

The Recent Notice of Caution

A memorandum in the form of a postcard was mailed recently to all of the licensees in reference to an individual that has had his license revoked by the Board.

During the recent continuing education classes questions were raised concerning this Notice of Caution. The first question asked whether the licensees should expect more postcards such as the above to be mailed out. The answer to this question is, no. This was an isolated incident where the Auctioneer Licensing Board felt that there was a great need to inform the licensees about the actions of this individual. It was the hope of the Board that by sending the notice to licensees that they would in turn share this information with the public. However, this does not mean that if the circumstances warrant such a notice in the future, the Board would not again warn it's licensees.

The next question asked what this individual did to necessitate the Board's actions. This person originally was disciplined by an Order from the Board that he be sent a Letter of Reprimand for failing to have a written agreement with the owner of property to be sold at auction and for failing to deposit into, and disburse funds from, his escrow account and that he be fined in the amount of \$250.00. Due to this individual's non-compliance with this Order, his auctioneer license was Indefinitely Suspended.

Approximately six months later, criminal summons were issued against the individual for violation of N.C.G.S. 85B-4(a). An investigative report was presented to the Board and his Indefinitely Suspended auctioneer license was permanently Revoked for violations of N.C.G.S. 85B-4(a) and (g), N.C.G.S. 85B-8(a) (1), and 21 NCAC 4B .0404(a)(1) and (14). The Board also directed the staff and legal counsel to obtain an injunction in the Board's name if there was evidence in the future of impending violations of the Auctioneer Law by this individual.

This individual conducted at least three auctions after his auctioneer license was Revoked. Because of his actions during one of the above auctions he was indicted in Iredell County for felony conversion and a misdemeanor for conducting an auction without a license. Another licensed auctioneer assisted him at these three auctions and was administratively charged with three violations of 21 NCAC 4B .0404(a)(5), auctioneering at an unli-

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2002 Proposed Board Meeting Dates

The Board has set the following dates and locations for its regularly scheduled meetings for the end of the 2002 fiscal year. The July through December 2002 dates below are tentative.

<u>Date</u>	<u>Location</u>
June 14	RTP, NC
July 19	Orlando, FL
August 21	Raleigh, NC
September 18	Raleigh, NC
October 16	Raleigh, NC
November 20	Raleigh, NC
December 18	Raleigh, NC

All Board meetings normally begin at 9:00 a.m. and are open for the most part to all licensees and the public. Certain matters, such as discussions of potential disciplinary cases to determine probable cause as well as final sanctions, if appropriate, are discussed in closed sessions. We encourage all interested persons to attend one or more of these meetings.

Although not required, you may wish to notify the staff if you plan to attend a meeting. This will assist in our planning to accommodate visitors.

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censed auction firm sale, and he paid a three hundred dollar fine.

Due to the evidence that this individual with the revoked auctioneer license was performing auctioneer duties without a currently valid license, the Board's legal counsel first obtained a Temporary Restraining Order, then a Temporary Injunction against the individual. The legal counsel is in the process now of obtaining a Permanent Injunction.

The last question asked if the Auctioneer Licensing Board could keep this individual from conducting livestock auctions in North Carolina. The sale of livestock at public livestock markets that are authorized and regulated by the Commissioner of Agriculture are exempt from N.C.G.S. 85B. Likewise, the sale at auction of a particular breed of livestock conducted by an auctioneer who specializes in the sale of that breed when such sale is conducted under the auspices of a livestock trade association, provided that the sale is regulated by the Packers and Stockyards Act and the auctioneer is required to be bonded by the United States Department of Agriculture, is exempt from N.C.G.S. 85B. These exemptions do not permit the North Carolina Auctioneer Licensing Board to regulate livestock auction sales. Which means the Board cannot prevent this individual from working these type of sales.

The Notice of Caution warned that allowing this individual to perform auctioneer duties at a non-exempt auction sale could lead to the commission of either criminal or administrative violations by a participating licensee. It is the hope of the Board that this does not occur.

Public Rule Making Hearing

At the June 2002, Auctioneers Association of North Carolina Convention at the Sheraton Hotel in RTP, North Carolina, a public hearing on the permanent rule changes will be held. The hearing will take place at 3:45pm on Saturday, June 15, 2002.

Plan to attend. This is your opportunity to give your input on this important matter.

CURRENT BOARD MEMBERS

Patricia D. Worley
Princeton, NC
Chairperson

William B. Lilly
Norwood, NC
Vice Chairman

William R. Forbes, Jr.
Creswell, NC
Board Member

James W. Johnson, III
Angier, NC
Board Member

Keith J. Pierce
Winston-Salem, NC
Board Member

CURRENT STAFF MEMBERS

Robert A. Hamilton, Executive Director

Connie M. Crisman, Administrative Officer

Teresa Watson, Administrative Assistant

Ann Neisen, Secretary

Bruce E. Marshburn, Investigations Coordinator

Ronnie Stewart, Investigator

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Licensing Board Activity Report

This activity report covers the period from July 2001 through March 2002. The Board met nine times; conducted three auctioneer licensing examination sessions and gave fifteen auction firm exams; issued one hundred and ten auctioneer licenses, eighteen apprentice auctioneer licenses and fifty-one auction firm licenses; denied licensing to nine auctioneers, one apprentice auctioneer, and one auction firm applicant; settled four cases which had been scheduled for hearings; and, attended the AANC convention in Greensboro. The Chairman of the Board attended the FARB convention in Las Vegas, Nevada, the Executive Director attended the NAA convention in Las Vegas, Nevada and the full Board and Executive Director attended the NAA convention in Boise, Idaho.

Disciplinary Actions

A summary of the disciplinary actions is as follows:

1) Gulshan Kumar Oberoi, NCAL #6691 (Potomac, MD) - Gulshan Oberoi permanently surrendered his auctioneer license for selling, or offering to sell, goods or real estate at auction in this State or perform any act for which an auction firm license is required without a currently valid license issued under N.C.G.S. 85B; for engaging in unprofessional conduct; for obtaining or attempting to obtain compensation by fraud or deceit; for failure to possess truth, honesty and integrity sufficient to be entitled to the high regard and confidence of the public; and for advertising the sale of a house without intending to offer that house for sale at the advertised auction. A Settlement Agreement and Consent Order were entered into between the Board and Gulshan Kumar Oberoi, prior to a scheduled hearing, in which he agreed to the above stipulations. Mr. Oberoi neither admitted to nor denied the Board's findings of violations.

2) Hossein Kabirbaik, NCAL #4972 (Potomac, MD) - Hossein Kabirbaik's auctioneer license was suspended for a period of two years for commission or conviction of a crime that is punishable as a felony offense under the laws of North Carolina or the laws of the jurisdiction where committed or convicted; for violating any federal or state statute or rule which substantially relates to the auctioneering profession; for failing to possess truth, honesty and integrity sufficient to be entitled to the high regard and confidence of the public; and for failing to provide notice of any such arrest, charge or criminal conviction within 30 days of the occurrence. A Settlement Agreement and Consent Order were entered into between the Board and Hossein Kabirbaik, prior to a scheduled hearing, in which he agreed to the above stipulations. Mr. Oberoi neither admitted to nor denied the Board's findings of violations.

3) R. Danny Ervin, NCAL #1007 (Mooresville) - R. Danny Ervin's auctioneer license was revoked for selling or offering to sell, goods at auction in this State or perform any act for which an auction firm license is required without a currently valid license issued under N.C.G.S. 85B; and for violating an order of the Auctioneer Licensing Board requiring a licensee to comply with any provision of the Board's law or administrative rules. Mr. Ervin did not appeal the revocation as allowed by law and agreed to the Board's findings of violations.

4) Keith L. Yokeley, NCAL #5323 (Lexington) - Keith Yokeley paid a \$100.00 fine. This action resulted from the investigation in which the Board subsequently found that Mr. Yokeley had auctioneered for an unlicensed auction firm. Mr. Yokeley waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

5) Cheryl M. McDonald, NCAL #6456 (Wilmington) - Cheryl McDonald paid a \$100.00 fine. This action resulted from the investigation in which the Board subsequently found that Ms. McDonald had failed to account for or to pay over within a reasonable time, not to exceed 30 days, funds belonging to another which have come into her possession through an auction sale. Ms. McDonald waived her right to appeal as allowed by law and agreed to the Board's findings of violations.

6) Michael L. Booth, NCAL #2349 (Bonifay, FL) - Michael Booth voluntarily surrendered his auctioneer license for failing to properly make disclosures required by 21 NCAC 4B .0405 and for failing to report to the Board any and all criminal arrests for, charges of, or convictions of a misdemeanor that has as an essential element dishonesty, deceit, fraud, or misrepresentations, or any arrests, charges or convictions of any felony. A Settlement Agreement and Consent Order were entered into between the Board and Michael L. Booth, prior to a scheduled hearing, in which he agreed to the above stipulations. Mr. Booth admitted to the Board's findings of violations.

7) Gregory H. Braswell, NCAL #3082 (Smithfield) - Gregory Braswell paid a \$200.00 fine for two violations of bidding on items at an auction he was conducting without announcing such bidding in advance of the auction and for committing a crime the circumstances of which substantially relate to the auctioneering profession. Mr. Braswell waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

Licensing Board Activity Report (continued)

8) Thomas Noonan, NCAL #6933 (Plymouth, MA) - Thomas Noonan paid a \$250.00 fine for selling or offering to sell, goods or real estate at auction in this State without a currently valid apprentice auctioneer license issued under Chapter 85B and for performing any act for which an auction firm license is required without a currently valid license issued under Chapter 85B. Mr. Noonan waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

9) Charles R. Easler, NCAL #4909 (Summerville, SC) - Charles Easler's auctioneer license was indefinitely suspended for two violations of selling or offering to sell, goods at auction in this State without a currently valid auctioneer license issued under N.C.G.S. 85B; for failure to properly make disclosures required by 21 NCAC 4B .0405; and for failure to notify the Board within 10 days in writing of each change or addition of residence or business address. Mr. Easler waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

10) Cheryl M. McDonald, NCAL #6456 (Wilmington) - Cheryl McDonald's auctioneer license was suspended indefinitely for failing to maintain accounting records; for failing to maintain records which identify the purchaser of all goods; for failure to completely cooperate with any investigation; for making a false statement or giving false information in connection with an investigation by the Board; for engaging in unprofessional conduct; and for violating an order of the Auctioneer Licensing Board requiring a licensee to comply with any provision of the Board's law or administrative rules. Following an investigation into this matter, the Board found probable cause to suspend or revoke Cheryl McDonald's auctioneer license and referred the matter to the Office of Administrative Hearings as prescribed by Chapter 150B. Cheryl McDonald failed to respond as required and the Board suspended Cheryl McDonald's license indefinitely as allowed by law.

11) Randolph H. White, NCAL #5453 (Raleigh) - Randolph White's auctioneer license was suspended for a period of one year for conducting an auction in this State without first having a written agreement with the owner of the property to be sold; for failing to maintain, for not less than five years, complete records showing the deposit, maintenance, and withdrawal of trust or escrow funds and the disbursement of funds on auction day; for failure to account for or to pay over within a reasonable time, not to exceed 30 days, funds belonging to another which have come into the licensee's possession through an auction sale; for commingling the funds or property of a client with licensee's own; for engaging in unprofessional conduct; for failing to prepare a receipt or settlement statement when disbursing funds on auction day; and for withdrawing funds from the Custodial Account for Sellers for non-

acceptable payments as referenced by 21 NCAC 4B .0603(e). A Settlement Agreement and Consent Order were entered into between the Board and Randolph H. White, prior to a scheduled hearing, in which he agreed to the above stipulations. Mr. White admitted to the Board's findings of violations.

12) Alan Fisher, NCAL #4471 and Alan Fisher Auction & Appraisal Co., NCAFL #7071 (Monroe) - Alan Fisher paid a \$100.00 fine for failing to account for or to pay over within a reasonable time, not to exceed 30 days, funds belonging to another which have come into the licensee's possession through an auction sale and for unprofessional conduct. Mr. Fisher waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

13) Mervin W. Farrar, NCAL #2740 (Graham) - Mervin Farrar paid a \$250.00 fine in lieu of a suspension of 90 days for auctioneering at an unlicensed auction firm sale. Mr. Farrar waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

14) Letters of Reprimand - The following Letters of Reprimand were issued;

- Salvage Discount Auction, NCAFL #5537, (Kernersville) - Failing to clearly give in all advertisements relating to an auction, the auctioneer's or auction firm's name and license number and failing to review the contents of an advertisement prior to its publication to ascertain its compliance with applicable Law and Rules.

15) Cautionary Letters - During this reporting period, one letter of caution was issued for the following reason:

- Failure to account for or to pay over within a reasonable time, not exceed 30 days, funds belonging to another which have come into the licensee's possession through an auction sale.