

FEDERAL AUCTION SERVICE

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

FEDERAL AUCTION SERVICE

AND TO

ANY EMPLOYEE, REPRESENTATIVE, AGENT OR ASSOCIATE OF

FEDERAL AUCTION SERVICE

BACKGROUND AND ISSUES:

Federal Auction Service (Federal) has been licensed as an auction sales business since October 2002.

An inspection of the public auction records of Federal was conducted in February of 2008 by _____, Compliance and Accountability, Service Alberta. The inspection was authorized by Section 145 of the *Fair Trading Act*.

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

Trust Account

Federal maintains a trust account with CIBC in Calgary.

Review of the bank statement for the trust account finds that the account name listed on the statement is "FEDERAL AUCTION SERVICE INC".

The proper name identified in the current licence is "Federal Auction Service".

This same finding was identified in the 2003 inspection. After the previous inspection Federal indicated they would have the name on the account changed. It is clear the change did not occur.

Trust Records

Review of the consignor statements finds that the statements do not detail, for the consignor, the gross amount received for the goods sold in accordance with Section 18 of the Regulation. The statements only indicate the amounts owed to the consignors for each item. The amount owed is equivalent to an established reserve. Sales amounts that exceed the set reserve price are retained by Federal for a commission. The statements only indicate the set reserve amount; not the total amount received for the item or the amount Federal has earned as commission.

Trust Deposits

Review of the trust deposits finds that all auction sale payments are originally deposited to Federal's general account through debit and credit card machines. Generally the gross sale proceeds are then deposited to the trust account within three days of receipt.

Review of the deposits for one sale found that lump sum transfers were made to the trust. The transfers, made more than three days after receipt, were for less than the total gross sale proceeds. There was no clear accounting of the amounts deposited to the trust for this sale. Federal indicated that the amounts deposited were meant to cover the amounts owing to consignors. Amounts for commissions, fees, and GST were retained in the operating account.

A similar finding was identified during the 2003 inspection. This inspection finds some improvement; however, it is evident Federal still fails to consistently ensure proper deposit of trust monies in accordance with Section 15(2) of the Regulation.

Trust Withdrawals

The review of withdrawals from the trust account found that cheques are generally issued for consignors in a timely fashion. For one sale, a consignor was not paid within 21 days following the auction.

The review found there is no clear accounting of the withdrawal of commissions, fees, or GST from the trust account. According to Federal, monies for commissions, fees and GST are retained in the trust for an undefined period of time following a sale and are only removed when required.

Review of the bank statements identified that bank fees are withdrawn from the trust account.

Statutory Declaration

The review found that Federal does not maintain statutory declarations on goods having a market value of more than \$1,000 for each sale in accordance with Section 7 of the Regulation.

Federal indicated on-site that goods are received from consignors in bulk shipments with a memorandum detailing the item and the reserve price. Goods received are not sold at any one particular sale. They may be auctioned at several sales spanning several months.

They have a general consignor agreement that contains a statement that the items consigned are free of any claims or dispute, however, this agreement is not specific to any particular items nor has it been properly witnessed by a Commissioner for Oaths.

The same finding was identified in the 2003 inspection. There has been no improvement in this area.

ORDER

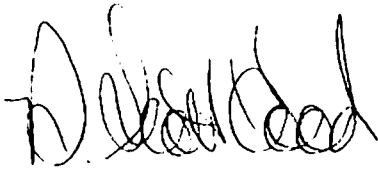
Federal Auction Service or through any employee, representative, agent, or associate, must immediately:

- Ensure their bank changes the name of their trust account to Federal Auction Service.
- Ensure the consignor statements indicate the sale price and the amount payable to the consignor in accordance with Section 18 of the Regulation.
- Ensure all gross 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 owed to consignors from each auction sale 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.

- Inquire with the CIBC if bank fees can be taken from the general account or retain a minimum balance in the trust sufficient to cover bank fees.
- Ensure statutory declarations for items valued at over \$1000 are properly completed and retained in the records in accordance with Section 7 of the Regulation. The statutory declaration must be properly witnessed by a Commissioner for Oaths.

NON COMPLAINT 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*.**

A handwritten signature in black ink, appearing to read "Scott Hood". The signature is written in a cursive, somewhat stylized font.

Scott Hood
Director of Fair Trading (as delegated)
April 17, 2008