

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE AUCTIONEER BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
	:	
FRED CURTIS AND JOHN W. MERWIN,	:	(AS TO JOHN W. MERWIN)
RESPONDENTS	:	ORDER 0000 327

Division of Enforcement Case File Number 07 AUC 019

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

John W. Merwin
305 South Franklin Street
Livingston, WI 53554

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

Wisconsin 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. Respondent John W. Merwin is licensed in the state of Wisconsin as an Auctioneer, having license number 52-775. This license was first granted to Mr. Merwin on March 14, 1995 and it is current through December 14, 2010.

2. The most recent address on file with the Wisconsin Department of Regulation and Licensing (Department) for John W. Merwin is 305 South Franklin Street, Livingston, WI 53554.

3. Respondent Fred Curtis was licensed in the state of Wisconsin as an Auctioneer, having license number 52-217. This license was first granted to Mr. Curtis on March 1, 1995 and it expired on December 31, 2004.

4. The most recent address on file with the Department for Mr. Curtis is 206 West Prairie Street, Boscobel, WI 53805.

5. On or about October 25, 2007, the Department received a complaint against Fred Curtis alleging unlicensed practice, deceptive advertising and contract violations. A case was subsequently opened for investigation.

6. The Department's investigation revealed that Fred Curtis worked for John W. Merwin as a "ringman" and that on occasion, Mr. Curtis would call an auction for a short period of time to allow Mr. Merwin to take a break.

7. Mr. Merwin admitted in a December 26, 2007 letter to the Department that his advertisements may have made it look like Mr. Curtis was an auctioneer. Mr. Merwin indicated in the December 26, 2007 letter that he now puts "ringman" in front of Mr. Curtis' name.

8. A review of the documents submitted by Mr. Merwin relating to an October 27, 2007 auction revealed the following violations in his contract:

- a. The contract did not contain Mr. Merwin's business address or state registration number;
- b. The contract did not contain the address of the owner or cosignor;
- c. The contract did not contain a general description of the property to be sold at the auction or a statement indicating if Mr. Merwin was able to purchase items at the auction; and
- d. The contract did not contain a statement regarding buyers' fees or surcharges.

9. Mr. Merwin redrafted his contract form to correct the violations.

10. In resolution of this matter, Respondent John W. Merwin consents to the entry of the following Conclusions of Law and Order.

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 John W. Merwin has violated:

a. Wis. Stat. § 480.24(2)(b) by engaging in conduct while practicing as an auctioneer or as an auction company which evidences a lack of knowledge or ability to apply professional principles or skills;

b. Wis. Stat. § 480.24(2)(d) and Wis. Admin. Code § RL 123.02 by advertising in a manner which is false, deceptive or misleading; and

c. Wis. Admin Code § RL 124.02, by failing to include the following in a written contract:

- Registrant's state registration number and business address;
- The address of the owner or cosignor;
- A general description of the property to be sold at auction and a statement indicating whether registrant is authorized to purchase at the auction; and
- 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.

3. As a result of the violations noted in the Conclusions of Law, John W. Merwin is subject to discipline pursuant to Wis. Stat. § 480.24(2).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Respondent John W. Merwin is hereby REPRIMANDED.

IT IS FURTHER ORDERED that:

2. Respondent John W. Merwin shall pay a FORFEITURE in the amount of ONE THOUSAND DOLLARS (\$1,000.00) within 90 days of the date of this Order and shall pay COSTS in the amount of TWO HUNDRED DOLLARS (\$200.00) 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 payment of the costs and forfeitures as ordered and as set forth above, the Respondent's license (number 52-775) may, in the discretion of the board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with payment of the costs and forfeitures.

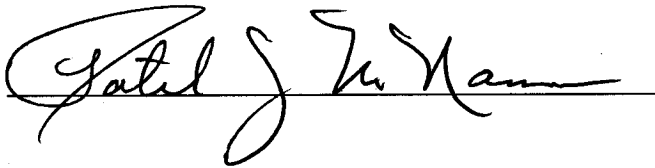
5. This Order is effective on the date of its signing.

IT IS FURTHER ORDERED that file 07 AUC 019 is hereby closed as to Respondent John W. Merwin.

Dated this 20 day of July, 2010.

WISCONSIN AUCTIONEER BOARD

By:

A handwritten signature in black ink, appearing to read "Gated J. McNamee", is written over a horizontal line.