

AUCTIONEERS BOARD MEETING

MINUTES

The Virginia Auctioneers Board met on October 17, 2002, at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia, with the following members present:

Beverly B. Darby
Larry J. Linkous
Donna Newcomb
James H. Perkinson
Samuel K. Updike, Jr.

Staff present for all or part of the meeting were:

Louise Fontaine Ware, Director
Sandra Whitley Ryals, Chief Deputy Director
Karen W. O'Neal, Deputy Director of Regulatory Programs
Marian H. Brooks, Regulatory Board Administrator
Mark N. Courtney, Assistant Director
Trisha L. Henshaw, Administrative Assistant
Dawn Waters, Policy, Planning and Public Relations Director
Mary Broz, Communications Director
Bonnie Rhea Adams, Assistant Director of Post Adjudication
Cynthia Platt, Legal Assistant

Lisa Rowley, Assistant Attorney General, was present as a representative of the Office of the Attorney General.

Finding a quorum of the Board present, Mr. Updike, Vice-Chair, called Call to Order the meeting to order at 10:05 a.m.

Mr. Linkous moved to approve the agenda as written. Ms. Darby seconded the motion which was unanimously approved by members: Darby, Linkous, Newcomb, Perkinson, and Updike.

Approval of
Agenda

Ms. Brooks introduced Ms. O'Neal as the new Deputy Director of Regulatory Programs. Ms. O'Neal has been with the Department in various capacities for the past 12 years.

Introduction of New
Board Members and
Staff

Ms. Brooks also introduced Mr. Perkinson as the newest member of the Board.

Ms. Brooks announced that Ms. Rowley is currently the Board's counsel, however, she will be leaving the Office of the Attorney General next week. Ms. Rowley indicated that new counsel would be assigned to the Board.

Mr. Linkous moved to approve the minutes of the April 11, 2002, Board meeting as written. Ms. Newcomb seconded the motion which was unanimously approved by members: Darby, Linkous, Newcomb, Perkinson, and Updike.

Ms. Ware and Ms. Ryals were introduced to the Board members as the new Director and Chief Deputy Director, respectively.

Mr. Updike gave the following rules for the public hearing:

"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 Public Participation Guidelines published in the Virginia Register on Monday, August 12, 2002.

"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 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 Larry Linkous, James Perkinson, Donna Newcomb, and Beverly Darby.

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

"Rules for this 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.

Approval of Minutes

Introduction of
Director and Chief
Deputy

Public Hearing on
Proposed Public
Participation
Guidelines

“Anyone may speak in rebuttal to the comments of another speaker and those comments will also be limited in the amount of time they may speak. I will call for rebuttal comments when all speakers on the list have finished.

“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, October 18, 2002.”

After seeing that no one was present to offer any comment on the proposed regulations, Mr. Updike closed the public hearing.

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

Public Comment

Mr. Updike nominated Mr. Linkous for the position of Chair. Mr. Perkinson seconded the nomination which was unanimously approved by members: Darby, Linkous, Newcomb, Perkinson, and Updike. By acclamation, Mr. Linkous was elected as Chair of the Board through June 30, 2003.

Election of Chair and Vice-Chair

Mr. Linkous nominated Mr. Updike for the position of Vice-Chair. Ms. Darby seconded the nomination which was unanimously approved by members: Darby, Linkous, Newcomb, Perkinson, and Updike. By acclamation, Mr. Updike was elected as Vice-Chair of the Board through June 30, 2003.

The Board took a brief recess from 10:12 to 10:14.

Break

No other respondent, counsel for respondent or other representative, or participant without an appointment was present to speak before the Board.

Call for Respondent

In reference to **File Number 2002-01590, Troy E. Graham, Jr.**, the Board members reviewed the record of the Informal Fact-Finding Conference, which consisted of the investigative file, transcript and exhibits, and summary and recommendation of the presiding Board member. Due to the broad scope of violations and the uncooperative nature of the respondent, Mr. Perkinson moved to accept the summary and recommendation of the presiding Board member, which includes the

File Number 2002-01590, Troy E. Graham, Jr.

following:

Count I: Clear and convincing evidence of a violation of 18 VAC 25-21-110(1)(a) of the Board's 1998 regulations for Mr. Graham's failure to include a detailed list of the personal property received for sale at auction. A monetary penalty of \$500 shall be imposed for violation of this regulation.

Count II: Clear and convincing evidence of a violation of 18 VAC 25-21-110(2) of the Board's 1998 regulations for Mr. Graham's failure to include the auctioneer's name, address, telephone number, and license number in the auction contract. A monetary penalty of \$500 shall be imposed for violation of this regulation.

Count III: Clear and convincing evidence of a violation of 18 VAC 25-21-110(4) of the Board's 1998 regulations for Mr. Graham's failure to include the date, time, and place of the auction at which the personal property was scheduled to be auctioned in the auction contract. A monetary penalty of \$500 shall be imposed for violation of this regulation.

Count IV: Clear and convincing evidence of a violation of 18 VAC 25-21-110(6) of the Board's 1998 regulations for Mr. Graham's failure to include the date the owner is to be paid by and who is responsible for disbursing the funds in the auction contract. A monetary penalty of \$500 shall be imposed for violation of this regulation.

Count V: Clear and convincing evidence of a violation of 18 VAC 25-21-110(7) of the Board's 1998 regulations for Mr. Graham's failure to include a statement that the clerk sheets, or other evidence to properly account for all items sold, shall be given or made for inspection by the owner on a daily basis. A monetary penalty of \$500 shall be imposed for violation of this regulation.

Count VI: Clear and convincing evidence of a violation of 18 VAC 25-21-110(8) of the Board's 1998 regulations for Mr. Graham's failure to include the following statement in the auction contract above the owner's signature line: "I have read and accepted the terms of this contract." A monetary penalty of \$500 shall be imposed for violation of this regulation.

Count VII: Clear and convincing evidence of a violation of 18 VAC 25-21-110(9) of the Board's 1998 regulations for Mr. Graham's failure to provide a legible executed copy of the contract to the owner at the time of execution. A monetary penalty of \$500 shall be imposed for violation

of this regulation.

Count VIII: Clear and convincing evidence of a violation of 18 VAC 25-21-140 of the Board's 1998 regulations for Mr. Graham's failure upon completion of his service as an auctioneer to give the clients evidence to properly account for all items sold at auction. A monetary penalty of \$2,000 shall be imposed for violation of this regulation.

Count IX: Clear and convincing evidence of a violation of 18 VAC 25-21-180(A)(5) of the Board's 1998 regulations for Mr. Graham's refusal or failure, upon request or demand, to produce to the Board or any of its agent any document, book, or copy thereof in the licensee's possession concerning the performance of auctioneering duties. A monetary penalty of \$2,500 shall be imposed for violation of this regulation.

Count X: Clear and convincing evidence of a violation of 18 VAC 25-21-170(B) of the Board's 1998 regulations for Mr. Graham's failure to give the Board written notice within 30 days of his change of address. A monetary penalty of \$250 shall be imposed for violation of this regulation.

Count XI: Clear and convincing evidence of a violation of 18 VAC 25-21-180(A)(3) of the Board's 1998 regulations for Mr. Graham's failure to properly account for all items of personal property he obtained for sale at public auction and his failure to inform the owners of the status, disposition, or location of all items of personal property, thus failing to demonstrate reasonable care in the performance of his auctioneering duties. A monetary penalty of \$2,500 shall be imposed for violation of this regulation.

Mr. Perkinson further moved to impose a sanction of suspension of Mr. Graham's auctioneer license for 60 days. Mr. Perkinson further moved that failure to pay the total monetary penalty assessed within sixty (60) days of the date of entry of the final order will result in the automatic suspension of license number 2905 001954 until such time as said amount is paid in full.

Ms. Newcomb seconded the motion which was unanimously approved by members: Darby, Linkous, Newcomb, and Perkinson. As the presiding Board member at the Informal Fact-Finding Conference, Mr. Updike was not present during the discussion or vote.

In regards to File Number 2002-01121, Wingfield Auctions, the Board members reviewed the record of the Informal Fact-Finding Conference, which consisted of the investigative file, transcript and exhibits, and

File Number 2002-01121, Wingfield Auctions

summary and recommendation of the presiding Board member. After discussion, Ms. Newcomb moved to accept the summary and recommendation of the presiding Board member. Wingfield Auction Co.'s failure to include the Virginia auctioneer firm license number in the advertisements constitutes a violation of the Board's 1998 regulation 18 VAC 25-21-100(B). A monetary penalty of \$100 shall be imposed for the violation of the regulation. Ms. Newcomb further moved that failure to pay the total monetary penalty assessed within sixty (60) days of the date of entry of the final order will result in the automatic suspension of auctioneer firm license number 2908 000484 until such time as said amount is paid in full. Ms. Darby seconded the motion which was unanimously approved by members: Darby, Linkous, Newcomb, and Perkinson. As the presiding Board member at the Informal Fact-Finding Conference, Mr. Updike was not present during the discussion or vote.

Regarding File Number 2002-00059, Franklin W. Lowery, the Board members reviewed the record of the Informal Fact-Finding Conference, which consisted of the investigative file, transcript and exhibits, and summary and recommendation of the presiding Board member. After discussion, Ms. Newcomb moved to accept the facts in the summary, reject the recommendation, in part, and adopt the following:

File Number 2002-00059, Franklin W. Lowery

Count I: List for consigned merchandise was adequate; therefore, close this aspect of the file with a finding of no violation.

Count II: Clear and convincing evidence of a violation of 18 VAC 25-21-110(2) of the Board's 1998 regulation for Mr. Lowery's failure to include his individual Virginia auctioneer's license number in the auction contract. A monetary penalty of \$100 shall be imposed for violation of this regulation.

Count III: Clear and convincing evidence of a violation of 18 VAC 25-21-110(6) of the Board's 1998 regulation for Mr. Lowery's failure to include by what date the owner is to be paid and who is responsible for disbursing the funds in the auction contract. A monetary penalty of \$100 shall be imposed for violation of this regulation.

Count IV: Clear and convincing evidence of a violation of 18 VAC 25-21-110(7) of the Board's 1998 regulation for Mr. Lowery's failure to include a statement in the auction contract that the clerk sheets, or other evidence to properly account for all items sold, shall be given or made available for inspection by the owner. A monetary penalty of \$100 shall be imposed for violation of this regulation.

Count V: Clear and convincing evidence of a violation of 18 VAC 25-21-110(8) of the Board's 1998 regulations for Mr. Lowery's failure to include the following statement in the auction contract above the owner's signature line: "I have read and accepted the terms of this contract." A monetary penalty of \$100 shall be imposed for violation of this regulation.

Count VI: Clear and convincing evidence of a violation of 18 VAC 25-21-180(4) of the Board's 1998 regulations for Mr. Lowery's action of using the firm name of "Langley Auctions" on his June 9, 2001 contract with a client to sell goods at public auction, without first obtaining an auction firm license as required by § 54.1-603(A) of the Code of Virginia.

Count VII: Clear and convincing of a violation of 18 VAC 25-21-180(A)(3) of the Board's 1998 regulations for selling items at retail sale prior to the start of the auction, when he had contracted with the owner to sell all items to the highest bidder at public auction. A monetary penalty of \$500, instead of \$250, shall be imposed for violation of this regulation because the contract was entered into with the owner to sell their items at auction. Subsequently, the items were not sold at auction but at retail; therefore, the owner was misled.

Ms. Newcomb further moved that failure to pay the total monetary penalty assessed within sixty (60) days of the date of entry of the final order will result in the automatic suspension of auctioneers license number 2905 000547. Ms Darby seconded the motion which was unanimously approved by members: Darby, Linkous, Newcomb, and Perkinson. As the presiding Board member at the Informal Fact-Finding Conference, Mr. Updike was not present during the discussion or vote.

Concerning File Number 2002-02361, James A. Tilman, IV, the Board members reviewed the record of the Informal Fact-Finding Conference, which consisted of the investigative file, transcript and exhibits, and summary and recommendation of the presiding Board member, as well as a letter received from the complainants after the Informal Fact-Finding Conference. Ms. Newcomb stated that she has attended auctions conducted by Mr. Tilman in the past but believed that she could be fair and impartial in this matter. Mr. Perkinson stated that he knew the complainants in this case through a fraternal organization; therefore, he wished to recuse himself from the discussion and vote.

File Number 2002-02361, James A. Tilman, IV

After discussion, Ms. Darby moved accept the summary and recommendation of the presiding Board member and closed the file with a finding of no violation. Ms. Newcomb seconded the motion which

was unanimously approved by members: Darby, Linkous, and Newcomb. As the presiding Board member at the Informal Fact-Finding Conference, Mr. Updike was not present during the discussion or vote.

Ms. O'Neal provided an overview of the new board member orientation presentation. The new board member orientation, which consists of several modules, including regulatory review, finance, enforcement, and public information, will be divided so that different information is discussed over several meetings, instead of everything discussed at one meeting.

**Board Member
Training**

Ms. Waters provided the Board members with information regarding public records issues. Ms. Broz discussed various public relations information with the Board members, and also discussed the role of DPOR in relation to the boards.

Mr. Updike moved to adopt the following resolution for service:

**Adoption of
Resolution**

Lisa J. Rowley

WHEREAS, Lisa J. Rowley did faithfully and diligently serve as counsel to the Virginia Auctioneers Board;

WHEREAS, Lisa J. Rowley did devote generously of her time, talent and leadership to the Board;

WHEREAS, Lisa J. Rowley did endeavor at all times to render assistance and advice to the Board with fairness and good judgment in the best interest of the citizens of the Commonwealth and this profession; and

WHEREAS, the Virginia Auctioneers Board wishes to acknowledge its gratitude for devoted service of a person who is held in high esteem by the members of the Board and the citizens of the Commonwealth;

NOW THEREFORE BE IT RESOLVED, by the Virginia Auctioneers Board this seventeenth day of October 2002, that Lisa J. Rowley be given all honors and respect due her for her outstanding service to the Commonwealth and its citizens; and

BE IT FURTHER RESOLVED, that this Resolution be presented to her and be made a part of the official minutes of the Board so that all may know of the high regard in which she is held by this Board.

Ms. Darby seconded the motion which was unanimously approved by members: Darby, Linkous, Newcomb, Perkinson, and Updike.

Ms. Rowley thanked the Board members and expressed that she would miss working with the Board, however, she looked forward to beginning a new chapter in her career.

The Board recessed for a break from 11:35 a.m. to 11:45 a.m.

Break

The Board member training continued with Ms. O'Neal discussing the role of a board member and the regulatory review process.

Board Member Training

The Board members were provided with Board financial statements for August 2002. Ms. Brooks explained that these reports will be provided with the Board meeting agenda packages as a cost-saving measure. Further, Ms. Brooks indicated that the most recent statements will be included with the Board member packages; however, they could contact the Board office if they wanted the financial statements for other time periods.

Review Financial Statements

Mr. Perkinson moved to adopt the following meeting dates for 2003:

Adopt 2003 Meeting Dates

Thursday, January 9, 2003
Thursday, April 10, 2003
Tuesday, July 8, 2003
Thursday, October 9, 2003

Ms. Newcomb seconded the motion which was unanimously approved by members: Darby, Linkous, Newcomb, Perkinson, and Updike.

Mr. Updike moved to adopt the following resolution for service:

Other Business

Frank "E." Bolton

WHEREAS, Frank "E." Bolton did faithfully and diligently serve as a member of the Virginia Auctioneers Board from 1994 to 2002;

WHEREAS, Frank "E." Bolton did devote generously of his time, talent and leadership to the Board;

WHEREAS, Frank "E." Bolton did endeavor at all times to render decisions with fairness and good judgement in the best interest of the citizens of the Commonwealth and these professions; and

WHEREAS, the Virginia Auctioneers Board wishes to

acknowledge its gratitude for devoted service of a person who is held in high esteem by the members of the Board and the citizens of the Commonwealth;

NOW THEREFORE BE IT RESOLVED, by the Virginia Auctioneers Board this seventeenth day of October 2002, that Frank "E." Bolton be given all honors and respect due him for his outstanding service to the Commonwealth and its citizens; and

BE IT FURTHER RESOLVED, that this Resolution be presented to him and be made a part of the official minutes of the Board so that all may know of the high regard in which he is held by this Board.

Mr. Perkinson seconded the motion which was unanimously approved by members: Darby, Linkous, Newcomb, Perkinson, and Updike.

Ms. Brooks also provided the Board members with information regarding providing agenda materials on CD. Ms. Brooks indicated that several boards within the agency receive agenda materials on CD, which helps reduce mailing costs and the amount of paper used. Additionally, Ms. Brooks indicated that in addition to the CD, the agenda information is also provided on a secure portion of the website that can be accessed using an assigned user name and password. After asking if the Board would be interested in receiving agenda materials on CD, the Board members agreed by consensus to direct staff to provide agenda materials on CD.

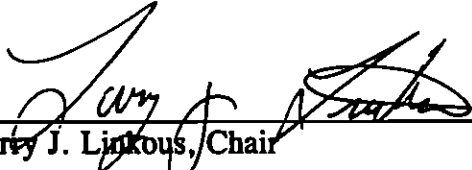
Ms. Newcomb inquired about an apparent issue involving inadequate contracts. Ms. Newcomb stated that several of the cases that have come before the Board involved inadequate contracts. The licensed auctioneer members of the Board indicated that sample contracts are available from various organizations that include all of the required language; therefore, licensed auctioneers should not be having difficulty including the required information in their contracts.

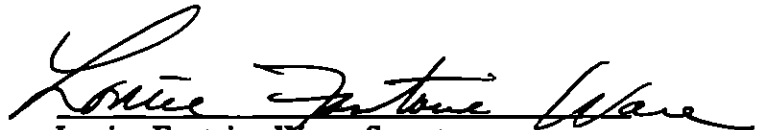
Conflict of Interest forms were completed by all members present.

**Conflict of Interest
Forms**

There being no further business, the meeting was adjourned at 12:42 p.m.

Adjourn


Larry J. Linkous, Chair


Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records