

Lawsuits and Auctioneers

The North Carolina Supreme Court has held that a violation of a statutory provision designed to protect the consuming public [such as Chapter 85B] may constitute an unfair and deceptive trade practice as a matter of law if the violation offends established public policy or is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.

This statement of the law comes from a recent Court of Appeals decision regarding a case where secured creditors were suing an auction company, among other defendants, for allegedly improperly disbursing sale proceeds. Although typically my practice tips focus on one aspect of the statutory or regulatory law affecting auctioneers, the ruling in this case illustrates the interplay between the NCALB's statutes and regulations and a lawsuit by dissatisfied customers or third parties against an auctioneer. In other words, if you get sued as an auctioneer by some party associated with an auction sale or your conduct as an auctioneer, it is very likely that the first thing a plaintiff's attorney is going to refer to is North Carolina General Statute Chapter 85B and the regulations promulgated thereunder to determine whether you have violated any of the licensing laws for auctioneers. On the other side of that coin, evidence by you that you have complied with the NCALB's laws and regulations may provide you with an adequate defense, at least, to some aspects of a plaintiff's complaint.

Nonetheless, it is more than likely that if a dissatisfied party to one of your auctioneering activities sues you, they are also going to file a complaint with the NCALB to go after your license. Furthermore, even if they don't, you are required by Section .0405(b) of the NCALB's Rules and Regulations to "report to the Board any and all civil suits involving [you] that are based upon any allegation of gross negligence, dishonesty, fraud, misrepresentation or incompetency, or that in any way involve an auction sale or a transaction related to an auction matter or auctioneering. . . within 30 days of the date the complaint . . . is served on [you]."

There are numerous reported appellant cases involving auctioneers in North Carolina ranging in time from 1803 to 2013. Close observance of the NCALB's laws and regulations will help you in staying out of this painful literature or, at least, it will show you on the winning side.