

Before the
New Hampshire Board of Auctioneers
Concord, NH 03301

In the Matter of "Harvey Webber"
Docket No. 18-01

DECISION AND ORDER

By: Gregory J. Walsh - Chair, Roy W. Tilsley – Vice-Chair, Gregory Peverly – Secretary, and Robert P. Secord - Member.

BACKGROUND INFORMATION

Harvey Webber was issued an auctioneer's license, number 2457. His license expires on August 30, 2019.

On January 8, 2018, the Auctioneer's Board ("Board") reviewed a complaint from Royal Feltner alleging that Mr. Webber violated his professional obligations under RSA 311-B as follows:

1. The Respondent failed to provide to the complainant an accounting of each lot sold at auction within 15 calendar days as required per Auc 501.02(e).
2. The Respondent failed to pay the complainant all sums due for goods sold at auction within 15 calendar days as required per Auc 501.02 (d).
3. The Respondent provided the complainant with payment checks that were returned from the bank for insufficient funds.
4. The Respondent acted in an unprofessional manner.

The board ordered an investigation, appointing Russell R. Abbott as investigator. Based on the investigation, this board issued a Notice of Hearing dated March 5, 2018. As stated in the Notice, the specific issue to be addressed at the disciplinary hearing was whether Mr. Webber's actions around the sale of items by auction, violated RSA 311-B:11, II, including without limitation, RSA 311-B:11, II, (c), (d), and (f) and Auc 501.02(d), and (e).

RSA 311-B:11, II, provides in relevant part:

II. Misconduct sufficient to support disciplinary proceedings under this section shall include:

(c) Violation of the code of ethics established by the board through rulemaking in accordance with RSA 541-A;

(d) Negligent or willful acts performed in a manner inconsistent with the interests of persons relying on the expertise of the licensee;



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Auc 501.02, provides in relevant part:

(d) The responsible auctioneer shall pay consignors all sums due them for goods sold at auctions conducted by said auctioneer within 15 calendar days or at some other time mutually agreed upon in writing by both parties, except as follows:

(1) A subsequent written agreement signed by both parties may alter a payment schedule initially established between the parties, but a licensee who does not pay in accordance with a payment schedule which was in effect at the time payment was due shall be subject to misconduct sanctions even if the consignor later consents to a modification of the schedule;

(2) If a third party claims or disputes the ownership of the goods sold, the monies shall be placed in an escrow account, with an independent escrow agent pending resolution of the claim, and

(3) If a third party brings legal action against the auctioneer for payment to the consignor, the monies shall be placed in an escrow account with an independent escrow agent pending resolution of the claim.

(e) The responsible auctioneer shall provide to the consignor an accounting of each lot sold at auctions conducted by said auctioneer within 15 calendar days or at some other time mutually agreed upon in writing by both parties. "Lot" means the object or group of objects offered by an auctioneer for one money.

The Board held a hearing on the merits on May 7, 2018.

Russell R. Abbott, who investigated the complaint, acted as prosecutor.

The Board deliberated in public on May 7, 2018.

FINDINGS OF FACT

The evidence did support that the Respondent took several consignments and did not provide an accounting for the items sold or unsold. Mr. Webber's testimony that he traveled to Mr. Feltner's workplace and left an accounting there was not credible, particularly in light of Mr. Feltner's testimony that he did not receive any accounting. Mr. Webber admitted that he had not paid Mr. Feltner due to personal circumstances. While Mr. Webber argued that he had reached an oral agreement with Mr. Feltner to pay a reduced amount with a series of checks, which Mr. Feltner allegedly agreed to cash at later dates, Mr. Webber's testimony ignored the fact that the alleged agreement only arose after Mr. Webber violated his obligation to pay Mr. Feltner within 15 days. Mr. Webber's allegation that Mr. Feltner cashed the checks earlier than agreed to, does not, even if credible, relieve Mr. Webber from his violation of the 15 day requirement of Auc 501.02(d). Finally, the Board notes that the issuance of checks without sufficient funds in the account to cover the checks is a criminal matter pursuant to RSA 638:4. Mr. Feltner is still owed monies from the sale of his consignments.

Finally, the Board notes Mr. Webber's complete failure to cooperate with the Board's investigation of this matter. Rather than providing an accounting upon receipt of Mr. Feltner's complaint, Mr. Webber ignored this matter until the hearing. The failure of any licensed auctioneer to respond to inquiries from this Board, to participate in a Board investigation of a Complaint, or to provide the Board with an accurate address constitutes unprofessional conduct.



DISCUSSION AND CONCLUSIONS

The issues raised and addressed include:

1. Whether the Respondent, failing to provide to the complainant an accounting of each lot sold at auction within 15 calendar days, is in violation of RSA 311-B:11(II), including without limitation, RSA 311-B:11(II)(c), (d),(f), and Auc 501.02(e).
2. Whether the Respondent, failing to pay the complainant all sums due for goods sold at auction within 15 calendar days, is in violation of RSA 311-B:11(II), including without limitation, RSA 311-B:11(II)(c), (d),(f), and Auc 501.02(d).
3. Whether the Respondent, providing the complainant with payment checks that were returned from the bank for insufficient funds, is in violation of RSA 311-B:11(II), including without limitation, RSA 311-B:11(II)(c), (d),(f), and Auc 501.02.
4. Whether the Respondent, acted in an unprofessional manner, is in violation of RSA 311-B:11(II), including without limitation, RSA 311-B:11(II)(c), (d),(f), and Auc 501.02.

The evidence presented at the hearing demonstrates that Harvey Webber did not provide an accounting for the items that had been sold or remained unsold. Furthermore, Mr. Webber failed to pay the consignor, for items that sold. Mr. Webber issued checks which were returned for insufficient funds. Mr. Webber failed to respond to this Board's inquiries regarding Mr. Feltner's complaint.

The Board finds that the above-referenced violations constitute negligent or willful acts inconsistent with the interest of persons relying on the expertise of a licensee.

In the future, the Board would advise Mr. Webber to provide a detailed accounting of all items consigned for auction; pay consignors within the agreed upon timeframe, and return unsold item upon the consignors request.

THEREFORE, the New Hampshire Board of Auctioneers finds and concludes, based on the evidence presented that:

Harvey Webber violated RSA 311-B and Auc 501.02 as alleged in the Notice of Hearing.

THEREFORE, IT IS ORDERED, THAT, Mr. Webber pay Mr. Feltner monies due in the amount of \$17,284.00 within 30 days from the date of this order.

THEREFORE, IT IS FURTHER ORDERED, THAT, Mr. Webbers license is revoked.

The license revocation imposed shall be held in abeyance for a period of 12 months from the date of this order, during which time the license will be under suspension. If, within this 12 month period, Mr. Webber takes an approved Auctioneering license course, takes and passes the state administered exam, pays a fine of \$2,476.00, complies with the requirement to pay Mr. Feltner the sum of \$17,284 within 30 days of the Order, and commits no other violations of RSA 311-B or the Auc rules, the license revocation shall be vacated.

The Board notes, for the complainant's benefit, that all NH Licensed Auctioneers are required to hold a \$25,000 surety bond.



BY ORDER OF THE NEW HAMPSHIRE BOARD OF AUCTIONEERS

Dated: May 15, 2018



Gregory J. Walsh
Chairman - Board of Auctioneers

