

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE AUCTIONEER BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

PATRICK W. BIRKETT,
RESPONDENT.

:
:
:
:
:

FINAL DECISION AND ORDER

ORDER 0001505

Division of Enforcement Case No. 11 AUC 006

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

Patrick W. Birkett
972 E. Philhower Road
Beloit, WI 53511

Wisconsin Auctioneer Board
P.O. Box 8935
Madison, WI 53708-8935

Division of Enforcement
Department of Safety and Professional Services
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 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, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Patrick W. Birkett (dob 12/04/1965) is licensed in the State of Wisconsin as an Auctioneer, having license number 52-794, first issued on 03/20/1995 and current through 12/14/2012. Mr. Birkett's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 972 E. Philhower Road, Beloit, WI 53511.

2. On or about June 7, 2011, the Department received a complaint alleging that Complainant attended an auction and was told at auction that items would not be sold for less than \$5. Complainant alleged that the advertisement for the auction failed to mention reserves. Division of Enforcement Case Number 11 AUC 006 was subsequently opened for investigation.

3. The Department's investigation revealed that Respondent Birkett's auctioneer license expired on December 15, 2010 and was renewed on August 26, 2011.

4. Respondent Birkett performed six auctions from May 19, 2011 to June 19, 2011, while his auctioneer license was expired.

5. Respondent Birkett performed auctions under trade names (e.g., Birketts Auction, Orfordville Auction) prior to notifying the Department of the trade names.

6. Respondent Birkett failed to include his name and a statement that he is a "registered Wisconsin auctioneer" in auction advertisements for auctions held on June 4, 2011 and August 4, 2011.

7. Respondent Birkett advertised a June 4, 2011 auction as an absolute auction when the auction items were sold with a reserve or minimum bid.

8. In resolution to this matter, Respondent Birkett 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. By the conduct described in the Findings of Fact, Respondent Birkett violated Wis. Stat. § 480.08(1)(a) by acting as an auctioneer while his auctioneer license was expired.

3. By the conduct described in the Findings of Fact, Respondent Birkett violated Wis. Admin. Code § RL (now SPS) 121.07 by conducting business under trade names prior to notifying the Department of the trade names.

4. By the conduct described in the Findings of Fact, Respondent Birkett violated Wis. Stat. § 480.20 by failing to include his name and a statement that he is a "registered Wisconsin auctioneer" in advertisements.

5. By the conduct described in the Findings of Fact, Respondent Birkett engaged in unprofessional conduct pursuant to Wis. Admin. Code § RL (now SPS) 126.02(3) by advertising an auction as an absolute auction when items were sold with a reserve or minimum bid.

6. As a result of the above violations, Respondent Birkett is subject to discipline pursuant to Wis. Stat. § 480.24(2).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The attached Stipulation is hereby accepted.

2. Respondent Patrick W. Birkett is hereby REPRIMANDED.
3. Within 90 days of the date of this Order, Respondent Birkett shall pay COSTS of this matter in the amount of \$415.00.
4. Payment of costs shall be made payable to the Wisconsin Department of Safety and Professional Services and sent to the Department Monitor at the address below:

Department Monitor
Division of Enforcement
Department of Safety and Professional Services
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 267-3817, Fax (608) 266-2264
5. 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 as ordered, Respondent's license (no. 52-794) 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.
6. This Order is effective on the date of its signing.

WISCONSIN AUTIONEER BOARD

by:


A Member of the Board

4-24-12
Date