

Practice Tips

By Garris Neil Yarborough, Legal Counsel to the Board

Executive Summary

If you receive notice of a complaint from the NCALB, respond in a timely manner or you may lose your auctioneer license.

Detailed Explanation

This practice tip may seem so obvious that many of you may wonder why I bring it to your attention, but the last two license revocations the Board has instituted were for the failure to respond to a complaint. These revocations were instituted without ruling on the validity of the original complaint.

N.C. Gen. Stat. §85B-8(b)(10) states as a ground for revocation – “Failure to properly make any disclosures or to provide documents or information required by the Chapter or by the Commission.” Additionally, N.C. Gen. Stat. §85B-8(b)(1) states as a ground for revocation – “Any violation of this Chapter or any violation of a rule or regulation duly adopted by the Commission.” NCALB Regulation .0404(a)(6)(A) also authorizes revocation for “failure to completely cooperate with any investigation.”

When a complaint is lodged against you or your auction firm, our investigator will mail you a notice of the complaint, enclosing the complaint and directing you to respond by a specific date which is always at least 30 days from the date of the letter. Our investigator follows this up with a telephone call telling the licensee it is coming. Typically, if our office does not receive a written response, a follow-up communication may be sent. However, thereafter, if we receive no response, the complaint will then go to the probable cause subcommittee with only the complainant’s version of the story and whatever information the investigator can independently glean without the cooperation of the licensee. At that time, the investigator will also report the failure of the licensee to respond.

It is then very possible that the underlying complaint may not be acted upon, but a recommendation of revocation is brought forward from the probable cause subcommittee to the full Board. In the last two cases such as this, the full Board has revoked the licensee’s license based on a failure to respond. This is particularly unfortunate when there appears that the licensee may have an excellent defense for showing no violation of any auctioneer law or, at least, mitigating circumstances which would reduce the severity of the discipline imposed.

Also, please remember a licensee saying they did not get the correspondence will not usually suffice as a defense in that under section .0601(a) “All licensees shall notify the Board in writing of each change or addition of residence or business address (including mailing address) and change of trade name, assumed name, or combination of names under which the licensee conducts business related to auctions.” Under subsection (e) of .0601 it further states that, “Any change in address, business name or ownership required by these Rules shall be reported within 10 days of the occurrence of such change.” Therefore, this requirement coupled with the fact that our investigator would have previously called you to tell you the complaint was coming, will not constitute a defense and may subject you to further discipline under section .0601 [assuming your license isn’t already revoked for failure to respond.]