

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE AUCTIONEER BOARD

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IN THE MATTER OF :  
DISCIPLINARY PROCEEDINGS AGAINST :  
 : FINAL DECISION AND ORDER  
THOMAS A. SIMONSON, JOHN D. MARG, : AS TO RESPONDENT  
BRIAN C. CRAIG, CARL N. SHIRK, PHILIP L. : GROWERS PRODUCE AUCTION  
WOLF, AND GROWERS PRODUCE AUCTION, :  
RESPONDENTS. : LS0904281AUC

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Division of Enforcement Case File # 06 AUC 005

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

Growers Produce Auction  
5347 Dell Rd.  
Cashton, WI 54619

Auctioneer Board  
P.O. Box 8935  
Madison, WI 53707-8935

Department of Regulation and Licensing  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708-8935

PROCEDURAL HISTORY

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 Wisconsin Auctioneer Board (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. Growers Produce Auction is licensed in the State of Wisconsin as an auction company, having license # 53-332. This license was first granted to it on 01/03/2007 and is current through 12/14/2010. The most recent address on file with the Department of Regulation and Licensing for Growers Produce Auction is 5347 Dell Rd., Cashton, WI 54619.

2. On or about October 26, 2005, Growers Produce Auction held an auction. At the time of the auction, Growers Produce Auction was not licensed in the state of Wisconsin. Growers Produce Auction received its initial auction company license from the state of Wisconsin on January 3, 2007.

3. Nolan Turnmire attempted to sell some goods at the October 26, 2005 auction held at Growers Produce Auction. Mr. Turnmire did not feel the bidding was high enough on one of the items so he bid on his own item, and ended up being the high bidder, resulting in a “no sale.” Mr. Turnmire was charged commission on the no sale item and he argued that “no one at the sale company or their representatives either said or advertised that there would be a no-sale fee of 10% of a bid in item.”

4. The Department's investigation revealed that Growers Produce Auction failed to enter into a written contract with Mr. Turnmire prior to the October 26, 2005 auction. Instead, there was a "Bidder's Registration" form signed by Mr. Turnmire, and an unsigned Settlement sheet, but neither contained all of the required elements of auction contracts. The Bidder's Registration form and Settlement sheet were missing the following elements required of auction contracts:

Registrant's state registration number

Statement indicating whether the registrant is authorized to purchase at the auction

A description of the services to be provided and the consideration for the services. The description must state which party is responsible for advertising and other expenses.

A statement of whether a buyer's fee or surcharge will be assessed and if so, the percentage or other amount to be charged to the successful bidder

The date, dates or time period during which the items will be sold at the auction

5. The Department's investigation revealed that advertising for the October 26, 2005 auction failed to contain the statement "registered Wisconsin auctioneer" after the names and registration numbers of the auctioneers calling the auction.

### CONCLUSIONS OF LAW

1. The Wisconsin Auctioneer Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 480.24, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. Respondent Growers Produce Auction has violated:

a. Wis. Stat. § 480.08(1), by acting as an auction company in the state of Wisconsin without being registered as an auction company.

b. Wis. Stat. § 480.14(1), by conducting an auction without first entering into a written contract with each owner or consignor of goods or real estate that may be sold at the auction and by failing to specify in a contract the terms and conditions upon which the auctioneer or auction company accepts the goods or real estate for sale.

c. Wis. Admin Code §§ RL 124.02(1), 124.02(3), 124.02(4), 124.02(5), and 124.02(6), by failing to include the following in a written contract:

Registrant's state registration number

Statement indicating whether the registrant is authorized to purchase at the auction

A description of the services to be provided and the consideration for the services. The description must state which party is responsible for advertising and other expenses.

A statement of whether a buyer's fee or surcharge will be assessed and if so, the percentage or other amount to be charged to the successful bidder

The date, dates or time period during which the items will be sold at the auction

d. Wis. Stat. § 480.20 and Wis. Admin. Code § RL 123.03(2), by failing to include the statement "registered Wisconsin auctioneer" in advertising.

3. As a result, Growers Produce Auction is subject to discipline pursuant to Wis. Stat. § 480.24(2).

### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Growers Produce Auction (license # 53-332) is hereby REPRIMANDED.

IT IS FURTHER ORDERED that:

2. Respondent Growers Produce Auction shall pay COSTS in the amount of ONE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$1,250.00) within 90 days of the date of this Order.

3. Payment shall be made by **certified check or money order**, payable to the Wisconsin Department of Regulation and Licensing and sent to:

Department Monitor  
Division of Enforcement  
Department of Regulation and Licensing  
P.O. Box 8935, Madison, WI 53708-8935  
Telephone (608) 267-3817, Fax (608) 266-2264

4. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The Board in its discretion may, in the alternative, impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent fails to timely submit any payment as ordered, then the Respondent's license SHALL BE SUSPENDED without further notice or hearing until Respondent has complied with the terms of this Order.

5. This Order is effective on the date of its signing.

IT IS FURTHER ORDERED that file 06 AUC 005 is hereby closed.

Dated this 28<sup>th</sup> day of April, 2009.

WISCONSIN AUCTIONEER BOARD

By: Patrick J. McNamara