

NEW HAMPSHIRE ISSUES ON REGULATION OF INTERNET AUCTIONS

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The Live Free or Die State is particularly sensitive to issues of anticompetitive regulation of businesses, whether the commerce is conducted out of brick and mortar facilities or via cyberspace. The New Hampshire State Constitution provides, in part, that: "Free and fair competition in the trades and industries is an inherent and essential right of the people and should be protected against all monopolies and conspiracies which tend to hinder or destroy it." Thus, regulation of any industry in our state has to be demonstrably necessary to protect the public interest.

Eyebrows are beginning to be raised, however, over the growing instances of consumer fraud in the Internet auction industry. In New Hampshire, with a population of only 1.2 million, complaints alleging unethical Internet auction practices have increased from a handful a year several years ago to over twenty per month this year. These complaints generally allege either that the product was never delivered or that the quality or characteristics of the product were not as represented. Most of the complaints involve New Hampshire consumers who were aggrieved by sellers residing outside the state. A substantial number of the complaints, however, allege misconduct by sellers who reside in New Hampshire.

Resource limitations, along with the relative complexity and expense of Internet related investigations, have precluded active pursuit of most of the complaints. The Attorney General's Consumer Protection Bureau looks for repeat offenders or patterns that can be grouped for investigation. These are either pursued under the state's consumer protection act or, in at least two cases, referred to criminal prosecution. The Consumer Protection Bureau also reviews auction web sites for misleading or otherwise actionable content.

Often, it is not discernible from the complaint or the web page, whether the respondent is selling her or his own property or the property of other persons. The New Hampshire Auctioneers' Board has taken action against at least two persons residing within the State who used auction web sites to sell the property of others. As a result, those persons have sought and received licensure from the Board.

The Auctioneer's Board first became interested in regulating internet auctions in 1999 when various licensed auctioneers in the state complained against E-Bay operating in the state without a license. In early 2000, the Board met with representatives of E-Bay to discuss their business practices and, based on the information provided at that time, concluded that E-Bay did not meet the state's

definition of auctioneer. At that time there was insufficient evidence of public need for regulation to justify proceeding with additional legislation to restrict Internet auctions in New Hampshire. In the meantime, those few internet auctioneers based in New Hampshire that have come to the attention of the Board have become licensed.

Although new legislation is not currently being considered in New Hampshire, regulators are discussing how best to address the cascading consumer protection issues, whether it be through licensing, registration or more vigorous civil and criminal legislation and enforcement. Some of these discussions include how to best protect New Hampshire consumers from the unethical practices of out-of-state as well as in-state auctioneers and how best to allocate limited resources to such a gargantuan task. The same professional misconduct concerns that justify licensure of brick and mortar auctioneers are becoming more evident in the electronic auction house. So far, it appears that Federal enforcement efforts are not substantially filling the gap and that the Internet auction sites consumer information services are not fully effective at providing reasonable levels of consumer protection. Consumer fraud is itself detrimental to “free” trade. Thus, it could be that some additional state restrictions on free commerce may become necessary to ensure that e-commerce is effected fairly and honestly, to everyone’s benefit.