



Lorelei Salas
Commissioner

September 9, 2016

BY EMAIL

[REDACTED]

42 Broadway
9th Floor
New York, NY 10004

nyc.gov/consumers

RE: Question Regarding Auction Prices

Dear [REDACTED],

The New York City Department of Consumer Affairs (“DCA”) writes in response to your inquiry regarding whether the sale price disclosed by an auctioneer pursuant to Section 2-125(a) of Title 6 of the Rules of the City of New York (the “Rules”) must account for any payment(s) made by the auctioneer in connection with an irrevocable bid placed on an auctioned item. As explained below, if the individual who placed the irrevocable bid with the auctioneer wins the auction and is also entitled to a fixed fee or other compensation from the auctioneer as consideration for placing such bid, the lot selling price must be reported net any compensation paid to the irrevocable bidder.

DCA’s laws and rules governing auctioneers are intended to establish a fair and transparent auction environment for auctioneers, auction participants and the general public, thereby bolstering and protecting the integrity of the auction process. To this end, DCA regulates, among other things, the terms of the contracts that an auctioneer must provide to a consignor; reserve pricing; the conduct permitted at an auction; and the records that a licensed auctioneer must maintain. As pertinent here, Section 2-125(a) of the Rules requires that an auctioneer keep “a written record of all details of each sale, including . . . description and selling price of each lot.”

It is our understanding that an irrevocable bid, or third-party guarantee, as it is sometimes referred to, works as follows. When an item is offered for auction, the auctioneer may guarantee that the item will be sold for a minimum amount. To reduce the financial risk associated with such guarantee, an auctioneer may solicit an undisclosed third-party to place an irrevocable bid on the auctioned item. By placing the irrevocable bid with the auctioneer, the bidder agrees to buy the product if no higher bid is made at the live auction. In return for such bid, which is not disclosed to the public, the bidder receives compensation from the auctioneer, generally in the form of a flat fee or a percentage of any proceeds above the bid or guarantee amount.



Based on our understanding of an irrevocable bid, if the party that places the bid with the auctioneer wins the auction, he or she must pay the hammer price, plus the auctioneer's buyer premium, minus any amount owed to that party in connection with the placing of the irrevocable bid. Because the fee paid to an irrevocable bidder works effectively as a discount on the bid, it must be disclosed as part of the selling price of the item if the irrevocable bidder prevails at the auction. In that way, it is no different than the buyer's premium, the additional amount paid by any buyer to the auctioneer above the hammer price for each sale. Although theoretically separate from the hammer price, the buyer's premium is disclosed because it is effectively part of the total amount paid by the winning bidder.

Disclosure of the selling price paid by an irrevocable bidder to an auctioneer net any compensation reflects the true price paid by the bidder and promotes greater transparency in the auction process.

Thank you for your inquiry.

