

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN

BEFORE THE AUCTIONEER BOARD

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST :

GENE J. FINZ,

Respondent

FINAL DECISION AND ORDER

LS0006161AUC

The parties to this action for the purpose of Wis. Stats. sec. 227.53 are:

Gene Finz

3301 R Coors Blvd. NW

Albuquerque, NM 87120

Wisconsin Auctioneer Board

P.O. Box 8935

Madison, WI 53708-8935

Department of Regulation and Licensing

Division of Enforcement

P.O. Box 8935

Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. **Gene J. Finz**, ("Finz"), 3301-R Coors Blvd. 400, Albuquerque, New Mexico 87120, is an auctioneer, registered in the State of Wisconsin pursuant to license #52-1200, originally granted on November 5, 1996. Finz is the owner of Lakes Area Auction, Co.
2. Finz operates under the business trade name of Lakes Area Auction Co., which is not separately licensed as an auctioneer company.

98 AUC 022

3. On or about October 26, 1996, Finz submitted an Application for Auctioneer Registration to the Wisconsin Department of Regulation and Licensing. A copy of the Application for Auction Company Registration is attached as **Exhibit 1**.
4. Finz signed his auctioneer license application under oath and in the presence of a notary.
5. In Section B, subparagraph (b) of his Application for an Auctioneer Registration, Finz stated under oath, that

the true and correct answer to the following question was "**NO**":

"Has any licensing or other credentialing agency ever taken any disciplinary action against you, including but not limited to, any warning, reprimand, suspension, probation, limitation or revocation? (If YES, attached a sheet providing details about the action, including the name of the credentialing agency and the date of the action.)

6. Finz did not disclose on his auctioneer license application that he had been disciplined by the Texas Department of Licensing and Regulation on October 4, 1994 for a violation of the Texas Revised Civil Statutes, Texas Administrative Code and Government Code for failure to announce, give notice, or disclose that an auction which Finz conducted was covered by a Recovery Fund administered by the Texas authorities. Finz accepted the determination of the Texas Commissioner and paid an administrative penalty of \$750.00 in final settlement of the issues in the proceeding. A copy of the Texas disciplinary action is attached as **Exhibit 2**.

7. A complaint was submitted to the Wisconsin Department of Regulation and Licensing by Geoffrey Uhle dated September 11, 1998, alleging that Finz had retained and sold Uhle's merchandise in Lake Geneva, Wisconsin after it had been recalled, and that Finz had failed to pay Uhle the proceeds of the auction. Finz disputes these allegations.

8. Finz told Uhle that the missing inventory had been stolen or lost and refused to make payment to Uhle for the value of the inventory. A suit to recover damages was subsequently filed by Uhle. The parties reached an out-of-court settlement and sent letters to the Department requesting that the complaint be withdrawn. Finz disputes these allegations. A copy of the letters is attached as **Exhibit 3**.

9. Finz admits that he has never maintained a trust account in Wisconsin for deposit of auction proceeds received on behalf of consignors in connection with his auctions for the reason that he does not hold funds belonging to third parties.

99 AUC 011

10. In August 1997, Finz purchased "Lakes Area Auction Co.," a registered Wisconsin auction company (license #68), owned by licensed auctioneer, Patricia A. Davies. Finz had been employed by Ms. Davies at the time that he applied for his auctioneer license in 1996.

11. Ms. Davies alleges that she informed Finz when she sold him the auction company that the company license could not be sold or transferred to him. Ms. Davies requested that the Department send a company license application to Finz in Albuquerque, New Mexico.

12. Finz agreed to cease and desist use of Ms. Davis's company license upon notification from the Department that he could advertise under his individual auctioneer license and use the company as a trade name. **Exhibit 5**.

VIOLATIONS

14. Based on the foregoing, Respondent **GENE J. FINZ** has violated:

- a.) 480.24 (2) (a) Wis. Stats. by having made a material misstatement in an application for a certificate or renewal of a certificate.
- b.) RL 126.02 (2) Wis. Adm. Code, by having violated a law or rule of any jurisdiction, the circumstances of which substantially relate to the practice under registration.
- c.) s. 480.16 Stats., by failing to maintain a trust account in a bank, savings and loan association or credit union authorized to do business in Wisconsin.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation be hereby accepted.

IT IS FURTHER ORDERED, that **Gene Finz's**, auctioneer license **No. 52 1200** be, and hereby is **Suspended** for a period of six months beginning on the effective date of this Order. During the term of the suspension herein provided, the Respondent may not engage in the following activities in the State of Wisconsin:

- a. Call an auction by calling for, recognizing, or accepting offers for the purchase of goods or real estate at an auction.

- b. Advertise, represent or otherwise hold out as being available to call or manage an auction.
- c. Advertise, represent or otherwise hold out as being an auctioneer or auction company or use the title "auctioneer," "registered auctioneer," "certified auctioneer," "licensed auctioneer," "auction company," "auction sales staff," "auction team member" or any similar title.
- d. Solicit, negotiate or enter into any auction contract, auction listing, auction consignment, or related auction agreement, including assisting or aiding another registrant to perform auction-related duties.

IT IS FURTHER ORDERED, that during the term of the suspension provided herein, the Respondent may not perform, manage or supervise any of the following activities in the State of Wisconsin:

- a. Call for bids at any type of auction, including auctions under s. 480.02 (2) (a) to (i), Stats.
- b. Work as, or perform duties related to, an auction cashier, an auction clerk, or an auction ring person or grounds person, including bid-relaying or spotting, merchandise displaying, or assisting the auctioneer or auction staff before, during or after the conducting of an auction.
- c. Oversee, in any manner, the conducting of any auction.
- d. Accept any form of referral fee, finder's fee, commission, commission sharing or splitting, or related compensation from any auctioneer, auction company, or auctioneer-related professional.
- e. Participate in any form of auctioneer-related bid-calling, bid calling contests or competitions, either as a contestant, judge, master of ceremonies or in any other capacity.
- f. Suggest or imply to the public, privately or through advertising, that he is able to perform any of the activities in subparagraph (a) to (e).

IT IS FURTHER ORDERED, that during the term of the suspension provided herein, the Respondent may not be employed, retained or otherwise utilized to perform any auction-related activity by any other person or company doing business in the State of Wisconsin.

1. Violation of any of the terms of this Order or of any law substantially relating to the practice an auctioneer or auction company may result in a summary suspension of the Respondent's license; the termination of the stay; the imposition of additional conditions and limitations; or the imposition of other additional discipline, including revocation of a certificate of registration.

IT IS FURTHER ORDERED, that Respondent **Gene Finz** shall pay partial costs of **\$250.00** and a forfeiture in the amount of **\$500.00**, within 60 days of the date of this Order by making payment of the same to the Department of Regulation and Licensing, P.O. Box 8935, Madison, WI 53708-8935.

IT IS FURTHER ORDERED, that file 98 AUC 022 and 99 AUC 211 shall be and hereby are closed.

Dated this 25th day of September, 2000.

WISCONSIN REAL AUCTIONEER BOARD

Richard Lust

A member of the Board