



Comments Received by the Department of Consumer Affairs

on

Amendment of Rules Governing Auctioneers and Auction Houses

as made available for public inspection

IMPORTANT: The information in this document is made available solely to inform the public about comments submitted to the agency during a rulemaking proceeding and is not intended to be used for any other purpose

June 3, 2019

VIA EMAIL

Mr. Casey Adams
Director of City Legislative Affairs
NYC Department of Consumer Affairs
42 Broadway, 8th Fl.
New York, NY 10004

Re: *Proposed Amendment of Section 2-122 of Subchapter M of Chapter 2 of the Title 6 of the Rules of the City of New York*

Dear Mr. Adams:

On behalf of Christie's Inc., we submit this comment to the Proposed Amendment of Section 2-122 of Subchapter M of Chapter 2 of Title 6 of the Rules of the City of New York. The Department currently seeks to revise Section 2-122 of Subchapter M of Chapter 2 of Title 6 of the Rules of the City of New York by adding a subsection (m) that would read as follows:

"In the case of error or dispute related to bidding, the auctioneer must notify the successful bidder no later than by the end of the seventh calendar day following the date of the auction if the auctioneer opts to cancel the sale of the lot or reoffer and resell the lot. If the auctioneer does not notify the successful bidder by the end of the seventh calendar day following the date of the auction, the auctioneer shall be prohibited from canceling the sale of the lot, or reoffering and reselling the lot, as a result of any bidding error or dispute."

We propose that the Section read as follows (with the modifications being underlined):

"In the case of error or dispute related to bidding arising from a claim submitted to the auctioneer by a bidder registered to bid in the auction, the auctioneer must notify the successful bidder no later than by the end of the seventh calendar day following the date of the action if the auctioneer opts to cancel the sale of the lot or reoffer and resell the lot. If the auctioneer does not notify the successful bidder of its decision by the end of the seventh calendar day following the date of the auction, the auctioneer shall be prohibited from canceling the sale of the lot, or reoffering and reselling the lot, as a result of any bidding error or bidding dispute, unless otherwise required by law, court order or with the written consent of the successful bidder."

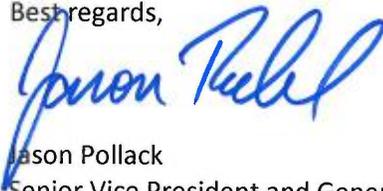
We suggest these changes to the proposed rules for the following reasons:

- We believe there must be some definition to what constitutes an "error or dispute related to bidding" and, as a result, we have inserted that it must result from a claim from a registered bidder.

- We want to clarify that the proposed amendment deals only with errors or dispute involving *bidding*. Several types of disputes may arise in an auction context and many cannot be resolved in a seven-day time frame. As a result, we seek clarity that these issues only relate to bidding disputes, rather than disputes relating to authenticity and other similar matters.
- The final addition seeks to ensure that if an auction house is required by a law or court order to cancel a sale or if the successful bidder consents, it can do so without violating this regulation.

We are happy to address any questions or concerns regarding this proposed rule change.

Best regards,



Jason Pollack
Senior Vice President and General Counsel, Americas



June 3, 2019

Mr. Casey Adams
Director of City Legislative Affairs
New York City Department
of Consumer Affairs
42 Broadway, 8th Floor
New York, NY 10004

Re: Comments To DCA Proposed Rules Relating to Auctions & Auction Houses

Dear Mr. Adams,

We write to express the comments of Sotheby's to the Department of Consumer Affairs ("DCA" or "Department") proposal to add new rules relating to auctioneers and auction houses to subchapter M of chapter 2 of title 6 of the Rules of the City of New York.

Sotheby's, headquartered in New York City, has been uniting collectors with world-class works of art since 1744. As successor to a business that began in 1744, Sotheby's is the oldest company listed on the New York Stock Exchange ("NYSE") (symbol: BID) and is the only publicly traded auction house in the art market. Sotheby's accepts works of art on consignment and matches sellers with buyers through the auction or private sale process. Sotheby's and our New York auctioneers hold licenses pursuant to DCA rules and regulations.

Sotheby's has no comments to DCA's first proposal, which is to add a new rule to clarify that auction houses must receive an auction house license to engage in the business of auctioneering.

Sotheby's would, however, like to provide the following comments to DCA's second proposal to add a new rule to require that auctioneers must notify a winning bidder within seven days of the auction if the auctioneer opts to cancel the sale of the lot or reoffer and resell the lot. As DCA notes in the Notice of Public Hearing, many auctioneers and auction houses reserve significant discretion under their own auction terms and conditions to cancel sales at any time because of potential errors or disputes related to bidding. DCA suggests that "such cancelations create significant confusion for buyers." The Notice further states, "To prevent abuse and ensure finality with respect to auction sales, the proposed rule establishes a deadline by which an auctioneer or auction house must identify an error or dispute and notify the successful buyer of their decision to cancel the sale or reoffer and resell the lot."

Sotheby's

We assume, based on the description contained in the Notice of Hearing, that DCA's intent is to put a 7-calendar day deadline on cancellations arising strictly out of **bidding** errors, and that it is not DCA's intent to impose a 7-day deadline on cancellations arising out of any other types of disputes. Accordingly, we recommend that the proposed language of the new rule be drafted with more precision in order to avoid any confusion or ambiguity. The language we would propose is as follows (redlined to show changes from DCA's proposal):

§ 2. Subchapter M of Chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 2-122 Requirements and Obligations of Licensees.

(m) In the case of **bidding** error or dispute related **solely to the recognition of bids on a lot by a registered bidder in the auction sale for that lot**, the auctioneer must notify the successful bidder **either verbally or in writing**, no later than by the end of the seventh calendar day following the date of the auction, if the auctioneer opts to cancel the sale of the lot or reoffer and resell the lot. **The auctioneer's decision to cancel the sale will be final, provided that, if the auctioneer does not notify the successful bidder of intent to cancel the sale of the lot** by the end of the seventh calendar day following the date of the auction, the auctioneer shall be prohibited from canceling the sale of the lot, or reoffering and reselling the lot, **unless otherwise required by law, court order, or with consent of the buyer.**

(n) An auction house must use only licensed auctioneers to conduct auctions.

The changes proposed would:

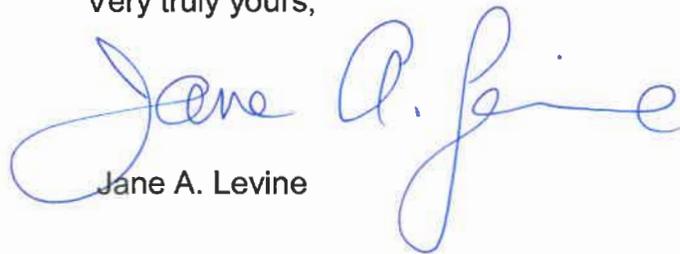
- clarify that the scope of the rule applies only to disputes raised by registered bidders relating to their bidding activity on the lot in question;
- clarify the form of notice required;
- clarify that this rule would not interfere with other legal obligations on the part of the auctioneer or auction house; and
- allow flexibility for parties to reach their own agreement by consent to allow cancellation at a later date.

Sotheby's

We believe the above language fully captures DCA's intent while clarifying the scope of the rule to avoid problems with vagueness and ambiguity going forward. We urge DCA to adopt the language contained herein. If we have misunderstood the intent of DCA's proposal, we then urge DCA to delay enactment of this rule in order to engage in further discussion with industry participants to understand the issue and how best to address it.

Thank you for accepting our comments.

Very truly yours,

A handwritten signature in blue ink that reads "Jane A. Levine". The signature is fluid and cursive, with the first name "Jane" being the most prominent.

Jane A. Levine