

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 :
 : FINAL DECISION AND ORDER
HOWARD N. JOHANNES, SR., :
RESPONDENT. :

0005543

Division of Legal Services and Compliance Case Nos. 16 AUC 006 and 16 AUC 007

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

Howard N. Johannes, Sr.
N405 Winchester Road
Fremont, WI 54940

Wisconsin Auctioneer Board
P.O. Box 8366
Madison, WI 53708-8366

Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190
Madison, WI 53707-7190

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 Howard N. Johannes, Sr. (DOB November 26, 1951) is registered by the State of Wisconsin as an auctioneer, having registration number 762-52, first issued on March 10, 1995 and current through December 14, 2018. This registration was expired from December 15, 2014 through July 12, 2016. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is N405 Winchester Road, Fremont, Wisconsin 54940.

16 AUC 006

2. On June 21, 2016, the Department received a complaint from D.O. regarding Respondent's auction services. Division of Legal Services and Compliance Case No. 16 AUC 006 was subsequently opened for investigation.

3. On February 22, 2016, J.O., D.O.'s brother, signed a contract with Respondent to sell their father's estate at an auction on May 21, 2016.

4. During the investigation of this matter, the Department reviewed the contract between Respondent and J.O. and found the contract failed to contain the following information: (a) the registrant's state registration number; (b) the registrant's business address; (c) a statement indicating whether the registrant is authorized to purchase at the auction; and (d) a statement of whether a buyer's fee or surcharge will be assessed.

5. In response to the Department's investigation, Respondent submitted a revised contract that indicated Respondent was doing business under a trade name that had not been registered with the Department.

16 AUC 007

6. On July 1, 2016, the Department received a complaint from B.K. regarding an item purchased at an auction called by Respondent, and alleging that Respondent was calling auctions while his registration was expired. Division of Legal Services and Compliance Case No. 16 AUC 007 was subsequently opened for investigation.

7. During the investigation of this matter, the Department reviewed the auction advertisement submitted with the complaint and found the advertisement failed to contain the percentage or other amount of any buyer's fee or surcharge which is a condition to sale.

8. Respondent called approximately 101 auctions while his registration was expired.

9. In resolution of this matter, Respondent 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 violated Wis. Stat. § 480.08(1)(a) by acting as an auctioneer while his registration was expired.

3. By the conduct described in the Findings of Fact, Respondent violated Wis. Admin. Code § SPS 121.07 by doing business under a trade name before notifying the Department in writing of the trade name.

4. By the conduct described in the Findings of Fact, Respondent violated Wis. Admin. Code § SPS 123.03(4) by failing to include in an advertisement the percentage or other amount of any buyer's fee or surcharge which is a condition to sale.

5. By the conduct described in the Findings of Fact, Respondent violated Wis. Admin. Code §§ SPS 124.02(1), (3) and (5) by entering into a written contract with an owner or consignor of goods to be sold at auction that failed to contain:

- a. the registrant's state registration number and business address;
- b. a statement indicating whether the registrant is authorized to purchase at the auction; and
- c. 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.

6. As a result of the above violations, Howard N. Johannes, Sr. is subject to discipline pursuant to Wis. Stat. § 480.24(2)(j).

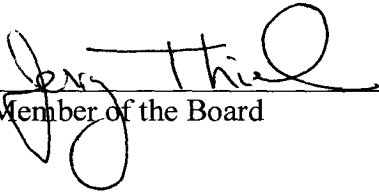
ORDER

1. The attached Stipulation is accepted.
2. Respondent Howard N. Johannes, Sr. is REPRIMANDED.
3. Within 90 days from the date of this Order, Respondent shall pay a FORFEITURE in the amount of \$500 and the COSTS of this matter in the amount of \$730.
4. Payment of the forfeiture and 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 Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

5. In the event Respondent violates any term of this Order, Respondent's registration (number 762-52), or Respondent's right to renew his registration, may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of the Order. The Board may, in addition and/or in the alternative, refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.
6. This Order is effective on the date of its signing.

WISCONSIN AUCTIONEER BOARD

by:  (TW)
A Member of the Board

12/12/17
Date

STATE OF WISCONSIN
BEFORE THE AUCTIONEER BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

HOWARD N. JOHANNES, SR.,
RESPONDENT.

:
:
:
:
:

STIPULATION

0005543

Division of Legal Services and Compliance Case Nos. 16 AUC 006 and 16 AUC 007

Respondent Howard N. Johannes, Sr. and the Division of Legal Services and Compliance, Department of Safety and Professional Services, stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.

2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:

- the right to a hearing on the allegations against Respondent, at which time the State has the burden of proving those allegations by a preponderance of the evidence;
- the right to confront and cross-examine the witnesses against Respondent;
- the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
- the right to testify on Respondent's own behalf;
- the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
- the right to petition for rehearing; and
- all other applicable rights afforded to Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondent is aware of Respondent's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Auctioneer Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

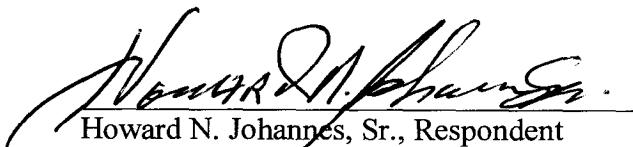
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division

of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

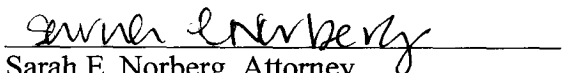
7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

8. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.



Howard N. Johannes, Sr., Respondent
N405 Winchester Road
Fremont, WI 54940
Registration no. 762-52

8-28-17
Date



Sarah E. Norberg, Attorney
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

8.30.17
Date