



Department of
Consumer Affairs

Jonathan Mintz
Commissioner

[REDACTED]
Staff Attorney

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April 24, 2013

BY EMAIL

[REDACTED]
[REDACTED]
RE: Auction House and Collateral Loan Broker License

Dear [REDACTED]

This is in response to your inquiry in which you asked whether an auction house that advances money to an artist before the auction of the artist's work must be licensed as a Collateral Loan Broker by the Department of Consumer Affairs (DCA). The answer is no.

The laws relevant to auction houses and collateral loan brokers do not specifically require a licensed auction house to also be licensed as a collateral loan broker where an auction house advances money or makes a loan to consignors. Further, the requirements relevant to collateral loan brokers do not make sense in the context of a loan made by an auction house to a consignor. For instance, New York General Business Law (GBL) Section 46 permits a "rate of interest [of] four per centum per month." Additionally, GBL Section 48 prohibits the sale of a pawned or pledged item "until the same shall have remained four months in [the collateral loan broker's] possession." Thus, when a collateral loan broker lends money to a person who pawns or pledges an item, the expectation is that the loan will be repaid with interest and the pledged item returned upon payment of the loan.

In contrast, as you have described it, when an auction house advances money or makes a loan to a consignor, the expectation for the consignor and the auction house is that the auction house will be compensated for its services from the sale of the item once auctioned. This commercial transaction is distinguishable from the type of loan agreement arranged by collateral loan brokers as there is no expectation between the auction house and consignor that the money or loan advanced will be repaid with interest and the item returned. Additionally, it would be impractical to require auction houses to wait four months before selling an item, as the GBL requires of collateral loan brokers.

Note, however, that to protect consumers and consignors, Title 6 of the Rules of the City of New York Section 2-122(h) requires that "[i]f an auctioneer makes



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loans or advances money to consignors or prospective purchasers, this fact must be conspicuously disclosed in the auctioneer's catalogue or printed material."

Thank you for your inquiry.

Sincerely,

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A smaller black rectangular redaction box covering the name of the sender.

Staff Attorney

Handwritten initials, possibly "TJ", written in blue ink next to the redacted name.