

HERITAGE AUCTIONEERS ALBERTA LTD.

This Director's Order was issued under s. 157 of the *Fair Trading Act* in response to, in the opinion of the Director, contraventions of the Act. As mandated by s. 157.1 of the *Fair Trading Act*, this Director's Order is part of the public record.

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DIRECTOR'S ORDER UNDER SECTION 157 OF THE FAIR TRADING ACT

TO

HERITAGE AUCTIONEERS ALBERTA LTD.

AND TO

**ANY EMPLOYEE, REPRESENTATIVE, AGENT, OR ASSOCIATE OF
HERITAGE AUCTIONEERS ALBERTA LTD.**

Issues:

Heritage Auctioneers Alberta Ltd. has been licensed as an Auction Sales Business since March 31, 2005.

An inspection of the public auction records of Heritage Auctioneers Alberta Ltd. was conducted in January of 2007 by Mr. _____, CGA, Senior Compliance Officer, Compliance, Accountability & Risk Management, Service Alberta. The inspection was authorized by Section 145 of the *Fair Trading Act*.

A number of issues were identified during the inspection that are in contravention of the *Fair Trading Act* and/or the Public Auctions Regulation.

TRUST ACCOUNT

The auction sales business maintains its trust account with TD Canada Trust in Edmonton (Account #7750-5206711).

Heritage acknowledged they are using the trust account as their primary operating account and their accounting of transactions is not sufficient to properly reconcile deposits and withdrawals. Heritage indicated they had no understanding of a trust account or its purpose and were not aware of the application of the regulations surrounding its use.

Heritage indicated on-site that the inspection of their auction business has provided them an understanding of their responsibilities under the Legislation. They regret no course or information on how to properly meet the requirements of

the Fair Trading Act (the Act) and the Public Auctions Regulation (the Regulation) was available to them before they began operations. They have, however, acknowledged the valuable recommendations received on-site and have committed to improving compliance for sales after February 1, 2007.

TRUST RECORDS

The sales invoices reviewed did not consistently contain a description of the goods sold; only a lot number.

Heritage has consignors complete a blanket consignor sales agreement prior to auctioning their consigned goods. The agreement is not specific to any sale. An example of the sales agreement was provided on-site but no copies signed by any of the consignors were available.

The name and address of the consignor and address of the sales was not retained in the records in accordance with Section 21(2) of the Regulation.

Heritage indicated they send out a "Suppliers Report" as a statement to each consignor following each sale. The report does not clearly describe items sold or the amount received for each of the goods as required by Section 18 of the Regulation. The reports do indicate the amount owed to the consignors for each item. This amount is equivalent to the set reserve. Heritage receives commissions equal to the sales price less the set reserve price. No reconciliation of the commission calculation is retained in the records or indicated on the report.

Review of the trust account transactions indicates that Heritage has no clear accounting or record of reconciliation for the payment of consignors, the withdrawal of funds for GST payments or the payment of fees or commissions as required by Section 21(2) of the Regulation.

TRUST DEPOSITS

Payments made by Visa, MasterCard, and Debit were consistently deposited to the trust account within three days of receipt.

American Express payments for the March 12, 2006 sale totaling \$4,860 were not deposited to the trust account. Instead the proceeds were deposited to the general business account. It does not appear that these amounts were ever transferred to the trust. Heritage indicated that this was the first sale they used American Express and had mistakenly directed the proceeds to the general account rather than the trust. Payments from American Express are now consistently deposited to the trust within three days.

Deductions for service fees were made by the vendor for payments received by American Express (approximately 3.4% of gross).

One payment from the September 24, 2006 sale and one payment from the September 17, 2006 sale were not deposited to the trust account. Heritage indicated the payment for the September 24, 2006 sale was for a watch sold for \$44,274 that was subsequently returned January 8, 2007. They intend to return the money to the bidder within 60 days of its return. They acknowledge \$8,000 cash was received as payment but are unsure if the balance was received. No proceeds from the sale of the watch were deposited to trust or accounted for in the auction records.

A bidder payment of \$33,522.50 for the September 17, 2006 sale was not deposited in trust. Heritage indicated cash received in the amount of \$200 may have been used to pay staff on the day of the sale. The balance of \$33,322.50 paid by cheque may have been deposited in Jim Mirkalami's personal bank account. None of these proceeds were deposited to trust or accounted for in the auction records.

TRUST WITHDRAWALS

Review of the trust account indicates that Heritage has no clear accounting of the payment of consignors, the withdrawal of funds for GST payments or the payment of fees or commissions.

There are payments to their consignors from the trust account but the amounts do not correspond to the sale proceeds payable. Heritage indicated they may pay consignors in installments or lump sums and the payments may be for several sales or partial payment for one sale. It is difficult to determine if the correct proceeds were paid to the consignors or if they were paid 21 days following the sale. There is also no way to confirm the consignor statements are sent out within 21 days as there is no cover letter or copy of the actual statements sent in the auction records.

According to Heritage, commissions are retained in the trust for an undefined period of time following a sale and are only removed when required.

Copies of GST remittance statements received on-site confirm Heritage has been making quarterly GST payments, however it is difficult to confirm the sufficiency of these payments given the limited accounting records.

STATUTORY DECLARATION

Statutory declarations on goods having a market value of more than \$1,000 are not properly completed. Their version of a statutory declaration is a form

completed by Heritage that identifies the owner, lien holder, and lien amount.

They are not signed by the consignor or declared before a Commissioner for Oaths. These forms are not consistently completed or retained in the auction file.

BIDDING PRACTICE

During the on-site questions Heritage described their bidding practices. Heritage indicated that if an item has a reserve and the consignor will allow disclosure of the price, the auctioneer will indicate to the bidders there is a reserve and start the bidding at the reserve price. If the reserve is not met the auctioneer announces the item sold to 999, the auctioneer's bid number.

If the consignor instructs Heritage not to disclose the reserve, bidders are not informed. The auctioneer will open the bidding and artificially elevate the bids to the reserve price. If a real bidder has a bid on the item over the reserve price they purchase the item. If the reserve is not met the item is sold to 999, the auctioneer's bid number.

Heritage does not attempt to conceal the use of their practice to elevate the price of an item. The terms and conditions of sale contained in their auction catalogue and on the bidder registrations state:

"Many lots are offered subject to a reserve, which is the confidential minimum price acceptable to the consignor. We may implement such reserve by opening the bidding on behalf of the consignor and may bid up to the amount of the reserve, by placing successive or consecutive bids for a lot, or bids in response to other bidders. In instances where we have an interest in the lot other than our commission, we may bid up to the reserve to protect such interest, the consignor may pay us less than the standard commission rate where a lot is "bought-in" to protect its reserve."

ADVERTISING

Advertising for the September 24, 2006 and September 17, 2006 sales makes reference to "high value cargo seized by customs" and includes a seizure number. Heritage Auctions provided their rationale for making reference to customs seized merchandise in their advertisements. They indicated that prior to the year 2000:

Persian carpets from Iran were shipped to a US retailer. The retailer took possession, tagged and priced the carpets and displayed them in the shop for a sale. Upon completion of the sale, the retailer contacted the supplier's office in the US, Siamdoust and Sons, and indicated they no longer wished to sell the remaining carpets.

Siamdoust and Sons contacted Jim Mirkalami when he still had his previous auction business and asked if he could dispose of them at auction in Canada. The supplier shipped the carpets to Canada with an attached packing list and invoice. When the carpets went through customs they were held because the attached price tags did not match the value indicated in the invoice. Customs experts valued the carpets at about \$20,000 over the invoice price. Duties were calculated based on the expert's valuation. The supplier did not have the money to pay the duties so customs disposed of the carpets. The carpets were never received in Canada.

Siamdoust and Sons was at a financial loss due to the customs seizure and disposal of the carpets. They also own jewelry and asked 165678 Ontario Inc. to sell the jewelry to cover the customs loss. 165678 Ontario Inc. is a jewelry consignor for Heritage's sales. Because Heritage is selling the jewelry to cover the customs loss they felt it was acceptable to refer to the seizure in their advertisement for a jewelry sale.

Heritage was advised on-site that this representation is unacceptable and may be considered an unfair practice under Section 6 of the Act.

The advertisements for the September 24, 2006 and September 17, 2006 also make reference to "N.W.T EKATI MINE CANADA MARK CERTIFIED DIAMONDS". This representation was supported by documentation received on-site.

The advertisement for the January 14, 2007 sale makes reference to "CANADIAN GOVERNMENT CERTIFIED N.W.T. CANADIAN DIAMONDS" including an image of the Canadian flag.

The documentation provided to support this representation is a government certificate from the Government of the Northwest Territories, not a federal government department.

ORDER:

Heritage Auctioneers Alberta Ltd. or through any employee, representative, agent, or associate, must immediately:

- Ensure sales invoices provided to buyers fully describe the items sold.

- Complete consignor's contracts for each shipment of goods received from the consignors and that the contracts are retained in the records. These contracts should contain the name and address of the consignor.
- Ensure the date and addresses of each sale are maintained in the auction records in accordance with Section 21(2) of the Regulation.
- Ensure statements are sent to the consignor within 21 days following each sale. The statements should clearly describe the goods sold and the sale price and the amount payable to the consignor in accordance with Section 18 of the Regulation.
- Ensure all trust account transactions are clearly accounted for and recorded. These records must be retained in the auction file in accordance with Section 21 of the Regulation.
- Ensure all proceeds from each auction sale are deposited without deduction into the trust account within three days in accordance with Section 15(2) of the Regulation.
- Ensure all proceeds from each auction sale owed to consignors are paid from the trust in an amount exactly equal to the amount owing within 21 days after the sale in accordance with Section 17(1) of the Regulation.
- Ensure a proper accounting of commissions earned is completed and documented and the commissions are transferred from the trust to a general account after consignors have been paid in the exact amount owing in accordance with Section 17(3) of the Regulation.
- Ensure GST owing for each auction sale is transferred to the general account or a GST remittance account in the exact amount owing.
- Ask consignors to complete a statutory declaration for all items listed in the memorandum that accompanies shipments of consigned goods and retain them in the records to ensure compliance with Section 7 of the Regulation.
- Ensure future advertising makes a true representation of the goods offered for sale at auction in accordance with Section 6 of the Act.
- Ensure future advertising reflects that the certification is from the Government of the Northwest Territories not the Canadian Government.

NON COMPLIANCE WITH ORDER:

ANY PERSON WHO FAILS TO COMPLY WITH AN ORDER OF THE DIRECTOR UNDER SECTION 157 OF THE FAIR TRADING ACT CONTRAVENES THIS ACT AND IS GUILTY OF AN OFFENCE AND MAY BE PROSECUTED PURSUANT TO SECTION 163 OF THE FAIR TRADING ACT.



Scott Hood
Director of Fair Trading (as delegated)
May 24, 2007