

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN  
BEFORE THE AUCTIONEER BOARD

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

DEAN K. GEORGE,  
RESPONDENT.

: FINAL DECISION  
:  
:  
:  
: Case No.(s) 08 AUC 017 and 09 AUC 006  
:

**ORDER 0001937**

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The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Dean K. George  
11211 North Union Road  
Evansville, WI 53536

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

Department of Safety and Professional Services, Division of Enforcement, by

Attorney Sarah E. Norberg  
Department of Safety and Professional Services  
Division of Enforcement  
P. O. Box 8935  
Madison, WI 53708-8935

**PROCEDURAL HISTORY**

These proceedings were initiated upon the filing of a Complaint by the Department of Safety and Professional Services (Department), Division of Enforcement (Division) against Respondent Dean K. George on August 3, 2011. The Complaint alleged that Respondent is subject to discipline pursuant to Wis. Stat. §§ 480.24(2)(b) and (j) and 480.26(2) for the following violations: Respondent failed to include in an advertisement a statement of the terms and conditions under which he would accept payment by buyers at the auction, contrary to Wis. Admin. Code § SPS 123.03(3);<sup>1</sup> Respondent enforced an auction contract that was not written

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<sup>1</sup> Effective December 1, 2011, the Wisconsin Auctioneer Board regulations at Chapters RL 120-128 were redesignated as Chapters SPS 120-128 under Wis. Stat. § 13.92(4)(b)1. Although the designation at the time of the alleged conduct and filing of the Complaint was "RL," for ease of reference, this decision refers to the code provisions under the current designation of "SPS."

prior to the auction, contrary to Wis. Admin. Code § SPS 124.02; Respondent knowingly escalated or attempted to escalate bidding through collusion with another, contrary to Wis. Admin. Code § SPS 126.02(8); Respondent engaged in false, fraudulent, deceptive or misleading billing practices, contrary to Wis. Admin. Code § SPS 126.02(4); and Respondent obtained compensation by fraud or deceit, contrary to Wis. Admin. Code § SPS 126.02(5). A hearing was held on January 4, 2012. At the conclusion of the hearing the Administrative Law Judge (ALJ) ordered briefing. The final submission in this matter was received by the ALJ on April 13, 2012.

An evidentiary hearing in the above-captioned matter was held on January 4, 2012. Atty. Sarah E. Norberg appeared on behalf of the Division of Enforcement. The Respondent, Dean K. George, appeared without legal counsel. The hearing transcript was filed on January 10, 2012. The Administrative Law Judge issued her proposed decision on May 18, 2012. The Auctioneer Board considered the proposed decision at its meeting on July 17, 2012.

### **STATEMENT OF FACTS**

1. Respondent is registered in the State of Wisconsin as an Auctioneer, having registration<sup>1</sup> number 52-486, first issued on March 1, 1995 and current through December 14, 2012.

2. Respondent is the owner of an auction company, Dean George Auction Service.

#### **Facts Related to the Neuenschwander Auction.**

3. In 2008, Respondent contracted with Carla and Glen Neuenschwander for an auction of their real estate. Respondent prepared an advertisement for the Neuenschwander auction (Transcript of January 4, 2012 Hearing (Tr.) at 107-108; Div. Ex. 13).

4. The only information contained in the advertisement regarding terms and/or conditions of payment was the following: "Terms: Earnest money of \$1000.00. There is a 5% buyer's fee due at closing within 30 days." (Div. Ex. 13).

5. The real estate auction was held in May of 2008. On the day of the auction, Respondent approached Janice Farmer, who is the sister of Carla Neuenschwander, and Glen Neuenschwander, Jr., who is Carla and Glen Neuenschwander's son, and asked them to place bids on the real estate. Mr. Neuenschwander testified, "[Respondent] asked if we could help bid the house up ... [t]o get a better price for it." Ms. Farmer and Mr. Neuenschwander bid on the real estate even though they had no intention of purchasing the property. Ms. Farmer opened the bidding, and Mr. Neuenschwander bid several times, up to an amount previously agreed upon by him and Respondent (Tr. at 14-17, 39-42, 49; State's Ex. 6).

6. The testimony of Janice Farmer and Glen Neuenschwander, Jr. that Respondent asked them to bid on the real estate solely to raise the price of property and that they complied with his request was credible.

**Facts Related to the Huschka Auction.**

7. On July 29, 2008, Respondent arrived at the Huschka farm because he had been informed that they were going to be auctioning off their farm assets. These assets included everything related to farm operation. At the Huschka farm, he met with Duane Huschka and Duane's brother, Dan Huschka. Upon viewing the assets on July 29, 2008, Respondent informed Duane Huschka that he was amazed at the amount of items, including machinery and equipment, that would be sold. The contract provided that Respondent would be paid a commission of seven percent of the gross proceeds of the auction (Tr. at 55-57, 95, 98; Div. Ex. 9).

8. On January 2, 2009, Respondent came to the Huschkas' property with a camera to take some photographs of the farm equipment to use in advertising for the auction; however, the camera was not working properly. Respondent went into two of the four sheds and noted that the sheds were not as full of equipment as they had been in July of 2008. Duane Huschka confirmed that they had sold a lot of the equipment since entering the contract in July of 2008. Duane

Husckha testified that his understanding was that he had the right to sell the machinery up until the property was advertised. Respondent asked Duane Huschka if he had a listing of the equipment and Mr. Huschka said he did not. Respondent told him to get one ready and that Respondent would come back the following week to take some pictures. Respondent never came back to the property for more photographs, and Duane Huschka dropped the listing at Respondent's home. Respondent never discussed revising the contract prior to the auction (Tr. 59-62).

9. At the auction held on April 11, 2009, the total of the items sold was \$39,438. Immediately following the conclusion of the auction, Respondent informed the Huschkas that he needed a bigger commission. Duane Huschka described the interaction as follows:

And it was after [my mother] left that Dean [Respondent] told us we had a problem. And I said, "What problem?" He said, "I've got to have more money." He didn't ask. He said, "I've got to have more money." I said, "We have a contract with you that stated 7 percent. He said, "That was based on the fact that I thought this was going to be a large auction. You guys sold a lot of equipment. So the auction's a lot smaller." He said, "I've got to have a bigger sales commission." Again, I raised the point that we have a 7 percent contract. He said, "Well, I hope you see my viewpoint and do the decent thing and allow me a higher commission rate." And I didn't think that was right. And Danny and I just – we stood speechless for a little bit; and then finally Danny said, "What do you have in mind," to which he replied, "20 percent." The first word out of my mouth was "Wow." I looked at Danny, and he was shaking his head. He said, "No way. No way." And at that point, we began deliberating with him, negotiating, whatever you want to call it. But he – I just – from the way he said it, the way he worded it, I just felt that he was not going to leave until we agreed to pay him some more money. He made it sound like we were cheating him. It was up to us to do the decent thing. . . . Figures were thrown back and forth until we finally arrived at 15 percent.

Respondent then wrote up a new contract, with a fifteen percent commission. Duane and Dan Huschka signed the new contract, as did Respondent (Tr. at 62-65, 100; Div. Ex. 9).

10. Duane Huschka described Respondent's demeanor as follows: "Calm. He never made eye contact with us very much. He seemed to look at the ground a lot. But he was very calm, rational, didn't raise his voice with us. And we didn't either." Dan Huschka described

Respondent's demeanor during the conversation as follows: "Well, he was calm. But he was just so cold acting. He had absolutely no intention of honoring that first contract." He further stated: "We felt the only way we could get money out of him was to give him a higher commission rate." (Tr. at 64-65, 101).

11. Respondent drafted a second contract for the auction that had already been held earlier in the day. This second contract provided that Respondent would be paid a commission of fifteen percent of the gross proceeds of the auction. The Huschkas signed the second contract. Respondent received a commission of fifteen percent of the gross proceeds of the auction (Tr. at 65-66, 102-103; State's Exs. 9, 10).

**Facts Related to Prior Disciplinary Actions.**

12. Respondent has been disciplined by the Department on two prior occasions. One action, which resulted in a stipulated resolution, involved Respondent's failure to include the required contents in an auction advertisement as required by Wis. Admin Code § SPS (then RL) 123.03(1)-(4), which is one of the allegations in the instant case. In the prior matter, the advertisement contained no information whatsoever about payment. Neither the July 24, 2007 Final Decision and Order nor the Stipulation in that case show that Respondent was made aware that the Department's interpretation of the language, "terms and conditions under which [an auctioneer] will accept payment by buyers at the auction," as provided by Wis. Admin. Code § SPS 123.03(3), means or includes the method of payment, *i.e.*, check, credit card or cash (Div. Ex. 15).

13. The second disciplinary action involved conduct that occurred in 1996 in which Respondent and his brother, with whom he was then in business, engaged in "self-help" by going to a farm and confiscating cattle for which the owner had not paid as agreed upon. During the process of confiscating the cattle, both Respondent and his brother became physical with the owner. Criminal charges were filed as a result of the incident and Respondent was convicted

pursuant to an *Alford* plea in Green County Circuit Court of disorderly conduct and criminal trespass to a dwelling. He was placed on probation for 18 months. With regard to the prior disciplinary matter, Respondent had his registration suspended for six months, and he and his brother each had to pay one-half of the costs of the disciplinary proceedings (Div. Ex. 16).

## **DISCUSSION AND CONCLUSIONS OF LAW**

### **Burden of Proof.**

The burden of proof in disciplinary proceedings is on the Division to show by a preponderance of the evidence that the events constituting the alleged violations occurred. Wis. Stat. § 440.20(3). To prove by a preponderance of the evidence means that it is “more likely than not” that the examined action occurred. *See State v. Rodriguez*, 2007 WI App. 252, ¶ 18, 306 Wis. 2d. 129, 743 N.W.2d 460, citing *United States v. Saulter*, 60 F.3d 270, 280 (7th Cir. 1995).

### **Alleged Violation of Wis. Admin. Code § SPS 123.03(3).**

Wisconsin Admin. Code § SPS 123.03(3) provides that “[a]ll advertisements that an auction will be conducted shall contain ... [a] statement of the terms and conditions under which [an auctioneer] will accept payment by buyers at the auction.”

Respondent’s advertisement for the Neuenschwander auction stated: “Terms: Earnest money of \$1000.00. There is a 5% buyer’s fee due at closing within 30 days.” The advertisement did not contain any other information about the terms and conditions of accepting payment by buyers at the auction, such as what type of payment was required or permitted (*i.e.*, cash, check or credit card).

The Division asserts: “While Respondent’s advertisement does contain a statement of the terms under which he would accept payment by buyers at the auction, it does not contain a statement of the conditions, such as cash, check or credit card, under which he would accept payment.” (Div. Brief at 4). The Division further asserts that Respondent was made aware of

the requirement that his auction advertisements contain a “statement of the terms and conditions under which [an auctioneer] will accept payment by buyers” because he was disciplined by the Wisconsin Auctioneer Board in 2007 for the same violation.

Respondent’s position is that the law does not require him to include the acceptable method of payment in his advertisements.

The Division has not met its burden of establishing that Respondent violated Wis. Admin. Code § SPS 123.03(3). That provision does not specifically state that an auctioneer must include what method of payment – cash, credit or check -- is acceptable. Rather, it generally states that the auctioneer must state the “terms and conditions” under which he or she will accept payment by buyers. Here, Respondent listed some terms and conditions but did not list what method of payment was acceptable. This situation differs from the 2007 disciplinary proceeding because in the 2007 proceeding, Respondent’s advertisement contained absolutely no information about the terms and conditions of payment, whereas here, some information was listed. While the Division suggests that Respondent was made aware during the course of the 2007 disciplinary action that “terms or conditions” means or includes the method of payment (*i.e.*, cash, check or credit card), neither the decision nor stipulation in that matter indicate that Respondent was informed of the Department’s interpretation of that provision. Nor has the Department met its burden of establishing that the provision itself informs auctioneers that they must specifically include information regarding what method of payment is acceptable. Therefore, the Department has not established that Respondent violated Wis. Admin. Code § SPS 123.03(3).

**Alleged Violation of Wis. Admin. Code § SPS 126.02(8).**

Wisconsin Admin. Code § SPS 126.02(8) provides that “[k]nowingly escalating or attempting to escalate bidding through false bids, shills or through collusion with another” is



“[c]onduct evidencing a lack of knowledge or ability to apply professional principles or skills, within the meaning of s. 480.24(2)(b), Stats.”

At hearing, Janice Farmer credibly testified that Respondent asked her to help get the bidding started at the Neuenschwanders’ real estate auction. Ms. Farmer testified that she did start the bidding on the real estate at Respondent’s request and she had no intention of purchasing the property. Glen Neuenschwander, Jr. also credibly testified at hearing that he was asked by Respondent to bid on his parents’ real estate. He stated, “[Respondent] asked if we could help bid the house up ... [t]o get a better price for it.” Mr. Neuenschwander testified that he bid on the real estate several times at Respondent’s request and he had no intention of purchasing the property. The Division has met its burden of establishing that Respondent engaged in unprofessional conduct at the Neuenschwander real estate auction by knowingly escalating or attempting to escalate bidding through collusion with another, contrary to Wis. Admin. Code § SPS 126.02(8).

**Alleged Violation of Wis. Admin. Code § SPS 124.02.**

Wisconsin Admin. Code § SPS 124.02 provides that “[n]o auctioneer may conduct an auction unless the auctioneer or the auction company that is managing the auction has entered into a prior written contract with each owner ... of goods ... that may be sold at the auction.”

On July 29, 2008, Duane and Dan Huschka entered into a contract with Respondent for an auction of their family’s farm machinery. The contract provided that Respondent would be paid seven percent of the gross proceeds of the auction as a commission. The Huschkas proceeded with the auction under the terms outlined in the contract.

However, after the auction occurred, Respondent claimed he needed to have more money. The Huschkas testified that they did not believe Respondent would pay them the proceeds from their auction unless they submitted to Respondent’s demand for a higher

commission; however, neither Duane nor Dan Huschka testified that Respondent indicated he would not pay them unless there was a higher commission. Both Duane and Dan indicated that they negotiated with Respondent to reduce the commission down to fifteen percent from the twenty percent that Respondent requested after the auction.

The Division has not shown that Respondent conducted an auction without a prior written contract. Rather, the evidence shows that there was in fact a contract executed prior to the auction but that a new contract was executed following the auction. Therefore, the Division has not met its burden of establishing a violation of Wis. Admin. Code § SPS 124.02.

**Alleged Violations of Wis. Admin. Code §§ SPS 126.02(4) and 126.02(5).**

Wisconsin Admin. Code § SPS 126.02(4) provides that “[e]ngaging in false, fraudulent, deceptive or misleading billing practices” is “[c]onduct evidencing a lack of knowledge or ability to apply professional principles or skills, within the meaning of s. 480.24(2)(b), Stats.” Wisconsin Admin. Code § SPS 126.02(5) provides that “[o]btaining ... compensation by fraud or deceit” is “[c]onduct evidencing a lack of knowledge or ability to apply professional principles or skills, within the meaning of s. 480.24(2)(b), Stats.”

The Division asserts that Respondent’s conduct with respect to renegotiating the contract with the Huschkas constituted engaging in deceptive or misleading billing practices and obtaining compensation by deceit, contrary to Wis. Admin. Code § SPS 126.02(4) and § SPS 126.02(5), respectively. The record simply does not establish that Respondent engaged in deceptive or misleading billing practices. Rather, the evidence establishes only that the Huschkas caved into Respondent’s request for an additional amount in commission. While Respondent’s request may have been unreasonable, the evidence does not establish that his conduct was deceptive or misleading.

### **Discipline.**

The Wisconsin Auctioneer Board has the authority to discipline Mr. George in this matter pursuant to Wis. Stat. §§ 480.24(2)(b) and (j) and 480.26(2) for the violations discussed above. The three purposes of discipline are: (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209, 237 N.W.2d 689 (1976).

The Division requests the following discipline: (1) suspension of Respondent's registration for a period of one year; (2) limitation of Respondent's registration until he completes twelve hours of auctioneer education, in addition to the education he must complete to maintain his registration; and (3) a requirement that Respondent pay \$5,000 in forfeitures, which would be \$1,000 for each alleged violation. With respect to the forfeiture, the Division states that it would be amenable to waiving these forfeitures if, within six months of an Order of the Wisconsin Auctioneer Board, Respondent provides satisfactory proof to the Division that he has reimbursed the Huschkas the difference between the commission originally contracted for and the commission enforced (\$3,154).

A one-year suspension is appropriate for Respondent. Respondent has been disciplined by the Wisconsin Auctioneer Board on two previous occasions. Respondent's registration was previously suspended by the Wisconsin Auctioneer Board for six months yet he continues to disregard the Auctioneer rules and regulations. Manipulating bidding as Respondent did here goes to the heart of the auctioneering profession. Members of the public who attend auctions rely on the trustworthiness of the auctioneer and the integrity of the bidding process. In rigging the bidding process as he did, Respondent violated the public trust and undermined the auctioneering profession and process.

In addition, requiring Respondent to complete twelve hours of education, in addition to the education Respondent must complete to maintain his registration, will hopefully serve to

rehabilitate Respondent and ensure that he understands and takes seriously the rules governing his profession.

The Wisconsin Auctioneer Board has the authority to assess forfeitures against persons who violate its rules and regulations. *See* Wis. Stat. § 480.26(2). This authority allows for \$1,000 to be assessed per separate offense. Here, the Division has proven one violation. Therefore, a forfeiture in the amount of \$1,000 is appropriate.

**Costs.**

The final issue is what amount of costs, if any, of the investigation and prosecution of this matter should be borne by Respondent under Wis. Stat. § 440.22 and Wis. Admin. Code § SPS 2.18.

The Division requests that Respondent be ordered to pay the full costs of its investigation and of these proceedings. The factors to be considered in assessing costs are: (1) the number of counts charged, contested and proven; (2) the nature and seriousness of the misconduct; (3) the level of discipline sought by the prosecutor; (4) the respondent's cooperation with the disciplinary process; (5) prior discipline, if any; (6) the fact that the Department of [Safety and Professional Services] is a "program revenue" agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct; and (7) any other relevant circumstances. *See In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz*, LS0802183CHI (Aug. 14, 2008).

Based on all of the factors in this proceeding and on Respondent's prior disciplinary history, it is appropriate to require Respondent to pay 50 percent of the costs of the investigation and disciplinary proceedings in this matter. Although the Division only proved one of the five violations it alleged, the violation it did prove was egregious. The fact that Respondent was disciplined twice before and still plays fast and loose with the rules governing his profession is of

grave concern to the public. With respect to his treatment of the Husckhas, although a technical violation of the administrative code was not proved, his conduct evinces a profound disrespect to the customers he serves. Finally, as the costs of disciplinary proceedings are borne by the revenue received from licenses, it would be unfair to impose the full costs of this proceeding on members of Respondent's profession who have not engaged in such misconduct.

If the Board assesses costs against Respondent, the amount of costs will be determined pursuant to Wis. Admin. Code § SPS 2.18.

### **ORDER**

For the reasons set forth above, IT IS ORDERED that:

- (1) Respondent's registration is suspended for a period of one year.
- (2) Respondent may not be reinstated until he completes twelve hours of auctioneer education, in addition to the education he must complete to maintain his registration.
- (3) Respondent shall pay \$1,000 in forfeitures.
- (4) Respondent shall pay fifty percent of the costs of the investigation and prosecution in this matter in an amount to be established pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to:

**Department Monitor  
Department of Safety and Professional Services  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708-8935  
Telephone: (608) 267-3817  
Fax: (608) 266-2264**

IT IS FURTHER ORDERED that

- (5) After the expiration of the period of suspension, the Respondent may petition the Board for reinstatement of his registration (#52-486) to practice as an auctioneer. Any such

petition shall include a signed affidavit from the Respondent attesting to his compliance with all terms and conditions of this Final Decision and Order.

(6) Violation of any terms or conditions of this Order may be construed as conduct imperiling public health, safety and welfare; the Board, in its discretion, may impose additional conditions and limitations or other additional discipline for violations of any of the terms of this Order.

This order is effective on the date it is signed by a member of the Board or its designee.

### **EXPLANATION OF VARIANCE**

The Board accepts the Findings of Fact and Conclusions of Law of the Administrative Law Judge. The Board also accepts the Proposed Order of the Administrative Law Judge, but adds additional provisions to provide clarity, guidance, and to ensure that potential violations of the Order can be properly and judiciously enforced. These additions were made upon advice of the Board's legal counsel and based upon the Board's knowledge and expertise in enforcing its orders.

### **ORDER**

The Administrative Law Judge recommended that the Board suspend the Respondent's registration for a period of one year. However, the Order provided no guidance or direction as to the effective date of the suspension, or as to the means by which the suspension could be lifted such that the Respondent could reinstate his registration if he so chooses at the expiration of the one year suspension period.

Item (5): The Board adds item (5) to reflect and clarify that the suspension of Respondent's registration will only be removed upon his petition for reinstatement. It further requires Respondent to affirmatively attest to his compliance with this Order by providing an affidavit. Based upon the Respondent's established pattern of failing to follow the rules and

regulations governing this profession, the Board determined that such a provision was necessary to enable the Board to assess and address Respondent's compliance with this most recent Order.

Item (6): As outlined previously herein, the rule violation giving rise to this action is the third instance of discipline issued against this Respondent by the Auctioneer Board. In light of the egregious nature of the violation addressed here, as well as the two prior disciplines, the Board adds item (6) to ensure its ability to adequately enforce its orders and to better safeguard the public interests. Item (6) further serves to notify the Respondent that violation of any of the terms and conditions of this Order will be construed as conduct imperiling public health, safety and welfare, and accordingly, may result in other or additional discipline to the extent authorized by Wis. Stat. § 480.24.

Lastly, the Board clarifies that this Order becomes effective upon signing. This serves to establish the exact date from which the one year period of suspension is to run, the period after which the Respondent may petition for reinstatement.

Dated at Madison, Wisconsin this 20th day of July, 2012

By: BA Mattgson  
A Member of the Board or designee

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<sup>i</sup> A technical correction has been made in this Final Decision and Order correcting all appropriate references to the description of the credential at issue. Pursuant to Wis. Stat. § 480.08(2), Auctioneers are issued a registration, not a license. Accordingly, where appropriate, that correction has been made herein.