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March 15, 2011

Board of Tuscarawas County Commissioners
125 East High Ave.
New Philadelphia, OH 44663

Gentlemen:

This is in response to your March 15, 2011 e-mail. I understand that you are being "bombarded" with e-mails asking the Board to "shut down" the Sugarcreek Auction Barn. You inquire as to the authority of the Board of Commissioners in this regard.

Livestock dealers are regulated by the Ohio Revised Code under R.C. Chapter 943. The dealers are licensed through the Department of Agriculture under R.C. 943.03. I assume that the facility in question is a licensed livestock dealer and it may employ licensed auctioneers. R.C. 943.05 governs the refusal or suspension of a license by the Department of Agriculture based upon various violations such as measures of sanitation, false or misleading statements or other requirements. The Department of Agriculture maintains the authority to inspect, suspend or revoke these licenses. No authority exists under this Chapter giving a Board of County Commissioners any authority.

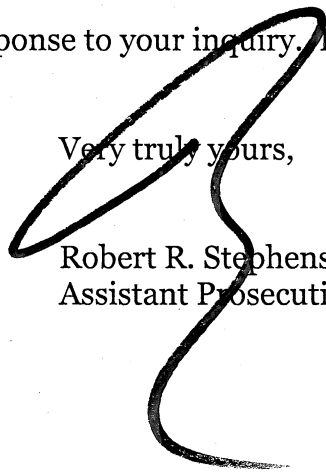
I would suggest that persons having issue with the facility address their complaints to the Ohio Department of Agriculture Animal Industry, 8995 East Main St., Reynoldsburg, OH 43068; (614) 728-6220; e-mail: animal@agri.ohio.gov.

If the complaints surround the auctioneer utilized by the facility a complaint can be filed with the Department of Agriculture Enforcement/Auctioneer Program. I

enclose a copy of the Auctioneer Complaint Form, including the contact information.

Hopefully this is in response to your inquiry. Please contact me if you have any questions.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to be 'R. Stephenson II', written over the typed name.

Robert R. Stephenson II
Assistant Prosecuting Attorney

RRS/ps
Enc.



Ohio Department of Agriculture
ENFORCEMENT/Auctioneer Program
8995 East Main Street, Reynoldsburg, OH 43068-3399
Telephone: (614) 728-6240 Fax: (614) 728-6328
www.ohioagriculture.gov/auction/ Email: auctioneer@agri.ohio.gov



AUCTIONEER COMPLAINT FORM

Name of Complainant: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone Number (daytime): _____

Name of Auctioneer, Apprentice Auctioneer, Auction Firm, or Auction Corporation,
Partnership, Association, LLC that is the subject of this complaint:

License Number (if known): _____

Address: _____

City: _____ State: _____ Zip: _____

When did the act or inaction occur which gives rise to this complaint?

Describe the facts/circumstances of your complaint in complete detail below. Please provide dates, name(s), and addresses of individuals involved.

| |
|--|
| |
|--|

***Additional information may be provided on a separate sheet of paper and attached to this form.



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Did you bring your circumstances to the attention of the auctioneer or corp., part., assoc. or limited liability corporation owner/manager? _____

If so, to whom? _____

When did you file complaint? _____

What was the response to your complaint? _____

Were there any witnesses that could support your side of the complaint? Yes No

If yes, please list name(s), address(es), and phone number(s)

Did you suffer any direct and actual losses as a result of your transaction with the aforementioned auctioneer? Yes No

If you did suffer actual or direct losses from your transaction with the licensed auctioneer please fill out **Exhibit 1 "Application for Recovery from the Auctioneer Recovery Fund"** and attach it to this form.

IMPORTANT: ENCLOSE COPIES OF RECEIPTS, CONTRACTS, ADS, SETTLEMENT SHEETS AND ANY OTHER WRITTEN DOCUMENTS RELEVANT TO THIS COMPLAINT.

Signature _____ Date _____

State of Ohio)

County of)

Sworn to me and in my presence this _____ day of _____, 20____.

 Notary Public

Commission Expires _____

Disclaimer: The Ohio Department of Agriculture is not obligated to investigate every complaint it receives, but will investigate complaints when if the facts alleged in the complaint appear to establish a violation of Chapter 4707 of the Ohio Revised Code and/or the administrative rules governing the activities/actions of auctioneers.



AUCTION RECOVERY FUND GUIDANCE DOCUMENT

The purpose of this document is to provide guidance to people who have suffered actual and direct losses associated with their dealings with an auctioneer on whether or not they are eligible to seek financial recovery from the Auction Recovery Fund (ARF) and how to file a claim for recovery.

What is the Auction Recovery Fund?

- The ARF is a fund where a member of the auctioneering public may seek recovery/compensation for actual and direct losses when a licensee violates Ohio auction law.
 - *Just because a member of the public believes that their sale of their personal or real property should have brought more money does not mean that a person is entitled to compensation from the ARF. There needs to be an actual and direct loss and a violation of the auctioneer law that only a licensee could perform.*

Who may make a claim to the ARF?

- A person who claims that he/she has been aggrieved/injured and suffered actual and direct losses by a licensee may make application from the Auction Recovery Fund (ARF).

How does a person who experienced an actual and direct loss from the activities of an auctioneer make a claim?

- Two ways to make claims:
 1. **Civil Court Process:** The injured person may file a lawsuit in court against an auctioneer where he/she obtain a judgment against a licensee; **or**
 2. **Administrative Route** – which involves filing a complaint and application with the ODA, and ODA either takes licensing action (a/k/a administrative action) or after an investigation charges the licensee criminally. (the complaint and ARF application forms are attached to this document)
- **1. Civil Court Process:** After an aggrieved person files suit in court against a licensee and obtains a judgment from that court, that person may file an application with the court of common pleas directing payment from the ARF. (Application attached to this document) **Note: In the hearing process it is required that the court find that the applicant to the ARF has incurred actual and direct losses from the actions of a licensee and the licensee has violated the auctioneer law.** If that is established the court should order ODA to pay the aggrieved person in an amount of the judgment that remains unpaid.
 - a. All claims of losses that involve Real Estate and Auction Law must be pursued by a court of competent jurisdiction.
 - b. *What information needs to be included in an application to ODA for payment after a court has issued an order?*
 1. Once an aggrieved person receives an order from the court he/she must make an application to ODA and provide the following information:
 - a. Nature of the act or transaction of the judgment;
 - b. The activities the applicant pursued to collect from the licensee;
 - c. Describe the actual and direct losses sustained and provide proof;
 - a. Attached the judgment entry issued from court

*** Claims involving real estate must be made in a court of competent jurisdiction for determination as to whether recovery should be from the real estate recovery fund or the auction recovery fund. Please see R.C. 4707.262.

- **2. Administrative Process:**

If an aggrieved person does not want to pursue a civil action he/she may file a complaint with ODA in accordance with R.C. 4707.16, and make application for recovery from the ARF. (Both documents are attached)



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a. **Steps of administrative process:**

1. If a complaint and application are filed ODA will review the information contained within the documents to determine if on the face of the documents that it appears the licensee violated the auctioneer law. If there appears to be a violation of the auctioneer law ODA will investigate the complaint.

Note: ODA is not obligated to investigate all claims, and if there is not enough evidence to establish that there may be a violation of the auctioneer law a complainant does not have a valid claim to the ARF.

2. If after investigation it is determined that there is a violation of auctioneer law ODA shall proceed to take administrative (action that affects a person's license) and/or criminal action.

3. If ODA proceeds to take administrative action, it must give the licensee an opportunity for a hearing.

a. Once the administrative proceedings are completed, and assuming there is a finding of a violation of the auctioneer laws, ODA is required to notify the complainant to give him/her the opportunity for a hearing to make a claim for recovery from the ARF.

b. At hearing, the complainant will have to establish actual and direct damages stemming from a violation of the auctioneer law.

c. The department can defend the fund against any claims.

d. If after hearing it is found that the auctioneer did not violate R.C. 4707, ODA will notify the complainant that they are not eligible to receive money from the fund.

4. If ODA files criminal charges then once those proceedings are complete and assuming that an auctioneer is found guilty, or pleads to a charge, a complainant will be notified that they can make a claim against the fund and afforded a hearing. The procedure described in the paragraph (3) applies.

*** How much may I recover from the ARF under either the administrative or court process?**

Assuming that the complainant has followed the above process, a complainant may be eligible to receive compensation from ARF in an amount up to \$50,000 or \$25,000 depending on the license status of the auctioneer. (R.C. 4707.11 and 4707.29)

However, if the actual and direct losses experience by more than one person exceed the limits of recovery ODA will make a pro rata distribution the claimants based upon the ratio of the respective claims bear to the aggregate of valid claims, or in another manner that the court or, if all the claims involve applications filed under the administrative route (R.C. 4707.26-4704.31) the director determines the equitable. (R.C. 4707.29)

*** If a person claims that they have incurred actual and direct losses from their dealings with a licensee in an amount of \$1,000.00 or less does a person have to through one of the two processes in order to be compensated?**

No. The Director of Agriculture may make payment out of the fund without a prior court order or a prior administrative order if all of the following apply:

1. There is evidence to establish that a claimant's actual and direct loss is in the amount of \$1,000 or less;
2. The losses are associated with an act or transaction only a licensee may perform;
3. The licensee has allegedly engaged in actions that are described in 4707.15 or that otherwise violates 4707 and the rules adopted under it;



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4. The amount of the alleged loss is readily ascertainable rather than speculative in nature.
5. The claimant filed a properly notarized complaint with ODA with the supporting documentation not longer than one year following the date of the alleged wrongful act of the licensee;
6. The department, within its discretion, determines that based on the evidence presented, justice will be better served by allowing compensation to be paid without first requiring the aggrieved party to obtain a court judgment or to obtain an administrative order of the department.

Are there persons that are not eligible or costs that are not recoverable from the ARF?

Yes, bonding companies, a person holding a license issued under the auctioneer law or real estate law, a person who obtained a final judgment that arose from an act or transaction that only a person licensed under the real estate law and that did not involve a violation of the auctioneer law.

Are there certain costs/damages that are not recoverable out of the ARF?

Yes, court costs, attorney fees, punitive damages and interest on a judgment are not recoverable from the ARF.

Where can I find the statutes/laws that address recovery from the ARF?

For complete information regarding the ARF please consult R.C. 4707.25-4707.31. Access to the Ohio Revised Code may be found on our webpage at www.ohioagriculture.gov.



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**APPLICATION FOR RECOVERY FROM THE
 AUCTIONEER RECOVERY FUND**

Please type or print the following:

Applicant Information

Name of Complainant: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone Number (daytime): _____

If represented by an attorney please provide ODA with his/her contact information.

Name of Attorney: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone Number (daytime): _____

Name and address of auctioneer that you are making a claim against:

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone Number (daytime): _____

Please provide a detailed explanation of the act or transaction, including important dates, that support your claim that a person licensed as an auctioneer by the Ohio Department of Agriculture through an act of commission or omission has violated the auctioneer law and caused you to incur damages.

(If there is not adequate space available please attach a document to this application and make reference to it in the area above.)



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Please describe the actual and direct losses you incurred as a result of act or transaction described in the above section of this application.

Please attach any and all documentation to support your claim for damages:

(If there is not adequate space available, please attach a document to this application and make reference to it in the area above.)

Please describe any actions that you have pursued to recoup any of the direct and actual losses you claim you have sustained, and attach any documentation to support any actions you have taken.

Please attach any other documents and/or provide us with any additional information that would assist the Ohio Department of Agriculture in determining whether or not there has been a violation of the Ohio Auctioneer Law, which resulted in an actual or direct loss to you.