

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA



Public Service Commission,)	
)	
)	Case No. AU-21-411
vs.)	
)	
)	CONSENT AGREEMENT
Chad Stoltz)	
)	
)	
Respondent.)	

Preliminary Statement

This Consent Agreement is entered into by and between Chad Stoltz of Dickinson, North Dakota and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the "Parties") for resolution of Case No. AU-21-411. Mr. Stoltz is a licensed auctioneer through the Commission under License No. 39.

On August 2, 2021, Staff received an Auction Complaint from Adam Maershbecker of Hebron, North Dakota against G&G Auctioneers / Glass Auction Service (Glass Auction). Mr. Maershbecker states on July 31, 2021, he attended the Clinny Schirado Estate & Guests Auction (auction) conducted by Glass Auction and had the winning bid of \$5,250 on a '79 IH truck w/22' van box, 87K (vehicle), as identified on the auction sale bill. Mr. Maershbecker alleges the auctioneer, identified as Mr. Chad Stoltz, hit the gavel and announced "sold" on the vehicle and at no time disclosed the reserve was not met. As the auction proceeded, Ross Glass, auctioneer and auction clerk for Glass Auction,

approached Mr. Maershbecker and informed him his bid was not high enough to meet the reserve price of \$7,000. When Mr. Maershbecker went to settle his invoice, identified as buyer #87, he noted the vehicle was not on his invoice. Mr. Maershbecker also submitted a copy of a text conversation between himself and Chance Glass, confirming Mr. Stoltz stated "sold" on the vehicle in question.

On August 9, 2021, Staff forwarded Mr. Maershbecker's complaint to Glass Auction requesting a response no later than August 27, 2021.

On August 25, 2021, Staff received an email response from Glass Auction.

On August 27, 2021, Staff received a mailed copy of the August 25, 2021 email response from Glass Auction. In the response, Glass Auction states Mr. Stoltz sold the vehicle to bidding #87, identified as Mr. Maershbecker; however, the seller/owner, Lynn Kinnischtzke, waved "no sale." Mr. Stoltz continued with the auction. Mr. Glass went over to Mr. Kinnischtzke to discuss the amount needed for the vehicle. Mr. Glass then went to Mr. Maershbecker and informed him the seller needed \$7,000 and asked Mr. Maershbecker if he would pay that amount to which Mr. Maershbecker stated "No." Mr. Glass then stated to Mr. Maershbecker that it would be a "no sale" unless he would pay the \$7,000.

On September 2, 2021, Staff contacted Chance Glass to discuss the auction and text messages with Mr. Maershbecker. Mr. C. Glass stated he worked as a helper during the auction and recalled the auctioneer, Mr. Stoltz announcing "sold" on the vehicle but needed to check with the owner who indicated no sale. Additionally, Mr. C. Glass confirmed that the text message with Mr. Maershbecker was regarding the vehicle in question and that the auctioneer did say "sold."

Pursuant to N.D.C.C. § 03-05-01, "an auctioneer. . .has authority from the seller. . .to sell by public auction to the highest bidder. . .to deliver the thing sold upon payment of the price to the clerk of the auction."

Pursuant to N.D.C.C. § 41-02-45(2), "A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner." Furthermore, N.D.C.C. § 41-02-45(3) provides "In an auction with reserve the auctioneer may withdraw the goods at any time until the auctioneer announces completion of the sale."

Based upon the investigation, Mr. Stoltz, in his capacity as a licensed auctioneer, violated N.D.C.C. §§ 03-05-01 and 41-02-45.

Mr. Stoltz and Staff engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and that entry of this Consent Agreement is the most appropriate means of resolving this administrative action, Staff and Mr. Stoltz agree to the following, subject to the approval and acceptance of the Commission:

1. Mr. Stoltz violated N.D.C.C. § 41-02-45 by failing to withdraw the '79 IH truck w/22' prior to announcing completion of the sale. Additionally, Mr. Stoltz violated N.D.C.C. § 3-05-01 by failing to deliver vehicle sold to Mr. Maershbecker.
2. Mr. Stoltz agrees to be assessed a civil penalty of \$250, payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent Agreement.

3. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violations alleged in the case.
4. Mr. Stoltz consents to the filing of the Consent Agreement and an Order in this case and hereby waives any further procedural requirements with respect to the Order's issuance. Provided the Commission adopts this Consent Agreement and issues an Order consistent with it, Mr. Stoltz understands and agrees in this case to waive all rights to contest the violations, the right to be represented by counsel, the right to present evidence and arguments to the Commission, the right to cross-examine witnesses, or contest the validity of this Consent Agreement and Order Adopting this Consent Agreement, including all rights to administrative or judicial hearings or appeals.
5. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Agreement and Order.
6. This agreement may be executed in counterparts and duplicate copies, each which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.


Dated this 20th day of October, 2021

PUBLIC SERVICE COMMISSION
COMPLIANCE DIVISION

By: 

Konrad Crockford
Director, Compliance Division
North Dakota Public Service Commission
600 East Boulevard Avenue Dept. 408
Bismarck, ND 58505-0480
701-328-4097

Dated this 31 day of October, 2021

By: 

Chad Stoltz