



## Ohio Revised Code

### Section 4707.26 Initiating claim against recovery fund.

Effective: September 12, 2008

Legislation: House Bill 48 - 127th General Assembly

---

(A)(1) A person who asserts that the person has been aggrieved by the actions of a person licensed under this chapter that resulted in actual and direct losses to the aggrieved person may initiate a claim against the auction recovery fund either under this section or section 4707.261 of the Revised Code. If an aggrieved person who wishes to seek recovery from the auction recovery fund has obtained a final judgment in a court of competent jurisdiction against the licensee, the aggrieved person shall initiate the claim in accordance with section 4707.261 of the Revised Code. If an aggrieved person who wishes to seek recovery from the auction recovery fund has not obtained a final judgment in a court of competent jurisdiction against the licensee, the aggrieved person shall initiate the claim in accordance with this section.

(2) An aggrieved person may initiate a claim against the auction recovery fund under this section if all of the following apply:

(a) The loss was associated with an act or transaction that only a person licensed under this chapter lawfully may perform.

(b) The licensee's actions are described in section 4707.15 of the Revised Code or otherwise violate this chapter or rules adopted under it.

(c) The licensee is not an auction firm.

(d) The loss was not associated with an auction conducted under division (B)(5)(b) of section 4707.02 of the Revised Code.

To initiate a claim against the fund, an aggrieved person shall file a verified complaint with the department of agriculture in accordance with section 4707.16 of the Revised Code. The verified complaint shall include an application to the department that requests recovery of the applicant's actual and direct losses and that is made on forms that the department provides. The application for



recovery shall specify the nature of the act or transaction on which the applicant's claim is based, the actual and direct losses sustained by the applicant, and any activities that the applicant has pursued as a remedy for the losses.

(B) Upon receipt of a verified complaint and application, the department shall conduct an investigation in accordance with section 4707.16 of the Revised Code. After the investigation, if the department determines that the licensee has engaged in conduct described in section 4707.15 of the Revised Code or otherwise has violated this chapter or rules adopted under it, the department shall propose to take action to suspend or revoke the licensee's license under section 4707.15 of the Revised Code or to initiate a criminal action against the licensee under section 4707.99 of the Revised Code, or both. The department shall issue a letter to the applicant indicating the department's proposed action and the date of any hearing that the department has scheduled regarding the matter.

(C) Upon exhaustion of administrative remedies or criminal proceedings that results in a finding that the licensee has engaged in conduct described in section 4707.15 of the Revised Code or otherwise has violated this chapter or rules adopted under it, the department shall issue a notice in accordance with Chapter 119. of the Revised Code via certified mail to the applicant indicating that the applicant may request a hearing for relief from the auction recovery fund. An applicant who seeks recovery from the fund of any actual and direct losses suffered as a result of a licensee's conduct shall submit, not later than thirty days following receipt of the notice, a request for a hearing to the department.

Upon the timely receipt of a request for a hearing, the department shall provide the applicant with the opportunity to appear at an adjudication hearing to offer proof and evidence of the actual and direct losses. Whenever possible, the department shall require all applicants whose claims to the fund arose from an underlying transaction involving the same licensee to be joined in one adjudication under this section so that the rights of all applicants may be equitably adjudicated and settled. On behalf of the fund, the department may defend claims against the fund and shall have recourse to all appropriate means of defense and review, including examination of witnesses, and verification of actual losses.

(D) Upon the conclusion of the adjudication hearing, the hearing officer shall issue a report and recommendation in favor of making payment to an applicant from the fund if, during the course of



the adjudication hearing, all of the following have been shown:

- (1) The licensee has engaged in conduct described in section 4707.15 of the Revised Code or otherwise has violated this chapter or rules adopted under it.
- (2) The licensee's conduct or violation is associated with an act that only a person licensed under this chapter lawfully may perform and the act resulted in direct and actual losses to the applicant.
- (3) The applicant filed a verified complaint and application with the department as required by this section.
- (4) The applicant is not the spouse of the licensee or the personal representative of the licensee's spouse.
- (5) If the licensee either provided an irrevocable letter of credit or gave bond in accordance with section 4707.11 of the Revised Code, the applicant first sought recovery under the irrevocable letter of credit or bond before applying for payment from the fund.

The amount of any payment from the fund to the applicant shall consist of an amount that is equal to the portion of the actual and direct losses incurred by the applicant that remain unpaid. The amount of the payment is subject to the dollar limitation established in section 4707.29 of the Revised Code.

If the hearing officer determines that not all of the items described in divisions (D)(1) to (5) of this section have been shown during the course of the adjudication hearing, the hearing officer shall issue a report and recommendation against making payment from the fund to the applicant.

(E) Pursuant to section 119.09 of the Revised Code, a hearing officer or the hearing officer's representative shall forward by certified mail a copy of the hearing officer's written report and recommendation to the applicant or the applicant's attorney or other representative not later than five days after the date on which the report and recommendation are filed.

Not later than ten days after receiving such a copy, the applicant may file with the department written objections to the report and recommendation. The department may grant extensions of time



to the applicant within which to file objections.

The objections shall be considered by the department before it approves, modifies, or disapproves the recommendation. The department may order additional testimony to be taken or permit the introduction of further documentary evidence.

The recommendation of the hearing officer may be approved, modified, or disapproved by order of the director of agriculture. The order shall not be issued until more than ten days have elapsed following the applicant's receipt of the report and recommendation as provided by this section. The director's approval, modification, or disapproval of the hearing officer's recommendation shall have the same effect as if the hearing had been conducted by the director.

No recommendation shall be final until approved, modified, or disapproved by the director as indicated by the order entered on the record of proceedings of the department. If the director modifies or disapproves the recommendations of the hearing officer, the director shall include in the record of the proceedings the reasons for the modification or disapproval.

After an order is entered on its journal, the department shall make payment, if applicable, to the applicant from the auction recovery fund in accordance with the order and shall provide to the applicant by certified mail, return receipt requested, a copy of the order and a statement of the time and method by which an appeal may be perfected. In addition, the department shall mail a copy of the order to the attorney or other representative of the applicant.

(F) An order of the director issued under this section constitutes a final determination of the director for purposes of appeal. An applicant who is denied compensation from the auction recovery fund or who receives an award less than the award requested may appeal the order of the director. Notices of appeal shall be filed in the manner provided in section 119.12 of the Revised Code.