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STATE OF WISCONSIN

BEFORE THE AUCTIONEER BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

FINAL DECISION AND ORDER

PAUL S. GEORGE

LS-9804151-AUC

DEAN K. GEORGE, and

LS 9805261 AUC

GEORGE AUCTION SERVICE

LS 9805211 AUC

RESPONDENTS.

The parties to this proceeding for the purposes of sec. 227.53, Stats., are

*Paul S. George
11215 Highway 14
Brooklyn, WI 53521*

*Dean K. George
11211 North Union Road
Evansville, WI 53536*

*George Auction Service
P.O. Box 135
Evansville, WI 53536*

*Department of Regulation & Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708*

*State of Wisconsin Auctioneer Board
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708*

A Class II hearing was held in the above-captioned matter on May 5, May 6 and June 16, 1999, at 1400 East Washington Avenue, Madison, Wisconsin. Respondent Dean K. George appeared personally and by Attorney Kim

Grimmer; respondent Paul S. George appeared personally and by Attorney Thomas J. Basting; and respondent George Auction Service appeared by Mr. Basting. The Division of Enforcement appeared by Attorney Charles J. Howden. The last of the written closing arguments was received on August 20, 1999.

The administrative law judge filed his Proposed Decision on September 8, 1999. The parties filed written objections to the Proposed Decision, as well as subsequent written responses to the opposing party's objections, the last being dated on October 4, 1999.

Based on the entire record, the Auctioneer Board makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Dean K. George, 11211 North Union Road, Evansville, Wisconsin 53536, is registered to practice as an auctioneer in Wisconsin by license #486, issued on March 1, 1995.

2. Paul S. George, 11215 Highway 14, Brooklyn, Wisconsin 53521, is registered as an auctioneer by license #637, issued on March 1, 1995.

3. George Auction Service, P.O. Box 135, Evansville, Wisconsin 53536, is a partnership previously registered to practice as an auction company in the state of Wisconsin by license #93, issued on March 3, 1995. The partners in the firm are Dean K. George and Paul S. George, each of whom owns a 50 percent share. The registration for George Auction Service expired, and the firm ceased doing business, on December 31, 1998. Under sec. 440.08(3)(b), Stats., George Auction Service currently retains the right, until December 31, 2003, to renew the license upon payment of required fees.

4. Craig and Sharon Ackerman, husband and wife (Ackermans), reside at N6603 Biggs Road, Argyle, Wisconsin. At the time of the events recounted herein, they ran a dairy farm at that location, and were milking approximately 50 cows.

5. On March 15, 1995, George Auction Service conducted a farm auction at the Jeff Beck Farm, also known as the Brennan Creek Farm. The Ackermans purchased three head of Jersey cattle and two cattle feeders at the auction. The George Auction Service cashier, who did not normally handle farm auctions, accepted the Ackermans' representation that credit had been arranged prior to the auction, and received a cash deposit of \$1300.00 from the Ackermans, leaving a balance of \$2455.00 owing to George Auction Service.

6. The Ackermans claim that prior to the auction, on March 11 or 12, 1995, they went to the site of the auction and spoke to Riley Kahl, an employee of George Auction Service, concerning receiving credit for the purchase of two or three head of cattle at the upcoming auction. Their proposal was that they pay one-third of any purchase amount at the time of purchase and set up a milk assignment agreement to pay the balance. Sharon Ackerman's testimony was that Riley Kahl, who was acting as the clerk for the Brennan Creek farm auction, told them that if there was a problem with the arrangement he would "get back to them."

7. A "milk assignment" is a credit arrangement whereby a portion of a farmer's milk proceeds are paid by the dairy company to the farmer's creditor. George Auction Service has never extended credit to auction buyers by accepting milk assignments, though they would occasionally accept a post-dated check if the buyer was known to them. Riley Kahl testified that he had never met the Ackermans prior to the auction and never represented to them that George Auction Service would extend credit through acceptance of a milk assignment.

8. Following the auction, Paul George assigned collection of the Ackerman debt to Dean George, who telephoned the Ackermans and spoke to Craig Ackerman concerning payment of the outstanding amount. Mr. Ackerman indicated to Dean George that he wished to pay with a milk assignment, and Mr. George stated that he would call Ackerman back later. Dean George thereafter conferred with Paul George, who declined to accept a milk assignment. Dean George conveyed that decision to the Ackermans and requested payment in full.

9. Between March 15, 1995, and June 5, 1996, Dean George attempted to reach Craig or Sharon Ackerman by telephone approximately 40 times. On various occasions he spoke with Sharon Ackerman, Craig Ackerman or their son. On other occasions, he left messages on the Ackermans' answering machine. Prior to March, 1996, Craig Ackerman indicated to Dean George that the debt would be paid with the receipts from culled cows. In early 1996, the Ackermans indicated that the debt would be paid with the receipts from a pending loan for which they had applied.

10. In approximately January, 1996, Dean George completed a Uniform Commercial Code Financing Statement for the Ackerman's signature, in an attempt to gain a security interest in the three cows for which George Auction Service had still not been paid. The form was sent to the Ackermans for their signatures, but they failed to execute it. They also failed to execute a second such form provided by Dean George.

11. In February, 1996, Dean George accompanied by Riley Kahl, stopped by the Ackerman farm on his way to another destination. Mr. George spoke with Craig Ackerman, indicating that he was there to see how the cows

were doing. After telling Ackerman that it appeared the cows were doing well, George asked about payment of the amount still owing. Ackerman reiterated that he had applied for a loan from Rural Economic & Community Development Services and that George Auction Service would be paid soon.

12. The Ackermans have never made any payment to George Auction Service for the cows in question except for the initial down payment of \$1300.00.

13. In early 1996, George Auction Service contracted to conduct a farm auction, identified as the Kunde auction, to be conducted on June 7, 1996, at the fairgrounds in Dubuque, Iowa. Approximately three weeks prior to the sale, a decision was reached between Paul George, Dean George and Riley Kahl that they would stop at the Ackerman farm on the way to Iowa, pick up the three cows for which they had not been paid, and sell them on consignment at the Kunde auction. Dean George telephoned the Ackermans and indicated their intent in that regard.

14. On the morning of June 5, 1996 Paul George, Dean George and Riley Kahl traveled to the Ackerman farm for the purpose of reclaiming the cattle for which the Ackermans had not fully paid. Riley Kahl and Dean George arrived first, and Riley Kahl, who was hauling the cattle trailer, backed the trailer up to the barn door preparatory to loading the cattle. Kahl and Dean George then entered the barn where Craig Ackerman was milking. Dean George confirmed that they were there to pick up the cattle to take to the Kunde auction and got permission from Ackerman to identify the cows in question. As dean George was walking to the end of the barn to identify the cows, Ackerman indicated that the cows would not leave the barn unless he was paid \$2000 per cow. After Dean George returned, Ackerman stated that he would speak to him after he finished the milking, and George and Kahl left the barn. After leaving the barn, Dean George called Paul George from his truck, telling him that the only way they would get the cattle that day would be to take them.

15. Paul George arrived a few minutes later and entered the barn without first speaking to Dean George or Riley Kahl. An argument ensued between Paul George and Craig Ackerman, culminating in Paul George first shoving Ackerman, causing him to stumble and fall, and then striking Ackerman, knocking him down and breaking his nose. During the course of the altercation, Sharon Ackerman called 911 from the telephone in the barn.

16. Dean George loaded the cows onto the livestock trailer attached to Riley Kahl's pickup truck. Both Sharon and Craig Ackerman actively attempted to prevent this process by removing the loading gate and attempting to take control of the cows. At one point during this process, while exiting the trailer, Dean George struck Craig Ackerman with his elbow, knocking Ackerman to the ground. At another point during the loading process, Dean George tripped and fell while exiting the trailer. Craig Ackerman thereupon threw the lading gate down onto George before the latter could rise.

17. After the cows were loaded, Paul George, Dean George and Riley Kahl, left in their individual pickup trucks, with Riley Kahl driving the truck towing the livestock trailer. Sharon Ackerman attempted to stop their departure by standing in front of first Paul's truck and then Riley's. Paul George and Riley Kahl both continued to proceed down the driveway, repeatedly bumping Sharon Ackerman. The three men were subsequently intercepted by sheriff's deputies, the cows were returned to the Ackerman farm, and Paul and Dean George were arrested.

18. On October 21, 1997, Dean K. George was convicted on an Alford Plea in Green County Circuit Court of disorderly conduct and criminal trespass to a dwelling in connection with his actions at the Ackerman farm on June 5, 1996. He was placed on 18 months probation and ordered to provide 160 hours of community service.

19. On January 6, 1998, Paul S. George pleaded no contest to the charge of disorderly conduct and battery in connection with his actions at the Ackerman farm on June 5, 1996. He was placed on 18 months probation and ordered to provide 80 hours of community service.

20. The circumstances of the conviction of Dean K. George for disorderly conduct and criminal trespass to a dwelling are substantially related to the circumstances of the practice of an auctioneer.

21. The circumstances of the conviction of Paul S. George for disorderly conduct and battery are substantially related to the circumstances of the practice of an auctioneer.

CONCLUSIONS OF LAW

1. The Auctioneer Board has jurisdiction in this matter pursuant to sec. 480.24, Stats.

2. The circumstances of the conviction of Dean K. George for disorderly conduct and criminal trespass to a dwelling are substantially related to the circumstances of the practice of an auctioneer.

3. The circumstances of the conviction of Paul S. George for disorderly conduct and battery are substantially related to the circumstances of the practice of an auctioneer.

4. By being convicted of crimes the circumstances of which are substantially related to the practice of an auctioneer, Dean K. George has violated sec. RL 126.02(2), Code, and sec. 480.24(2)(c), Stats., and he has

thereby engaged in conduct, while practicing as an auctioneer, which evidences a lack of knowledge or ability to apply professional skills, in violation of sec. 480.24(2)(b), Stats.

5. By being convicted of crimes the circumstances of which are substantially related to the practice of an auctioneer, Paul S. George has violated sec. RL 126.02(2), Code, and sec. 480.24(2)(c), Stats., and he has thereby engaged in conduct, while practicing as an auctioneer, which evidences a lack of knowledge or ability to apply professional skills, in violation of sec. 480.24(2)(b), Stats.

6. George Auction Service has, by the acts of its owners and representatives, Dean K. George and Paul S. George, violated sec. RL 126.02(2), Code, and sec. 480.24(2)(c), Stats., and George Auction Service has thereby engaged in conduct, while practicing as an auction company, which evidences a lack of knowledge or ability to apply professional skills, in violation of sec. 480.24(2)(b), Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED that the registration of Dean K. George to practice as an auctioneer in Wisconsin be, and hereby is, suspended for a period of six months, commencing ten days following the date of this final decision of the board.

IT IS FURTHER ORDERED that the registration of Paul S. George to practice as an auctioneer in Wisconsin be, and hereby is, suspended for a period of one year, commencing ten days following the date of this final decision of the board.

IT IS FURTHER ORDERED that any right to renew the registration of George Auction Service be, and hereby is, revoked, commencing ten days following the date of this final decision of the board.

IT IS FURTHER ORDERED that, pursuant to sec. 440.22, Stats., one-half the costs of this proceeding shall be assessed against Paul S. George.

IT IS FURTHER ORDERED that, pursuant to sec. 440.22, Stats., one-half the costs of this proceeding shall be assessed against Dean K. George.

EXPLANATION OF VARIANCE

The Auctioneer Board has accepted the Findings of Fact and Conclusions of Law recommended by the administrative law judge in his Proposed Decision. However, the board has modified two provisions within the recommended Order. The first is to increase the suspension period of the registration of Dean K. George from 30 days to 6 months, and the second to increase the suspension period of Paul S. George from 6 months to 1 year. Complainant's attorney had recommended that the board impose a 3-year suspension upon Dean George and a revocation of Paul George's registration. Both respondents believe that in light of their past records, and the fact that this was a singular incident for which they are extremely apologetic, the board's discipline should be milder.

This case essentially involves two experienced auctioneers who resorted to illegal methods of "self-help" in attempting to collect a debt owing from an auction. Their actions resulted in a physical confrontation at a farm, as well as physical injury to the farmer. One can certainly sympathize with the frustration created by the farmer's failure to make payment upon his debt. This is compounded by the fact that the farmer should never have been extended credit in the first place. Although these are certainly mitigating factors, and the frustrations understandable, they do not justify the conduct of Paul and Dean George. If an individual is owed money by another, that does not justify attempting to abscond with the debtor's property and physically assault and injure him in the process.

The board accepts the opinion of the administrative law judge resulting from his attempt to deduce what actually happened at the Ackerman farm. It is certainly no easy task, but it is made somewhat less complex in that Paul George's version of the events is in contradiction to the testimony of every other participant. The ALJ summarized the nature of the testimony as follows:

". . . (I)t is apparent that the testimony of Paul George as to what happened on June 5, 1996, is contradicted by the testimony of every other witness to those events. Given that the interests of the Ackermans are diametrically opposed to those of Dean George and Riley Kahl, and given that these events occurred three years ago, it is somewhat remarkable that their accounts are as consistent as they are. While there are disagreements, there is no disagreement as between these four witnesses that Paul George was the individual who physically confronted Craig Ackerman in the barn that morning, and while Dean George and Riley Kahl testified that they did not actually see Paul strike Craig Ackerman, their accounts offer no alternative possibility."

In fact, the ALJ found that: "Little of Paul George's testimony as to the crucial facts in this matter is credible."

The board believes that greater sanctions are required here than proposed by the ALJ. It is the board's opinion that it is only the auctioneers' good reputations, the fact that this is a singular incident in otherwise unblemished careers, and the trying circumstances faced, that prevents the board from seriously considering imposing the drastic sanctions recommended by the complainant.

In reviewing the discipline appropriate here, it appears from this record that whereas Dean George has admitted his conduct, Paul George refuses to do so. Therefore, it is appropriate to question whether or not Paul George is truly as repentant of his conduct as he claims. The fact that Dean George appears to have testified candidly respecting his actual conduct at the Ackerman farm, and Paul George has not, is sufficient reason for differentiating between the sanctions applied as between the two. Additionally, the record also indicates that although they were 50-50 partners in the auction company, it was Paul George that was the dominant partner when it came to management decisions. Certainly, in this case, it was Paul George who made the crucial decision that the Ackerman cattle would be confiscated, not Dean George.

This is a case of first impression for the board. It is the first time that it has been confronted with the question of appropriate discipline for auctioneers that engaged in attempting to obtain their compensation through the exercise of physical force over another. In determining this issue it must be remembered that the purposes for imposing discipline are to: 1) rehabilitate the licensee, 2) protect the public from incompetent or unethical practices, and 3) deter other licensees from engaging in similar misconduct. *State v. Aldrich*, 71 Wis.2d 206 (1976). Punishment of the licensee is not an appropriate consideration. *State v. MacIntyre*, 41 Wis.2d 481 (1969).

In this instance, the need for rehabilitation of Paul George appears greater than that for Dean George, given that Paul refuses to acknowledge the true facts surrounding his conduct. It is doubtful that either Paul or Dean George would again engage in similar activities in the future, thus lowering the need to protect the public in the future from them. However, there is a need for this board to send a strong message to other registrants so they will not engage in similar misconduct, and will have some idea of the action this board will take if they do. That can only be accomplished through imposing significant suspensions in this case.

In this case there was actual physical injury sustained by a consumer during the course of illegal activity in attempting to collect compensation from an auction. This is a serious violation of the auctioneer law. Given that there are mitigating circumstances, such as the past records of respondents in the industry, the recommended revocation for Paul George and three-year suspension for Dean George is too severe. Under the circumstances, the board believes that a one year suspension for Paul and a six-month suspension of Dean are sufficient to both promote their respective rehabilitation and deter other auctioneers from engaging in similar misconduct.

Dated: November 18, 1999.

STATE OF WISCONSIN

AUCTIONEER BOARD

Marie Skic-Loy

Vice-Chair