

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
1511 PONTIAC AVENUE
BUILDINGS 68 AND 69
CRANSTON, RI 02920**

<u>IN THE MATTER OF:</u>	:	
	:	
STEVEN FUSCO, INDIVIDUALLY, AND ESTATES UNLIMITED, INC.,	:	DBR NO: 12AC109
	:	
<u>RESPONDENTS.</u>	:	

CONSENT ORDER

The Rhode Island Department of Business Regulation (the "Department") enters this Consent Order with regard to the above-referenced Respondents pursuant to R.I. Gen. Laws §§ 5-58-1 *et seq.* and 42-35-14. The Department has determined to resolve this matter, after instituting administrative proceedings, by entering this Order based on the findings of fact and conclusions of law set forth below.

I. FINDINGS OF FACT

1. On January 31, 2013, the Director of the Department issued an Order to Show Cause, Notice of Hearing, and Appointment of Hearing Officer to Respondent ("Order to Show Cause") requiring Respondent to appear at a prehearing conference on March 1, 2013 (which was rescheduled to February 28, 2013 by agreement of all of the parties) to show cause why his auctioneer license ("License") should not be suspended or revoked.
2. The grounds for the Order to Show Cause were allegations of statutory and regulatory violations in two complaints filed against Respondents as well as his

failure to respond to the Department's request that he provide a written response to one of the Complaints.

3. The information he has provided (verbally at the February 28, 2013 hearing) and in writing to the first complaint manifest statutory and regulatory violations
4. Based on: i) information obtained after the prehearing conference on February 28, 2013; ii) Respondents' admitted statutory and regulatory violations; iii) failure to respond to repeated requests from the Department for documents and a written response, it is the Department's position that Respondents are unable to conduct themselves in a compliant manner and may be jeopardizing the property and proceeds of its customers.
5. Specifically, the two complaints investigated in this matter demonstrate that Respondent Fusco's conduct poses a threat to public welfare because:
 - A. Respondent Fusco has failed to maintain and provide accurate inventories of the Complainants' property as required under Commercial Licensing Regulation 2 Section 6(a).
 - B. Respondents' records are not maintained (if at all) within a reasonable time in proximity to getting possession of items.
 - C. With respect to the two Complaints at issue, if Respondents sell items, Respondent Fusco does not make clear nor does he communicate with the complainants regarding the commission structure applicable to different types of auctions.

- D. Respondent Fusco is not maintaining his records of inventory and records of sales in a manner that allows him to provide clear and accurate information about the conduct of his business activities.
- E. Respondent Fusco has repeatedly failed to pay the Complainants within 30 days as required by Commercial Licensing Regulation 2 Section 6(a).
- F. Respondent Fusco did not timely inform customers that auctions will be held, have been held.
- G. Upon information and belief, Respondent Fusco has conducted auctions without notifying the Complainants in this matter, without informing them of the goods sold at auction, and without paying the Complainants for the sale of certain items in a timely manner.

II. CONCLUSIONS OF LAW

7. R.I. Gen. Laws § 5-58-1 requires that:

Each applicant shall be a person who has a good reputation for honesty, truthfulness, and fair dealing; good moral character, and is competent and financially qualified to conduct the business of an auctioneer or apprentice all of which may be considered by the director along with any other information the director deems appropriate in determining whether the granting of the application is in the public interest.

8. R.I. Gen. Laws § 5-58-8 states that:

The director of business regulation has the authority to promulgate rules and regulations which are reasonable, proper, and necessary to enforce the provisions of this chapter, to establish procedures for the preparation and processing of examinations, applications, licenses, and permits for the conduct of auction sales; to deny, suspend, or revoke licenses, or permits, to issue cease and desist

orders, to assess administrative penalties of up to one thousand dollars (\$1,000) and to establish procedures for renewals, appeals, hearings, and rulemaking proceedings.

9. Commercial Licensing Regulation 2, entitled *Auctioneers*, (and promulgated pursuant to R.I. Gen. Laws § 5-58-8) establishes the licensing duties and rules for licensed auctioneers and requires licensed auctioneers to, *inter alia*:
 - A. account for all proceeds received from auctions and sign and issue a closing statement to the owner or agent whose goods are sold (Section 6(a));
 - B. pay owners or consignors of goods sold at auction within thirty (30) days of the conduct or auction sale (Section 6(a));
 - C. maintain and preserve in good condition in a safe place for five (5) years complete and correct records and accounts pertaining to sales held at auction including, but not limited to, inventory of goods, records of sales, duplicate receipts and contracts for services rendered (Section 6(a));
 - D. keep an accurate record of inventory items sold at auction (Section 6(b));
10. Commercial Licensing Regulation 2, Section 9 provides that the Director may suspend or revoke the license of any auctioneer for:
 - A. violation or failure to comply with any of the provisions of Commercial Licensing Regulation 2 and or R.I. Gen. Laws § 5-58-1 *et seq.* (Section 9(a)(1));
 - B. failure, within a reasonable time as determined by the Director in his or her sole discretion, to account for or to pay over monies belonging to others which

have come into the Licensee's possession as a result of a sale transaction (Section 9(a)(2));

- C. failure to voluntarily furnish the Director at his or her request copies of all written instruments prepared by the Auctioneer (Section 9(a)(4));
- D. any conduct which demonstrates bad faith, dishonesty, incompetency or untruthfulness (Section 9(a)(5).

11. R.I. Gen. Laws § 42-35-14 (c) states that:

No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency sent notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly initiated and determined.

ORDER

Based upon the foregoing, the public welfare imperatively requires that Respondent's License be suspended pursuant to R.I. Gen. Laws § 42-35-14(c).

Accordingly, the parties hereby agree that, in lieu of a summary suspension, and because Respondent has indicated a willingness to correct all pending issues and consent to a voluntary suspension of all licensed activity it is hereby ORDERED that:

1. Respondents' License is hereby suspended except such activities necessary to return the inventories of past and existing customers and compensate existing or past

customers for period of time not to exceed thirty (30) days pursuant to R.I. Gen. Laws §§ 5-58-8 *et seq.* and 42-35-14(c) under the terms and conditions delineated below:

- A. Respondent shall cease and desist from any activity requiring licensure pursuant to R.I. Gen. Laws § 5-58-8 *et seq.* except such activities necessary to return the inventories of past and existing customers and compensate existing or past customers for a period of time not to exceed thirty (30) days.
- B. Prior to the entry of this Consent Order, Respondent shall maintain a bond for a period of three (3) years to cover any claims and/or complaints that may arise as the result of any past activity covered by the period of time he held a License.
- C. Respondent may, upon complying with all licensing requirements, submit an application to become an auctioneer pursuant to R.I. Gen. Laws § 5-58-8 *et seq.* any time after eighteen months. Respondent agrees that any future auctioneer licensed activity shall be under the supervision of a licensed Rhode Island Auctioneer in good-standing and approved by the Department but only for such period of time as is reasonably necessary to demonstrate that the Respondent is operating in full compliance with all applicable and regulatory provisions to the satisfaction of the Department. This term shall not be construed as a guaranty, promise, or other agreement that the Department agrees or consents to the issuance of any future license—any future license

application is subject to review and approval or denial for good cause at that time.

- D. Respondent shall be prohibited from working with and/or for any licensed auctioneer conducting auctions in Rhode Island other than as a customer. The purpose of this clause is to prevent Respondents from engaging in licensed activities through third party auctioneers and/or circumventing licensing requirements.
- E. Prior to the entry of this Consent Order, Respondent shall provide to the Department a written documentation detailing: (i) all current clients/customers/accounts with the clients/customers name, address, and contact information; (ii) all money due to current clients/customers/accounts; (iii) copies of inventory records for all items currently in Respondent's possession (including the location of the inventory and the name, address, and contact information of owner of the inventory);and, (iv) all scheduled and/or pending auctions.
- F. Respondent shall maintain all bank statements for all accounts related to Respondents' licensed activities for the past 3 years and shall make such records available to the Department to address any issue that warrants review.
- G. Respondent shall provide reports indicating the payments made and/or the disposition of all items during the winding down of his business activity as described in Paragraph 1 (A) herein.

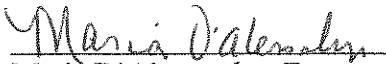
- H. Should the Department receive any complaints regarding Respondents, the Respondents to agree submit to the jurisdiction of the Department and to address any issues in the Complaints as deemed necessary and appropriate by the Department.
 - I. Respondents shall comply with this Order and/or as directed by the Department and Respondents shall comply with any and all reasonable requests, instructions, and directions made by the Department necessary to implement this Order.
 - J. Respondent shall provide the Department with full access to all of its books and records as needed to address any complaints and/or issues that may arise upon the suspension of the License and maintain all inventory and all other records and shall not destroy or alter any records without prior written approval from the Department.
2. Respondent shall compensate the two existing complainants in the full amount of all undisputed, unpaid sums owed to them and return their remaining items, at Respondents' expense, within 14 business days of the date of this Consent Order or the inspection referenced in the following paragraph, whichever is later, subject to the cooperation of the complainants in arranging for the receipt of such returned items.
 3. Respondent shall allow the existing 2 complainants, in the presence of his counsel and the Department, the opportunity to physically inspect his business premises to confirm their inventory and/or remove any items belonging to the complainants at a date to be reasonably agreed upon between the parties and not later than 30 days

from the date of this Consent Order. The parties will cooperate in arranging a mutually acceptable date should any scheduled date be continued or extended based on adverse weather conditions or other unforeseeable event.

4. The enforcement of this Order is not stayed or affected by the filing of any bankruptcy proceeding or other legal action intended to circumvent Respondent's obligations under this Order.
5. Respondent shall notify the Department of any bankruptcy or other legal proceeding within 7 business days of any such filing.
6. The Department's authority and jurisdiction remains in full force and effect in the event of any surrender or lapse of Respondents' License.
7. Should Respondents fail to comply with all statutory and regulatory requirements and/or the terms of this Order, the Department reserves its right to reinstate the administrative hearing process and/or take any action necessary to protect the public interest.


CONSENTED TO AS TO FORM AND SUBSTANCE BY:

THE DEPARTMENT:



Maria D'Alessandro, Esq.
Deputy Director
Commercial Licensing

 5/30/13
Neena Sinha Savage, Esq.
Chief of Legal Services


THE RESPONDENT:

 5/13/13
Steven Fusco

RESPONDENT'S COUNSEL

 5/30/13
Kevin Bowen, Esq.

RECOMMENDED BY:


Ellen R. Balasco, Esq.
Hearing Officer

ORDER

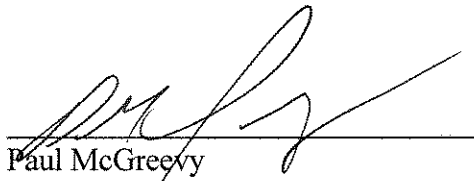
I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby

ADOPT
 REJECT
 MODIFY

the Recommendation.

Order No. 13-028

Dated as of the 31st day of May, 2013.


Paul McGreevy
Director

THE DIRECTOR RESERVES THE RIGHT TO PUBLISH A NOTICE OF THIS ORDER IN A
NEWSPAPER OF GENERAL CIRCULATION IN THE STATE OF RHODE ISLAND.

If you have any questions regarding the subject matter of this Order, please contact Neena Sinha Savage at (401) 462-9540 or NSSVG1@dbr.ri.gov and reference the case name and number.

All are welcome at the Rhode Island Department of Business Regulation ("DBR"). If any reasonable accommodation is needed to ensure equal access, service or participation, please contact DBR at 401-462-9551, RI Relay at 7-1-1, or email directorofficeinquiry@dbr.ri.gov at least three (3) business days prior to the meeting.

CERTIFICATION

I hereby certify that on this 31st day of May, 2013, I mailed, first class, postage prepaid and via certified mail, a copy of the within document to:

Stephen Fusco
Estates Unlimited, Inc.
63 Fourth Ave.
Cranston, RI 02910

Stephen Fusco
28 Edgewood Blvd.
Providence, RI 02905

Kevin Bowen, Esq.
LAW OFFICES OF KEVIN F. BOWEN
395 Smith Street
Providence, RI 02908

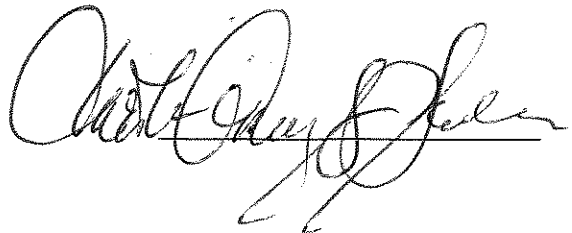
by email to:

Maria D'Alessandro, Esq.
Deputy Director, Commercial Licensing Division
Department of Business Regulation

Kimberly Precious
Implementation Aide
Department of Business Regulation

Neena Sinha Savage
Chief of Legal Services
Department of Business Regulation

Ellen Balasco, Esq.
Hearing Officer

A handwritten signature in black ink, appearing to read "Stephen Fusco", written over a horizontal line.