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**STATE OF WISCONSIN
BEFORE THE AUCTIONEER BOARD**

**IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST**

**ORDER GRANTING FULL LICENSURE
LS0002291AUC**

**THEODORE W. FLEISNER and
BADGER AUCTIONEERS, INC.,
RESPONDENTS.**

Theodore W. Fleisner
P.O. Box 247
Theresa, WI 53091

Badger Auctioneers, Inc.
P.O. Box 247
Theresa, WI 53901

Atty. John C. Temby
Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708

This matter was considered by the Auctioneer Board at its regular meeting on January 27, 2004.

BACKGROUND

1. Theodore W. Fleisner, (hereinafter referred to as "Fleisner") W1487 Highway 28, Theresa, WI 53901, is an auctioneer, registered in the State of Wisconsin under license #52-159, originally granted on March 1, 1995. Fleisner is the President of Badger.

2. Badger Auctioneers, Inc., (hereinafter referred to as "Badger") located at W1487 Highway 28, Theresa, WI 53901, is an auction company, registered in the State of Wisconsin under license #53-30, originally granted on March 1, 1995.

3. On September 25, 2000, the Auctioneer Board adopted a Final Decision and Order pursuant to a Stipulation signed by the respondents and the Division of Enforcement. A copy of the Final Decision and Order was served on the respondents by certified mail on September 29, 2000.

In its Final Decision and Order, the Board ordered that the respondents' licenses be suspended subject to compliance with and completion of the following requirements and conditions:

- (1) The certificate of registration #52-159 as an auctioneer of Theodore W. Fleisner shall be and is suspended for a period of thirty-six (36) months commencing on November 1, 2000, provided however, that after February 1, 2001 the suspension of Theodore W. Fleisner shall be stayed so long as Theodore W. Fleisner complies with the terms of this Order and the statutes and administrative rules relating to registration as an auctioneer.
- (2) Theodore W. Fleisner shall, on or before December 31, 2000, take and pass the auctioneer license examination required under sec. 480.08 (2) (e), Stats.

(3) Theodore W. Fleisner shall be responsible for all costs and expenses incurred in conjunction with taking the licensing exam, for filing reports as required in this Order, and any other expenses associated with compliance with this Order.

(4) The certificate of registration #53-30 as an auction company of Badger Auctioneers, Inc., shall be and is suspended for a period of 60 days commencing on November 1, 2000 provided, however, that after December 1, 2000, the suspension of Badger Auctioneers, Inc., shall be stayed so long as Badger Auctioneers, Inc., complies with the terms of this Order and the statutes and administrative rules relating to registration as an auction company.

(5) Badger Auctioneers, Inc. shall, on or before December 1, 2000:

a) Retain a certified public accountant to advise and assist Badger Auctioneers, Inc. in establishing financial procedures that comply with the requirements of Chapters RL 123 through 127, Wis. Admin. Code, and especially the requirement in sec. RL 125.12 that an auctioneer or an auction company maintain an adequate trust account bookkeeping system.

b) Submit reports from the certified public accountant retained under paragraph a) to the Auctioneer Board expressing an opinion on whether Badger Auctioneers, Inc., and its officer and employees are complying with the accounting and bookkeeping requirements of the Chapters 124 and 125, Wis. Adm. Code.

(i) Between December 1, 2000 and June 1, 2001, the certified public accountant shall file monthly reports with the Auctioneer Board. The monthly reports shall include copies of the check register, written reconciliation, and account summary sheet described in RL 125.12 (1)–(4), Wis. Admin. Code, and shall be filed by the twentieth day of the month following the month covered in the report. The reports shall be sent to the Department of Regulation and Licensing at the following address: Department Monitor, Division of Enforcement, PO Box 8935, Madison, WI 53708-8935.

(ii) After June 1, 2001 and until November 1, 2003 the reports shall be filed every three months.

c) Modify the contract forms used in its auctions to satisfy the requirements of sec. 480.14, Stats. and RL 124, Wis. Admin. Code. Copies of the modified forms shall be submitted to the Auctioneer Board prior to December 1, 2000.

(6) Badger Auctioneers, Inc. and Theodore W. Fleisner shall be jointly and severally liable for payment of a forfeiture to Wisconsin Department of Regulation and Licensing in the amount of \$4,000.00 and for payment of costs incurred in connection with the investigation and prosecution of the case files subject to this Order, in the amount of \$8,443.00. The forfeiture and costs shall be payable in full on or before February 1, 2001, or prior to the reinstatement of Theodore W. Fleisner's auctioneer license.

(7) Prior to the commencement of the suspension provided herein, all persons with whom the auctioneer or auction company has a contract for services to be performed during the period of suspension or following revocation must be notified. The notice shall be in writing and state that the registration of the auctioneer or auction company has been suspended and describe the terms of the suspension. A copy of the notices shall be provided to the Department Monitor with the first monthly monitoring report.

(8) During the term of the suspension herein provided, the Respondents may not engage in the following activities:

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.

(9) During the term of the suspension provided herein, the Respondents may not perform, manage or supervise any of the following activities:

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).

(10) During the term of the suspension provided herein, the Respondents may not be employed, retained or otherwise utilized to perform any auction-related activity described in subparagraphs (8) and (9). This section does not prohibit an auctioneer or auction company from contracting to perform services that an auctioneer or auction company is unable to perform because of a registration suspension or revocation and which the auctioneer or auction company contracted to perform prior to the license suspension or revocation.

(11) 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.

4. On January 27, 2004, the Board received written confirmation that the respondents have complied with all of the requirements and conditions, as set forth above and as ordered in its Final Decision and Order, dated September 25, 2000.

Based upon the record in this matter, the Board makes the following Order:

ORDER

NOW, THEREFORE, IT IS ORDERED that, based upon full compliance with the Board's Final Decision and Order dated September 25, 2000, the suspension of Theodore W. Fleisner's license to practice as an auctioneer be, and hereby is, removed. Respondent's license is restored to full licensure.

IT IS FURTHER ORDERED that, based upon full compliance with the Board's Final Decision and Order dated September 25, 2000, the suspension of the license of Badger Auctioneers, Inc., to operate as an auction company be, and

hereby is, removed. Respondent's license is restored to full licensure.

This order is effective on the date it is signed by a designee of the Auctioneer Board.

Dated this 28th of April, 2004.

Wisconsin Auctioneer Board

Richard O. Lust
Chairman