

## GOING ONCE, GOING TWICE, SOLD AND ARRESTED

By Judith I. Johannsen

Under Connecticut's real estate licensing law, a person who acts as a real estate salesperson or broker must be licensed and any person who engages in the real estate business as a salesperson or broker without a license can be fined up to one thousand dollars or imprisoned not more than six months or both. However, certain business entity circumstances and persons who act as executors, administrators or other fiduciaries are exempt from the licensing requirement.

This licensing law was tested recently by an auctioneer ("Mr. C") who had been hired by an estate's attorney to auction off a residential property. The attorney offered to pay Mr. C a commission of six per cent of the purchase price, and when the property sold for \$950,000 the attorney paid Mr. C \$57,000.

Mr. C was then arrested for violating the real estate licensing law, specifically, that he had acted as a real estate broker without having a license. After his arrest, Mr. C filed a motion to dismiss the charges against him claiming the statute did not apply to him.

The case posed two basic questions. First, by conducting an auction, did the auctioneer engage in the real estate business, and secondly, if he engaged in the real estate business, did he violate the law because he did not have a real estate salesperson's or broker's license?

The definition of engaging in the real estate business is, in part, any person who is employed by or acts on behalf of another and, for a fee, commission or other valuable consideration lists, sells, rents or exchanges real estate, or attempts to negotiate a sale, exchange, purchase or rental of an interest in real estate.

Mr. C admitted he did not have a real estate salesperson's or broker's license to engage in the real estate business, but he believed he didn't need one because he hadn't listed the property and hadn't negotiated terms and conditions of purchase and sale agreements, he just accepted bids. So, how exactly had he acted as a real estate broker engaging in the real estate business?

The state's reasoning was that Mr. C had engaged in the real estate business because he did more than just accept bids – he had brought the attention of buyers to the property by advertising the property auction on his website, he had installed a sign on the property with his name, the sale date and the telephone numbers, he had answered buyers' questions and he had showed the property to at least one prospect.

Mr. C then claimed that even *if* the licensing statute applied to him, it was so vague that he did not have notice as to what he must do or what he could not legally do. He maintained that an individual has a right to know what is legally prohibited and/or what is required, and if one has to guess at what a statute means, then that person's constitutional due process rights are violated.

The state agreed that when a reasonably intelligent person reads a statute, he or she should be able to understand what actions are prohibited or required. In this case, the state argued that the statute was clear - Mr. C needed to be licensed to list a property on his website, to install a sign on a property, to answer questions about a property and to show a property because that was engaging in the real estate business. The state further contended that Mr. C was aware he was about to engage in the real estate business because the CT Association of Realtors®' General Counsel sent him a letter warning him that if he were to conduct the auction, he would be in violation of the real estate licensing law.

The court determined that if the meaning of a statute can be readily determined then that statute could not be void because of vagueness. Therefore, the court held that the licensing statute was not unconstitutionally vague, that Mr. C had notice of what he could and could not do, and that he had knowingly and unlawfully engaged in the real estate business without a license.

Mr. C's final argument was that he was exempt from the licensing requirements because the statute's provisions do not apply to a fiduciary or a person selling real estate as a regular salaried employee. He claimed that when he accepted bids at the auction, he was acting merely as the agent for the estate's lawyer.

The state asserted there was no proof that the relationship between Mr. C and the estate's attorney was that of a fiduciary or agent. In fact, the attorney had hired Mr. C to conduct an auction, and since the attorney had employed him on a commission basis, Mr. C could not claim to be a "regular salaried employee" under the estate's executor exemption.

Based on the auctioneer's efforts to sell this property, the court denied Mr. C's motion to dismiss the charges against him, holding that the auctioneer violated CT real estate licensing law when he did more than receive bids for real property at auction.

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