

MINUTES OF THE STATE AUCTIONEERS COMMISSION
OHIO DEPARTMENT OF AGRICULTURE Seminar Room B
8995 E. MAIN STREET, REYNOLDSBURG, OH 43068
April 11, 2014

PRESENT:

Commissioner Bart Sheridan
Commissioner Doug Walton
Commissioner Gary Cain

Michael Rodgers, Chief, Legal Counsel
Donna Brinker Potter, Auctioneer Program Manager

Members of the Public:

Harry Grafton
Kathy Baber, OAA
Tim Beathard, OAA

Meeting called to order @ 9:30 am. Donna Potter called roll. All members of the commission are present except Rich Kruse who had emailed stating he would not be able to attend. The public member position is vacant. Chairman Walton reminded everyone the next meeting will be on August 8, 2014. He asked the commission to review the minutes from the last meeting. Commissioner Sheridan moved to accept the minutes as presented. Commissioner Cain seconded. No further discussion noted. The motion to approve minutes was passed by an affirmative vote of all members present.

The first item on the agenda is absolute auctions. Commissioner Cain stated that he feels that it should be worked out so that they can have a set fee for a deposit. He felt that it needed to be not construed as a minimum bid. He stated that the bidder and seller need to be taken in consideration. He stated that he did not know how they can address it. He stated that they have an obligation to the sellers and without requiring a decent down payment the seller is not protected if the high bidder walks away. Chairman Walton felt that the fixed down payment was more attractive to buyers versus a percentage. Commissioner Sheridan stated that looking at the law, all they have to go on is 4707. He asked what else is there to rely on. Donna Potter stated R.C. 1302.41 and case law. Commissioner Sheridan stated that looking at the language in 4707, it does not cover everything. He stated that in the past they have gone to a set down payment. However, it would appear that if they were going to deal with it appropriately, there has to be a change in the law to address these issues. He felt that there bigger issues with absolute auctions that needed to be dealt with as well, such as advertising an absolute auction and then changing to a reserve the day of the sale. He stated that he felt that it would be appropriate to maybe develop a subcommittee to review and make a presentation to the commission. Commissioner Cain stated that an auctioneer needs to determine which method is best. He said that we are not going to be able to dictate ethics and morals. However, a down payment should be something an auctioneer should be able to utilize. He stated that there needs to be room for common sense. Bart Sheridan asked for a clarification from the department regarding why they could not use a required down payment worded to the effect: the lesser of \$5,000 or 10% of the final bid price. Michael Rodgers stated that it is the department's position that anything you do that would set a fixed amount of money to bid or put down as a deposit is setting a de facto minimum bid. Michael Rodgers stated that perhaps a law change that would permit in a real estate auction the requirement to pay a fixed amount based on an appraised value. Commissioner Cain stated that from a practical standpoint it is not realistic. He felt that it would not be feasible to require the additional cost of an appraisal-- most people do not get an appraisal for their property prior to sale. Michael Rodgers acknowledged that most folks are operating under good intent to protect the client, however; the practice is currently not permissible under the statute. Commissioner Sheridan stated that obviously they were not going to get a different solution; the department has made a decision. Commissioner Sheridan asked if it would require a change in the OAC or the ORC. Michael Rodgers stated that it would require a change in the ORC. Commissioner Sheridan asked where in the law the statute prohibits the lesser option. Michael Rodgers stated that if you set a required amount for deposit, you are setting the de facto bid. Commissioner Cain stated that this was merely the interpretation of someone. Commissioner

Sheridan stated that he disagreed with Commissioner Cain. He stated that he still liked the lesser option. He stated that the next step would be if they are interested in promoting a change as a commission to create a committee with the department to examine the issue and make a recommendation to the commission and then to the department. Chairman Walton stated that if they don't do anything, nothing changes. Michael Rodgers stated that without legislative changes no changes would occur. Commissioner Sheridan stated that they did not need to keep discussing it, that they are wasting time until they move forward with a committee. He said that it is the Chairman's discretion but they cannot move forward until everyone is on board. Chairman Walton stated that it what they need to do. He felt that there should be representative from the commission, four representatives from the OAA and two from the department. It was suggested that all licensees should be allowed to participate. Donna Potter asked if they wanted her to send a letter on behalf of the commission inviting all licensees to submit their names and to draft a letter to the director asking him to appoint two representatives. It was agreed that the letter would be mailed with the deadline for submittal by the end of May. The commission would then review those interested in serving and designate the members of the subcommittee.

Enforcement update was given by Donna Potter. She stated that she would be reading her update due to some recent disciplinary actions and she did not want to misspeak. She stated that it was renewal season. Auctioneers with the last name K-W, all apprentices and auction firms are renewing this year. Renewals were mailed out in mid-Feb. All licensees have until 6/30/2014 to renew without a late fee. So far we have received 431/1491 auctioneers; 10/196 apprentices; 0/3 special auctioneers; 27/110 auctioneer: Corp/LLC; and 6/103 auction firms. The next item is the disciplinary actions. The department recently took disciplinary action against two licensees. The fact pattern is basically the same. The licensees auctioned off a property for a trust. The property has three homes on it. The family had mortgages in the amount of \$100,000 and \$440,000 and the family wanted to place a reserve in the amount of \$700,000-800,000 in order to sell the property. The auctioneer stated a better reserve as \$350,000 but it was not enough to cover the mortgages. The auctioneer convinced the family to sell the property at absolute auction because the marketing plan (included the Wall Street Journal, Cleveland Plain Dealer, Farm and Dairy, and other newspapers) and the auctioneer advised the family they would require a check in the amount \$27,500 in order to bid at the auction or if the auctioneer knew the bidder they did not need to provide the check. He stated that they would tell the family how many bidders were present and they could cancel the auction if they wanted the day of the sale. The auctioneer took an advance from the family in the amount of \$11,000 for the advertising. The advertisements did not run in the papers due the financial insolvency of the auctioneer company and the sellers were not notified. The monies were not deposited into a client trust account but into six different accounts. The accounts were assessed over \$7,000 in overdraft fees during this period. Day of the sale, the auctioneer told the family that there were twelve to thirteen qualified bidders where there were only 6 or 7. The property sold for approximately \$390,000 to the seller's brother in law. The high bidder refused to complete the sale and the property did not sell. The department conducted an extensive investigation and on July 10, 2013 issued two NOH letters, one to Dutton Auctioneers, LLC and the other to Joel Dutton. The department proposed to revoke the license of Dutton Auctioneers LLC and proposed to refuse to renew the license of Joel Dutton and to revoke his license. In determining the penalty the department looked at the seriousness of the violations and at the prior disciplinary history of Mr. Dutton.

A hearing was originally scheduled for October 17, 2013, the appellants asked for a continuance to find an attorney. The hearing was continued until December 3, 2013. The appellants asked for a continuance due to the fact that they had retained an attorney that morning and she was unable to attend the hearing. Jim Patterson spoke with their attorney and it was decided to proceed with the hearing and the record would be left open for additional information to be provided by the appellants' counsel within reasonable time. The appellants failed to provide any additional information and the record was closed on January 27, 2014. The hearing officer issued a report and recommendation of February 26, 2014. The hearing officer found that the

appellants violated sections R.C. 4707.15(C), (D), (E), (H), (J), (K), and (L), R.C. 4707.024, R.C. 4707.20(A), R.C. 4707.023(A)(1)(c) and (A)(2) and that revocation/refusal to renew the licenses were in order. Director's Orders 2014-095 and 2014-096 were signed by the Director on 3/24/2014 revoking the license of Dutton Auctioneers, LLC and refusing to renew and revoking the license of Joel Dutton. The appellants had 15 days to appeal the decision to the court of common pleas. The bond claim and Director's Orders were sent to the bonding company on April 9, 2014.

The final item on the enforcement update is in regard to the fund balances. As of 4/8/2014 the recovery fund balance is \$1,195,776.33; education fund balance: \$238,988.85 with \$6,288.56 remaining spending authority through 6/30; and the operating fund \$347,011.28. At the end of the fiscal year, any amount over \$300,000 in the operating fund, 25% will be transferred to the education fund.

The next item on the agenda is the verbal exam sheet. Chairman Walton stated that they needed to discuss: what they wanted to do; did they want to appoint a committee to review; and what did the commission desire. Commissioner Cain stated that sometime ago he asked for a sheet to be put together to set a criteria for the verbal exam. He said that he would like to hear from the others. Commissioner Sheridan stated that he liked the score sheet, it was helpful. He stated that his bigger concern is the passing score of 50% where the written requires 75%. He stated that when he scores, he is scoring pass or fail. He stated that the verbal is less important as the written, but did not feel right passing someone with what would otherwise be a failing score. Chairman Walton stated that he liked the score sheet but there were areas where he was sure he had not passed some individuals. Commissioner Cain stated that the chant is not most important part. Other areas are important and it has to be viewed as a profession. Commissioner Cain moved to set the passing grade to 70 on the verbal exam sheet. Commissioner Sheridan asked if he wanted to set it at 75%. Chairman Walton stated he agreed with 70. Commissioner Sheridan seconded. Chairman Walton asked for discussion. Commissioner Sheridan stated that it should be submitted for implementation for as soon as practical versus waiting for the five year rule review. Motion carried by an affirmative vote of all members present.

Chairman Walton asked for an OAA update. Kathy Baber stated that they had a board meeting the prior day and that the absolute auction was a hot topic. She stated that the OAA, Dick Kiko Jr., Andy White, Peter Gehres met with Director Daniels, the attorneys and with Donna Potter. The OAA would like to be a part of the Commission's subcommittee. She said she felt it was imperative for all groups to work together. Commissioner Sheridan asked what the predominant discussion was at the meeting. Kathy Baber indicated that issues raised by Commissioner Cain. Commissioner Sheridan stated that he understood but expressed concern over some of the other issues that seem to crop up the day of the sale. Kathy Baber stated that the major concern was regarding setting the deposit amount. Tim Beathard stated although the terminology changes, it is not a part of the purchase price. Donna Potter indicated that there are several practices that are occurring with the absolute auction that may potentially cause someone an issue if it went to court in her opinion. She indicated that a few years back she had a conversation with Kurt Bachman and, at that time, they both felt that a multi-par auction should not be conducted as an absolute auction due to the changing of the lots once the bids had been accepted. She stated that she felt that someone would challenge the practice in the courts and the practice probably would not be upheld which could be problematic for the auctioneer and the seller. Chairman Walton asked for any other business before the commission. No further business was brought before the commission. Commissioner Sheridan moved to adjourn the meeting. Commissioner Cain seconded. No further discussion noted. Meeting adjourned at 11:02 am by an affirmative vote of all members present.

Approved Chairman