

AUCTIONEERS BOARD MEETING

MINUTES

The Virginia Auctioneers Board met on January 9, 2003, at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia, with the following members present:

Beverly B. Darby (arrived at 10:09 a.m.)
Larry J. Linkous
Donna Newcomb
James H. Perkinson
Samuel K. Updike, Jr.

Staff present for all or part of the meeting were:

Karen W. O'Neal, Deputy Director of Regulatory Programs
Steven L. Arthur, Deputy Director of Administration and Finance
Marian H. Brooks, Regulatory Board Administrator
Trisha L. Henshaw, Administrative Assistant
Victoria Traylor, Legal Assistant
Cynthia Platt, Legal Assistant

No representative from the Office of the Attorney General was present at the meeting.

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

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

Ms. Newcomb moved to approve the minutes from the October 17, 2002, meeting as written. Mr. Updike seconded the motion which was unanimously approved by members: Linkous, Newcomb, Perkinson, and Updike. Approval of Minutes

Ms. Darby arrived at 10:09 a.m. Ms. Darby's Arrival

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

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 2002-01465, 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. Mr. Perkinson moved to accept the summary and recommendation of the presiding Board member as to the facts, and reject the recommendation. The facts are:

File Number 2002-01465, Troy E. Graham, Jr.

Count I: 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 his address, telephone number, and license number in the auction contract.

Count II: Clear and convincing evidence of a violation of 18 VAC 25-21-110(3) of the Board's 1998 regulations for Mr. Graham's failure to include in the contract the address or telephone number of the owner.

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 in the auction contract the date, time, and place of the auction at which the personal property was scheduled to be auctioned.

Count IV: Clear and convincing evidence of a violation of 18 VAC 25-21-110(5) of the Board's 1998 regulations for Mr. Graham's failure to include in the contract the fee or percentage of gross sales the auctioneer will charge the owner and what services are included in the fee, such as preparation, travel, labor, advertising, and any other auction related expenses.

Count V: 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 in the contract the date by which the owner is to be paid and who is responsible for disbursing the funds.

Count VI: 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 in the contract a statement 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.

Count VII: 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 in the contract this statement: "I have read and accepted the terms of this contract."

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 refusal or failure, upon completion of his service as an auctioneer, to give the owner evidence to properly account for the items sold at auction.

Count IX: Clear and convincing evidence of a violation of 18 VAC 25-21-150.C of the Board's 1998 regulations for Mr. Graham's failure

to disburse proceeds due to the owner from the sale of goods other than real property no later than 30 days after the date of the auction.

Count X: 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 failure, upon request or demand, to produce to the Board or any of its agents any document, book, or copy thereof in the licensee's possession concerning the performance of his auctioneering duties.

Count XI: 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 from his address of record.

Count XII: 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 demonstrate reasonable care in the performance of his auctioneering duties by his failure to properly account for all items of personal property he obtained from the owner for sale at the auction on September 16, 2001, and Mr. Graham's failure to disburse proceeds due to the owner from the sale of his goods.

Due to the broad scope and severity of the violations, the uncooperative nature of the respondent, and previous violations of the Board's regulations by Mr. Graham, Mr. Perkinson moved to revoke Mr. Graham's auctioneers license number 2905-001954. 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.

The Board members were provided with a copy of the Public Participation Guidelines (PPGs) as proposed. Ms. O'Neal indicated that the only change to the PPGs since they were adopted by the Board as proposed is the inclusion of the following statement in 18 VAC 25-10-30:

"When electronic notifications are returned as undeliverable over more than one day, individuals and organizations will be deleted from the list."

The inclusion of the above statement would prevent an individual or organization from immediately being deleted from the PPG list due to a temporary interruption of service to an electronic messaging system. After discussion, Ms. Newcomb moved to adopt the proposed Public Participation Guidelines as final with the above amendment. Ms. Darby seconded the motion which was unanimously approved by members: Darby, Linkous, Newcomb, Perkinson, and Updike.

**Adoption of Final
Public Participation
Guidelines**

The Board members discussed Senate Bill 761 that is being considered by the current session of the General Assembly. This bill provides a definition of "absolute auction" and includes requirements that must be followed when advertising absolute auctions involving real property. After discussion, the Board agreed by consensus to take no position regarding this bill.

**Discussion of Senate
Bill No. 761**

The Board members recessed for a break from 11:03 a.m. to 11:15 a.m.

Break

Mr. Arthur provided Board member training on the role of the Administration and Finance Division within the Department. Mr. Arthur discussed information regarding the functions and responsibility of the Education and Examinations Section, Finance Section, and the Administration Section. This included topics such as budget requirements, procurement, examination administration, and the administration of the Department.

**Board Member
Training**

The Board members agreed by consensus to revisit the discussion regarding Senate Bill No. 761. After discussion, the Board members determined by consensus that it would prefer to address the issues in SB 761 through the regulatory process.

**Discussion of Senate
Bill 761**

The Board members were provided with Board financial statements for November 2002 for informational purposes.

**Review Financial
Statements**

Ms. Brooks stated that copies of the 2000-2002 biennial report for the Department were provided to the Board members.

Other Business


Ms. Brooks also indicated that Financial Disclosure Forms were due from all Board members.

Conflict of Interest forms were completed by all members present.

**Conflict of Interest
Forms**

There being no further business, the meeting was adjourned at 12:15 p.m.

Adjourn


Larry J. Linkous, Chair


Louise Fontaine Ware
Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records