debra Harvey

MOTION

Mr. Moody made a motion, seconded by Ms. McCoy, that the Commission grant Ms. Harvey a firm license with no contingencies.

Adjournment

MOTION

There being no further business to be brought before the Commission at this time, Mr. Mullis moved the meeting be adjourned. Ms. McCoy seconded the motion, which carried unanimously.

The August 18, 2003 meeting adjourned at 12:51 p.m.