

AUCTIONEERS BOARD MEETING

MINUTES

The Virginia Auctioneers Board met on July 12, 2007, at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia, with the following members present:

G. Thomas Garten
Mark T. Motley
Amy Pence
Erlita Joanne Wang

Staff present for all or part of the meeting were:

Jay W. DeBoer, Director
Karen W. O'Neal, Deputy Director of Licensing and Regulation
Mark N. Courtney, Executive Director
Marian H. Brooks, Board Administrator
Michelle Gowen, Administrative Assistant
Earlyne Perkins, Legal Analyst

Board member James H. Perkinson was not present at the meeting.

R. Thomas Payne, II, Assistant Attorney General, and Elizabeth Peay, Assistant Attorney General, were present at the meeting.

Finding a quorum of the Board present, Mr. Motley, Vice-Chair, called the meeting to order at 10:08 a.m.

Call to Order

Ms. Pence moved to approve the agenda. Ms. Wang seconded the motion which was unanimously approved by members: Garten, Motley, Pence, and Wang.

Approval of Agenda

Ms. Pence moved to approve the minutes from the January 18, 2007, Board meeting. Ms. Wang seconded the motion which was unanimously approved by members: Garten, Motley, Pence, and Wang.

Approval of Minutes

Ms. Wang moved to approve the minutes from the April 18, 2007, Informal Fact-Finding Conference. Mr. Garten seconded the motion which was unanimously approved by members: Garten, Motley, Pence, and Wang.

Mr. Motley read the following rules for the public hearing:

Public Hearing on Proposed Regulations

“Good morning ladies and gentlemen. I am Mark Motley and I am the Vice-Chairman of the Auctioneers Board.

“This is a public hearing held at the Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, Virginia. This hearing is being held pursuant to § 2.2-4007 of the Administrative Process Act of the Code of Virginia for the purpose of receiving public comment on the Board's proposed regulations published in the Virginia Register on Monday, June 25, 2007.

“The list of interested parties and organizations which were notified of this process and invited to comment is available upon written request.

“The staff of the Department of Professional and Occupational Regulation will prepare a report of all public comment received which will be presented to the Board for consideration of any revisions to the proposed regulations.

“Please allow me to introduce the members of the Auctioneers Board at this time, they are: Amy Pence, Vienna, VA; Joanne Wang, Annandale, VA; and Tommy Garten, Covington, VA.

“Now I would like to present the rules for this public hearing -

“Comments will be received from any member of the public and initial comments will be limited to a maximum of 5 minutes depending on the number of individuals who wish to speak. If you have not signed up to speak and you wish to give testimony today, please sign your name on the sign up sheet at this time.

“We will be using the light box this morning to assist you in being aware of the allotted five minutes – the green light will be on for the first four minutes, the yellow light will come on when one minute remains, and then the red light will come on when the five minutes are up and your testimony will need to end.

“Board members may ask speakers questions or to clarify statements. However, this is not the proper forum for questions to the Board. If you have a question for the Board, please forward them in writing, to the Board.

“Any speaker, who wishes to provide a written statement in addition to his oral testimony, or in lieu of oral testimony, may do so until Friday, August 24, 2007.”

There were no comments made to the Board.

“The record of the public hearing will be kept open until Friday, August 24, 2007, and written comments will be accepted through 5:00 p.m. that day. This hearing is now closed.”

Public Comment Period – No comments were made to the Board members.

F. Sullivan Callahan, attorney for Calvin Zedd, was present via telephone to request that the Board consider continuing this matter to the next Board meeting due to the fact that Mr. Zedd’s current health will not allow him to travel at this time. After consideration of the written request and Mr. Callahan’s presentation, Mr. Garten moved to deny the request for a continuance. Ms. Pence seconded the motion which was unanimously approved by members: Garten, Motley, Pence, and Wang. Mr. Callahan asked that his exception to the Board’s decision be noted.

Mr. Callahan requested that the Board take into consideration that Mr. Zedd and Zedd Auctioneers, LTD, have not caused any harm to anyone nor have they cause any loss to or defrauded the public. Mr. Callahan also noted that a revocation of Mr. Zedd’s auctioneers license as well as the revocation of his firm’s license is a severe punishment for the violations and stated that Mr. Zedd is willing to subject his records as well as the firms records to an audit if the Board wishes.

Regarding **File Number 2007-00194, Calvin Zedd**, the Board members reviewed the record of the Informal Fact-Finding Conference, which consisted of the investigative file, transcripts and exhibits, and Summary of the Informal Fact-Finding Conference, as well as Mr. Callahan’s presentation. Mr. Garten moved to accept the Summary of the Informal Fact-Finding Conference as to the facts, which cites the following violation of the Board’s 2002 regulations: 18 VAC 25-21-180.A.6 (Count 1). Ms. Pence seconded the motion which was unanimously approved by members: Garten, Motley, Pence, and Wang.

After Ms. Perkins informed the Board of previous violations against Mr. Zedd, Mr. Callahan addresses the Board regarding the recommended sanctions. Ms. Pence moved to amend to recommended sanctions contain in the Summary of the Informal Fact-Finding Conference and impose the following: for the violation contained in Count 1, a one year suspension of Mr. Zedd’s auctioneer license, #2905000556, as well as a monetary penalty of \$2500. Mr. Garten seconded the motion which was unanimously approved by members: Garten, Motley, Pence, and Wang.

Regarding **File Number 2007-00056, Zedd Auctioneers, LTD**, the Board members reviewed the record of the Informal Fact-Finding

Public Comment

**F. Sullivan Callahan
on behalf of Calvin
Zedd and Zedd
Auctioneers, LTD
File Numbers 2004-
00194, and 2007-
00056,**

**File Number 2007-
00194, Calvin Zedd**

**File Number 2007-
00056, Zedd**

Conference, which consisted of the investigative file, transcripts and exhibits, and Summary of the Informal Fact-Finding Conference, as well as Mr. Callahan's presentation. Ms. Pence moved to accept the Summary of the Informal Fact-Finding Conference as to the facts, which cites the following violation of the Board's 2002 regulations: 18 VAC 25-21-180.A.6 (Count 1). Ms. Wang seconded the motion which was unanimously approved by members: Garten, Motley, Pence, and Wang.

Auctioneers, LTD

After Ms. Perkins informed the Board of previous violations against Zedd Auctioneers, LTD, Mr. Callahan's addressed the Board regarding the recommended sanctions. Ms. Pence moved to amend the recommended sanctions contained in the Summary of the Informal Fact-Finding Conference and impose the following: for the violation contained in Count 1, a three year suspension of Zedd Auctioneers, LTD, auction firm license, #2906000306, as well as a monetary penalty of \$2000. Mr. Garten seconded the motion which was unanimously approved by members: Garten, Motley, Pence, and Wang.

The Board members took a break from 11:27 a.m. to 11:37 a.m.

Break

Regarding **File Number 2007-00470, James Edward Carwile**, the Board members reviewed the Consent Order as seen and agreed to by Mr. Carwile. Ms. Pence moved to accept the Consent Order which cites a violation of 18 VAC 25-21-110 of the Board's 2002 regulations. For this violation, Mr. Carwile agrees to pay a fine of \$750 as well as \$150 in Board costs. Ms. Wang seconded the motion which was unanimously approved by members: Garten, Motley, Pence, and Wang.

File Number 2007-00470, James Edward Carwile

Regarding **File Number 2007-01726, Dixon's Auctions, Inc.**, the Board members reviewed the Consent Order as seen and agreed to by William E. Dixon. Ms. Pence moved to accept the Consent Order which cites the following violations of the Board's 2002 regulations: 18 VAC 25-21-110 (Count 1); and 18 VAC 25-21-180.A4 (Count 2). For these violations, Dixon's agrees to the following monetary penalties: \$250 fine for the violation contained in Count 1; \$500 fine for the violation contained in Count 2; as well as \$150 in Board costs. Ms. Wang seconded the motion which was unanimously approved by members: Garten, Motley, Pence, and Wang.

File Number 2007-01726, Dixon's Auctions, Inc.

Mr. Motley recused himself from the meeting and turned the position of Chair over to Ms. Pence.

Transfer of Chair

At 11:40 a.m., Mr. Garten moved that the meeting be recessed and that the public body immediately reconvene in closed meeting for the purpose of consultation with legal counsel and/or briefings by staff members pertaining to actual or probable litigation as permitted by § 2.2-3711.A.7 of the *Code of Virginia*. This motion was made with respect to the matter

Closed Meeting

identified as agenda item: 13. Review and Discussion of Proposed Settlement Agreement involving Motley's Auctions, Inc., and Mark T. Motley. The following non-members will be in attendance to reasonably aid the consideration of the topic: Jay DeBoer, Karen O'Neal, Marian, Brooks, Elizabeth Peay, R. Thomas Payne, II, and Mark Courtney. Ms. Wang seconded the motion which was unanimously approved by members: Garten, Pence, and Wang.

At 11:48 a.m., Mr. Garten moved to recess the closed meeting and immediately reconvene in open meeting. Ms. Wang seconded the motion which was unanimously approved by members: Garten, Pence, and Wang.

Open Meeting

CERTIFICATION OF CLOSED MEETING

WHEREAS, the Auctioneers Board has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

Certification of Closed Meeting

Whereas, § 2.2-3712 of the *Code of Virginia* requires a certification by this Auctioneers Board that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Auctioneers Board hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies and (ii) only such public business matter as were identified in the motion convening the closed meeting were heard, discussed or considered by the Auctioneers Board.

VOTE:

AYES: Garten, Pence, and Wang.

NAYS: 0

ABSENT: Motley, Perkinson

Mr. Motley returned to the meeting and resumed the position of Chair.

At 11:52 a.m., Mr. Garten moved that the meeting be recessed and that the public body immediately reconvene in closed meeting for the purpose of consultation with legal counsel and/or briefings by staff members pertaining to legal matters within the jurisdiction of the Board as permitted by § 2.2-371.A.7 of the *Code of Virginia*. This motion was made with respect to the matter identified as agenda item: 11. Legal Advice on Internet Auctions. The following non-members will be in attendance to reasonably aid the consideration of the topic: Jay DeBoer, Karen O'Neal, Marian, Brooks, Elizabeth Peay, and Mark Courtney. Ms. Pence seconded the motion which was unanimously approved by members: Garten, Motley, Pence, and Wang.

Transfer of Chair Closed Meeting

At 11:58 a.m., Mr. Garten moved to recess the closed meeting and immediately reconvene in open meeting. Ms. Pence seconded the motion which was unanimously approved by members: Garten, Motley, Pence, and Wang.

Open Meeting

CERTIFICATION OF CLOSED MEETING

WHEREAS, the Auctioneers Board has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

Certification of Closed Meeting

Whereas, § 2.2-3712 of the *Code of Virginia* requires a certification by this Auctioneers Board that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Auctioneers Board hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies and (ii) only such public business matter as were identified in the motion convening the closed meeting were heard, discussed or considered by the Auctioneers Board.

VOTE:

AYES: Garten, Motley, Pence, and Wang.
NAYS: 0
ABSENT: Perkinson

The Board members agreed by consensus to defer the election of officers to the Board meeting scheduled for October 18, 2007, so that Mr. Perkinson would be present.

Election of Officers

Mr. Courtney noted to the Board members that the proposed 2008 dates are subject to change as the Department is moving to a new location with shared conference space in August 2007. If any changes are necessary staff will inform the Board.

Set 2008 Meeting Dates

Ms. Pence moved to approve the following meeting dates for 2008:

Thursday, January 18, 2008
Thursday, April 17, 2008
Thursday, July 17, 2008
Thursday, October 16, 2008.

Ms. Wang seconded the motion which was unanimously approved by

members: Garten, Motley, Pence, and Wang.

The Board members were provided with the May 2007 financial statements for informational purposes.

Review Financial Statements

Mr. Courtney informed the Board members in more detail that the Department move is still on track for August 10, 2007, and noted they would be provided with more information in the near future.

Other Business

Ms. Brooks provided the Board members with a request from Mississippi for a reciprocal agreement with the Virginia Board. After review and discussion, Ms. Pence moved to accept the reciprocal agreement with Mississippi. Mr. Garten seconded the motion which was unanimously approved by members: Garten, Motley, Pence, and Wang.

Conflict of Interest forms were completed by all members present.

Conflict of Interest Forms

There being no further business, the meeting was adjourned at 12:11 p.m.

Adjourn

Mark Motley, Vice-Chair

Jay W. DeBoer, Secretary