

**MINUTES**

**NORTH CAROLINA AUCTIONEER LICENSING BOARD**

**February 12, 2018**

The North Carolina Auctioneer Licensing Board met on Monday, February 12, 2018 in the Fuquay-Varina Office. The meeting was called to order at 10:00 a.m. Members present were Chairman Gary Boyd, Lisa L. Brown, Daniel H. DeVane and Susan Rogers Holder. Also present were Charles F. Diehl, Executive Director, Becky Stewart, Administrative Officer, Ralph Southerland, Investigator, and Special Deputy Attorney General Anne Brown with the NC Department of Justice.

Chairman Boyd inquired of each member if there were any known conflicts of interest or an appearance of conflicts with respect to any matters coming before the Board during this meeting. Member Holder recused herself from consideration of the Probable Cause recommendations due to her attendance and participation in the Probable Cause Subcommittee meeting. Other members stated there were none. Then Chairman Boyd welcomed visitor Ms. Kelly Nicholas to the meeting.

**Minutes of the meeting held on January 8, 2018 were approved as recorded on motion by Member Holder. Member Brown seconded the motion which carried unanimously.**

Next Director Diehl reported on the Ad Violations and other Informal Investigations for the month of January. Then Ralph Southerland provided the investigative case log update as follows: ten (10) active cases and zero (0) cases under appeal.

At this time the Board considered the Probable Cause Subcommittee recommendations. Member Holder recused herself from consideration of the Probable Cause recommendations due to her attendance and participation in the Probable Cause Subcommittee meeting. **Member DeVane made a motion to accept the Probable Cause Subcommittee recommendations. Member**

**Brown seconded the motion which carried unanimously.**

Next Director Diehl read N.C.G.S. 85B-8(e)(2) “The Commission may, upon its own motion, summarily suspend a license when the healthy, safety, or welfare of the public is at risk, such as in the event of a potential loss of consigned items or potential loss of fund.” Director Diehl stated he and counsel have discussed that when the Board revokes a license the licensee continues to be active until final disposition. There are times when it might become necessary to immediately summarily suspend a license when the facts show that the auctioneer has not paid their client. The auctioneer has the potential to continue to do damage to the public with holding themselves out as an auctioneer. The public may know their apparent bad actions and yet their license continues in active status. Director Diehl further stated that in addition to the summary suspension, when staff knows that the auctioneer continues to solicit business, an extra step might need to be taken to get a civil injunction against them so the Board will have a court order forbidding auctioneering activity. Then Director Diehl recommended two cases to the Board for consideration of summarily suspending their license because they have not paid their sellers and the welfare of the public is at risk. **Member DeVane made a motion to go into Executive Session to discuss the two cases with counsel. Member Brown seconded the motion which carried unanimously. The Board went into Executive Session at 10:13 a.m.**

Member DeVane made a motion to return to open session. Member Brown seconded the motion which carried unanimously. The Board returned to Open Session at 10:24 a.m. **Member DeVane moved that the Board summarily suspend the licenses on the Probable Cause recommendations on items #2 and #3 from today’s Probable Cause Subcommittee pursuant to 85B-8(e)(2) based on the concerns articulated by staff this morning. Member Brown seconded the motion which carried unanimously.** Member Holder recused herself from consideration of the this motion due to her attendance and participation in the Probable Cause

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Subcommittee today. **Then Member Brown made a motion to summarily suspend the license #9914 pursuant to 85B-8(e)(2) based on the concerns articulated by staff this morning. Member Holder seconded the motion which carried unanimously.** This matter had been presented for consideration at the Probable Cause Subcommittee recommendations on December 14, 2017. Member DeVane recused himself from consideration of this motion due to his attendance and participation on the Probable Cause Subcommittee recommendations on December 14, 2017.

Next Director Diehl presented the financial information concerning the individual month of January. Following review **Member Brown made a motion to accept the financial information for the month of January. Member Holder seconded the motion which carried unanimously.**

Then Director Diehl requested that the discussion of NCAC 4B – Periodic Review/Rules readoption be tabled until the next Board meeting.

The next item on the agenda was the Consideration of Application for New Instructor(s) of Approved Schools of Auctioneering, Mendenhall School of Auctioneering – George A. Michak, Auctioneer Laws and Rules and Regulations, Uniform Commercial Code, Drafting and Negotiating Contracts. After review of the presented materials **Member Holder made a motion to approve the new instructor for Mendenhall School of Auctioneering. Member DeVane seconded the motion which carried unanimously.**

Next Director Diehl provided an update on the NCALB Funded CE Program. The NCALB free mandatory CE course is now available on the website along with a Certification of Course Completion Form. An email was sent to all licensees about this availability online. A certificate must be signed certifying they viewed the course and then be submitted to the office for credit. A decision was made, after consulting with the Chairman, instead of using a third party vendor as was done in Year 14/15 mandatory CE to stream the video online, an honor system would be utilized for the Year 18/19 mandatory CE stream video online. Should anyone be untruthful and not watch the entire video and yet sign the form falsely, they would be subject to license discipline as is stated on

the Certification of Course Completion Form. Director Diehl also reported that three of the twelve live continuing education programs have been completed, and that it is going well. Then Director Diehl presented two spreadsheets, a 2014 NCALB Mandatory CE Program Production & Delivery Costs and a 2018 NCALB Mandatory CE Program Production & Delivery Costs. The comparison shows a substantial savings of \$17,611.57 over 2014 due to all of the production and presentation functions in 2018 being performed by staff, in addition to the change in online delivery.

The next item on the agenda for review was NCALB Recovery Fund Claim – Ms. Trudy Tuck. Chairman Boyd requested a motion to go into Closed Session pursuant to GS 143–318.11(a)(3) to receive advice from counsel regarding matters of potential litigation. **Member Brown made the motion to go into Closed Session with Member DeVane seconding the motion which carried unanimously. The Board went into Closed Session at 10:45 a.m. Member Brown made a motion to return to Open Session. Member Holder seconded the motion which carried unanimously.** The Board returned to Open Session at 11:05 a.m. Member DeVane made the following motion: **Pursuant to G.S. 85B-4.5, the Board in its discretion declines to order that payment be made from the recovery fund on the grounds that: 1. The amount in question is not readily ascertainable without a judgment, but rather is speculative in nature; and, 2. Based upon the evidence presented the board finds that justice would not be better served by allowing compensation to be paid without first requiring the aggrieved party to obtain a judgment from a court of competent jurisdiction. Member Holder seconded the motion which carried unanimously.**

Under other matters Director Diehl reminded Board members that the NC State Ethics Commission of Statement of Economic Interest is due by April 15, 2018, and reported that this office has been informed by the Office of State Budget and Management that the allowable mileage rates for board members and employees who use their personal vehicles has changed to 54.5 cents per mile when the trip does not exceed 100 miles per day of travel and .33 cents per mile when the trip

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exceeds 100 miles per day. Director Diehl also reported there have been recent concerns about auctioneers potentially practicing real estate without a license, and described the resulting interaction with the NCREC staff. He further addressed an email chain he had shared with Board members that involved the two agencies and a citizen's questions about the disclosure of the reserve amount in an auction. Director Diehl reported that the NCALB and the Real Estate Commission work well on matters with mutual interest.

Then Chairman Boyd addressed security concerns. A brief discussion was held.

Following the review and approval of applications for licensing, the Board confirmed the next regular meeting on Monday, March 12, 2018 at 10:00 a.m. in the Fuquay-Varina office. **Member Holder made a motion to adjourn the meeting with Member Brown seconding the motion which carried unanimously.**

The meeting adjourned at 11:30 a.m.

Respectfully Submitted,

Becky J. Stewart  
Administrative Officer