

This article was first published in *Auctioneer* magazine, the official publication of the National Auctioneers Association. It is reproduced with the express, written permission of Mr. Proffitt.

A wakeup call

Shill bidding allegations act as reminder to stay on right side of the law



By Steve Proffitt

Two Auctioneers in New Hampshire were recently arrested on charges growing out of an auction. The trade press has been reporting the news that one Auctioneer was charged with misdemeanor counts of simple assault and imprisonment involving an auction consignor, while both were charged with misdemeanor counts of conspiracy and collusive bidding. The charges stem from an allegation that shill bidding was done by the Auctioneers to drive the bid price of a painting higher in a December 2009 auction. Both Auctioneers deny any wrongdoing.

Shill bidding and its evil brother, phantom bidding, are common occurrences in some auctions. Unfortunately, outside of my columns, I don't see much written about these vile practices. I wish they drew much closer scrutiny on a widespread basis

because that is the bright light needed to help stamp them out and end the damage they do.

So what is so special about these cases that they warrant the current level of reporting? Well, what elevates these matters for attention is that two Auctioneers have been arrested and charged with crimes tied to shill bidding alleged to have occurred in a consignment auction. You don't often see criminal charges coming out of such an event and that is what makes this pretty big news.

Shilling doesn't have to involve, or even be known to, the Auctioneers in charge. This is because Auctioneers who are as honest as Abe sometimes have shilling occur in their auctions. It happens when sellers secretly bring in friends, relatives, co-workers and you name the others to help bid their lots higher against legitimate bidders. Some Auctioneers are not so honest; however, and they engage in shill bidding themselves which makes the practice all the more sinister. Did that happen in New Hampshire? We don't know and will have

to wait to see what comes from these cases as they wind through the criminal justice system.

What about police involvement in this auction? It is too early to know whether the police will generally become more diligent in sniffing out illegal auction activity and charging the culprits with crimes. I see that as being unlikely. The police have limited resources to perform their duties and are more apt to do what they did here — become involved once a citizen's complaint of criminal conduct has been made.

Nevertheless, if these cases result in a conviction against one or both of these Auctioneers, the potential exists for two dynamics to arise that could bear in the future on shill and phantom bidding. These points bear consideration.

First, shill bidding encompasses several crimes, including fraud, conspiracy, and bid rigging. Depending upon the facts of a case, these crimes could be charged as a misdemeanor or a felony — as a state or a federal offense. The publicity from the New Hampshire cases could motivate aggrieved auction-goers (i.e., sellers, bidders, and buyers) to report suspected auction misconduct to law-enforcement agencies for investigation and action.

Second, a conviction could spur police and prosecutors elsewhere to become interested in auction-related matters that heretofore have not come before them. In that instance, if sufficient evidence were gathered to point to Auctioneer involvement, criminal charges could be filed and prosecuted against suspected wrongdoers.

Auctioneering is no longer the parochial activity that it largely was 60 years ago. Auction marketing has evolved into a sophisticated process that is now employed by skilled professionals to liquidate valuable property of every type. The old smoke-and-mirrors tricks, like shill and phantom bidding, were never lawful and should have never been tolerated. Today, there is no room for these crooked practices and Auctioneers and the industry alike should strongly denounce them and all other activities that would undercut the legitimacy of the auction markets. The auction profession can never be stronger than the public's perception of it and honest practices and ethical conduct are what the public requires in modern commerce.

A noteworthy point underlying the New Hampshire cases is that these charges might have been triggered not by shill bidding itself but, rather, by a related event. News reports state that the consignor had placed a painting with one of the Auctioneers to offer for sale by auction. The consignor attended the event and supposedly saw the Auctioneer declare the painting to be sold. Later, the consignor went to the auction house to seek payment of the net proceeds from the sale. The consignor claimed that the Auctioneer told him no sale had occurred and the highest bidder was the second Auctioneer who was described as "working for" the first.

At this point, an altercation allegedly occurred between the first Auctioneer and the consignor in which the consignor claims to have been assaulted and prevented from leaving the auction house. While it is speculation, it could be that, but for the alleged assault and imprisonment, the consignor would not have gone to the police and the conspiracy and collusive bidding charges would never have been brought.

An additional issue is that both Auctioneers have been hauled before the New Hampshire State Board of Auctioneers for the alleged "collusive bidding." This means the Auctioneers are not only facing criminal charges, but are also regulatory complaints involving their Auctioneer licenses. While I have seen no confirming report, it seems logical these complaints were also

filed by the consignor. Such events can be like dominoes. When one "falls" others can follow, as here where both the police and state regulators are involved.

The cases are set for trial in June. While the outcomes are yet unknown, the fact that criminal charges have been filed against two Auctioneers alleging collusive bidding should be a wakeup call for Auctioneers. These charges will require the Auctioneers to bear the time, expense, and anguish of defending themselves in a public court. Their fate hangs in the balance. The message to all Auctioneers is plain — stay on the right side of the law and give no one reason to accuse you of doing otherwise. Repercussions could be severe.

Steve Proffitt is general counsel of J. P. King Auction Company, Inc. (www.jpking.com). He is also an Auctioneer and instructor at Mendenhall School of Auctioneering in High Point, N.C., and Reppert School of Auctioneering in Auburn, Ind. He welcomes questions from readers about auctions and auctioneering. Readers' communications may be edited and revised. Proffitt will answer selected questions, but he cannot provide personal answers. His answers do not represent legal advice or the formation of an attorney-client relationship and readers should seek advice from their own attorneys on all matters. Please submit questions to sproffitt@jpking.com or c/o J. P. King Auction Company, Inc., 108 Fountain Avenue, Gadsden, AL 35901. □

Bonds & Insurance

Competitive Prices – Unbeatable Service

Introducing our newest Auctioneer Insurance Policy, starting at \$575.*

Includes:

- \$2,000,000 liability limit
- Free additional insured
- No audit
- Coverage for money on and off your premises
- Consignment for property of others

* Available in AL, AR, CT, DC, DE, FL, GA, IA, IL, IN, MA, MD, ME, MI, NC, ND, NH, MN, NE, NJ, NY, OH, PA, RI, SC, SD, TN, VA, VT and WI.

877-376-8676

Insurance

Extension 157, Greg or gmagnus@ermunro.com

Bonds

Extension 136, Amy or asmith@ermunro.com

Extension 128, Diane or dseitz@ermunro.com

Visit us at www.ermunro.com



We also offer Errors & Omissions Insurance and Bonds for Realtors, Auctioneers and Appraisers.

E.R. MUNRO COMPANY

Since 1885

Licensed in all 50 states

Member, National Auctioneers Association