BEFORE THE INDIANA AUCTIONEER COMMISSION
CAUSE NUMBER: IAC 00-01

STATE OF INDIANA,)
)
Petitioner,)
)
v.)
)
PAUL A. MEARSE,)
License Number: AU 19711475,)
)
Respondent.)

FILED
JAN 0 4 2000
IPLA

COMPLAINT

The State of Indiana ("Petitioner"), by counsel, Jeffrey A. Modisett, Attorney General of Indiana by Deputy Attorney General Vaneeta Markand Kumar, pursuant to Indiana Code § 25-1-7-7(a) files its Complaint against the purported Indiana auctioneer license of Paul A. Mearse ("Respondent"), and in support alleges and states:

1. The Attorney General of Indiana is empowered to bring disciplinary complaints in the name of the State of Indiana before the Indiana Auctioneer Commission ("Commission") pursuant to Indiana Code § 25-1-7 et seq.

2. The Commission is charged with the duty and responsibility of regulating the practice of auctioneering pursuant to Indiana Code § 25-6.1-1-1.

3. The Commission is empowered to hold disciplinary hearings pursuant to the authority of Indiana Code § 25-6.1-2-5, IC § 25-1-11-5, § 4-21.5-3 et seq., and IC § 4-21.5-3 et seq.

4. Respondent purports to hold Indiana auctioneer license number AU 19711475.

COUNT I

1. The Respondent resides at 1360 N. 200 E., LaGrange, IN., 46761.

2. Respondent purports to hold Indiana auctioneer license number AU 19711475.

3. Pursuant to information received by Lee Mohs, an investigator with the Indiana Professional Licensing Agency (IPLA), an investigation was done in regards to the legitimacy of the license held by the Respondent.

4. On or about February 8, 1999, Mr. Mohs contacted Carol Bachman at the Bachman Hostetler Auto Auction located in LaGrange, IN. Ms. Bachman explained that there was some concern involving the auctioneer license of Respondent. Ms. Bachman assured Mr. Mohs that the Respondent would not conduct any auctioneering work until the legitimacy of the Respondent's license was resolved. She also notified Mr. Mohs that the Respondent was being represented by her son Kurt Bachman, an attorney practicing in Fort Wayne, IN.

5. Shortly thereafter, Mr. Mohs contacted attorney Kurt Bachman. Mr. Bachman agreed to provide Mr. Mohs with a copy of the Respondent's license, the envelope in which the license was mailed in, and cancelled checks for both the examination fee and the license fee (See Attachment 1).

6. On or about March 30, 1999, Mr. Mohs met personally with Kurt Bachman and the Respondent. During this meeting, the Respondent denied that his auctioneer license was fabricated. He went on to explain that he had taken the July 22, 1998, auctioneer examination. On or about August 12, 1998, he stated that he spoke with Angie Stallings, an employee with the IPLA, who verbally informed him that he had passed the examination. A few days later, he stated that he received written notification of his passing that examination. Upon receiving the written notification, the Respondent promptly sent a check of thirty five ($35.00) for his license

fee. Respondent stated that he received his license from the IPLA in an envelope postmarked August 18, 1998. (See Attachment 2).

7. Also during that meeting, Mr. Mohs asked for a copy of the letter from IPLA which indicated that the Respondent passed the July 22, 1998, examination. The Respondent replied that he could not locate the letter. Mr. Bachman explained to Mr. Mohs that he had the Respondent's original license in his business safe and assured him that the photocopy of the license looked just like the original license.

8. IPLA's file on the Respondent indicates that the Respondent did not pass the July 22, 1998, examination, or any other later examination. In fact, the file contains a letter dated July 31, 1998, from IPLA, which informed the Respondent that he had failed the July 22, 1998, examination. (See Attachment 3). Furthermore, the file contains a letter from the IPLA dated August 25, 1998, which informed the Respondent that his application to sit for the September 9, 1998, examination had been approved. (See Attachment 4).

9. The IPLA staff then researched the purported auctioneer license number held by the Respondent. Such license number could not be traced or identified within their system.

10. IPLA acknowledged receipt of a thirty-five ($35.00) dollar check. However, their records indicate that the fee was applied toward payment for the examination. (See Attachment 5).

11. The conduct described above constitutes a violation of the *Auctioneer and Auction Licensing Act,* Indiana Code § 25-6.1-1-1 et seq. in that persons who are not properly licensed cannot engage in the operating, conducting, or otherwise producing auctions.

12. Indiana Code § 26-6.1-3-1 states:

> Sec.1. Coverage. (a) Except as provided in subsection (b) of this section, no individual may act as an auctioneer and no person may operate an auction house

or an auction company without obtaining and having in full force and effect a valid license issued by the commission in accordance with this chapter.

13. Indiana Code § 25-1-11-5 states in pertinent part:

Sec. 5. (a) A practitioner shall comply with the standards established by the board regulating a profession. A practitioner is subject to the exercise of the disciplinary sanctions under section 12 of this chapter if, after a hearing, the board finds that:

(1) a practitioner has:

(A) engaged in or knowingly cooperated in fraud or material deception in order to obtain a license to practice, including cheating on a licensing examination;

14. Indiana Code § 25-1-11-12 states:

(a) The board may impose any of the following sanctions, singly or in the combination, if the board finds that a practitioner is subject to disciplinary sanctions under section 5 through 9 of this chapter:

(1) Permanently revoke a practitioner's license.
(2) Suspend a practitioner's license.
(3) Censure a practitioner.
(4) Issue a letter of reprimand
(5) Place a practitioner on probation status and require the practitioner to:

(A) report regularly to the board upon the matters that are the basis of probation;
(B) limit practice to those areas prescribed by the board;
(C) continue or renew professional education approved by the board until a satisfactory degree of skill has been attained in those areas that are the basis of the probation; or
(D) perform or refrain from performing any acts, including community service without compensation, that the board considers appropriate to the public interest or to the rehabilitation or treatment of the practitioner.

(6) Assess a civil penalty against the practitioner for not more than one thousand dollars ($1,000.00) for each violation listed in sections 5 through 9 of this chapter except for a finding of incompetence due to physical or mental disability.

(b) When imposing a civil penalty under subsection (a)(6), the board shall consider a practitioner's ability to pay the amount assessed. If the practitioner fails to pay the civil penalty within the time specified by the board, the board may suspend the practitioner's

license without additional proceedings. However, a suspension may not be imposed if the sole basis for the suspension is the practitioner's inability to pay a civil penalty.

WHEREFORE, Petitioner requests an order against the Respondent that:

1. Imposes the appropriate disciplinary sanction;

2. Directs Respondent to immediately pay all costs incurred in the prosecution of this case; and;

3. Provides any further relief as the Board deems just and proper.

Respectfully submitted,

JEFFREY A. MODISETT,
Attorney General of Indiana

By: _____

Vaneeta Markand Kumar
Deputy Attorney General
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CERTIFICATE OF SERVICE

I certify that a copy of the "Complaint" has been duly served upon the Respondent and his Attorney Representative listed below, by United States mail, first-class, postage prepaid, on this 4th day of January, 2000.

Paul Mearse
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