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March 24, 2014

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Clerk of Court

Via Facsimile No. 225/389-3392

19th JDC, Parish of East Baton Rouge
P.O. Box 1991
Baton Rouge, LA 70821

ATTN: CIVIL SUITS DEPARTMENT

RE: *Robert Burns vs. LA Auctioneer's Licensing Board, et al*
Docket No.: 616,916, Section 25, 19th Judicial District Court
My File No.: 1107-0002

Dear Sir/Madam:

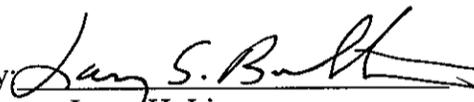
Attached for fax filing is a *Pre-trial Order* in the above-referenced matter. Please return a receipt by return facsimile to our office.

Please note that defendant, Louisiana Auctioneer's Licensing Board, is exempt from filing fees pursuant to La. R.S. 13:4521.

Thank you for your attention to this matter and should you should have any questions or comments, please do not hesitate to contact me.

Sincerely,

BANKSTON & ASSOCIATES, L.L.C.

By 
Jenna H. Linn

Enclosure: Exception of No Cause of Action
cc: Honorable Wilson Fields
Robert Burns (*via email only*)

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19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DOCKET NO.616916

SECTION: 25

ROBERT BURNS
versus

LOUISIANA AUCTIONEER'S LICENSING BOARD, CHARLES "HAL" MCMILLIN,
JAMES M. SIMS, DARLENE JACOBS-LEVY, GREGORY L. "GREG" BORDELON,
CHARLES "CLAYTON" BRISTER

FILED: _____

DEPUTY CLERK

**LOUISIANA AUCTIONEER'S LICENSING BOARD'S
PRE-TRIAL INSERTS**

NOW INTO COURT, through undersigned counsel, come Defendants, Louisiana Auctioneer's Licensing Board, Charles McMillin, James M. Sims, Darlene Jacobs-Levy, Gregory L. Bordelon, and Charles Brister, who provide the following pre-trial inserts, pursuant to this Court's Pre Trial Order:

Counsel:

Counsel for the Defendants are Larry Bankston and Jenna Linn of the law firm of Bankston & Associates.

1. Plaintiff's Claim and Supporting Legal Authorities:

2. Louisiana Auctioneer's Licensing Board's Claim and Supporting Legal Authorities:

The plaintiff, Robert Burns, was a licensee of the Louisiana Auctioneer's Licensing Board, and the individually named defendants are members of the Louisiana Auctioneer's Licensing Board (LALB). The LALB is an executive agency of the State of Louisiana. Its mission is to contribute to the safety, health, and management of the property of the people of Louisiana in the transfer of property by auction. The present suit arises out of a claim by Robert Burns that LALB and its individual members violated the Open Meetings Law by discussing his character in an Executive Session. LALB and its members named in the suit dispute that his character was in issue in the deliberations. The named defendants contend that the purpose of the deliberations was to discuss whether Robert Burns had violated any LALB rules, regulations, or statutes, and what, if any, penalties should be imposed.

The LALB members sit as a jury to determine whether any licensee has violated as its laws, rules, or regulations. On September 17, 2012, LALB held an administrative hearing to deliberate on allegations that Robert Burns had violated certain rules, regulations, and laws related to his status as a license holder. The administrative hearing was presided over by an administrative hearing officer of the Louisiana Attorney General's office. The administrative officer who presided over the hearing held on September 17, 2012 was Michael J. Vallen. Upon the advice the hearing officer, the LALB members decided to go into Executive Session to discuss whether Robert Burns had violated the terms of his license and whether he should be subject to penalties. It was the advice of the hearing office that the board members sat as jurors and therefore were entitled to deliberate in private. Following the deliberations, the board voted to publically reprimand Robert Burns for violations as a license holder.

Defendants deny any violation of the Open Meetings Law; however, it is imperative to clarify that any action taken in violation of the Open Meetings Law is “voidable” and not void ab initio. Therefore, the actions taken may be ratified by subsequent action taken in conformity with the Open Meetings requirements.

In an abundance of caution, following the administrating hearing held on September 17, 2012, the LALB held an additional hearing on January 8, 2013. At the January 8, 2013 hearing, the LALB deliberated on the claims pending against Robert Burns in Open Session. The members again found it appropriate to issue Robert Burns a public reprimand. Therefore, even if there was a violation of the Open Meetings Law on September 17, 2012, which is at all times denied, the subsequent administrative hearing ratified the previous decision to issue Robert Burns a public reprimand, Burns suffered no prejudice.

Legal Authorities:

La. Const. art. XII, § 3
La. R.S. 42:4.1
La. R.S. 42:9
La. R.S. 42:24

Delta Development Company, Inc., et al. v. Plaquemines Parish Commission Council, et al., 451 So.2d 134 (La. App. 4th Cir. 1984).

Sandifer v. La. State Bd. of Practical Nurse Examiners, 8 So.3d 546 (La. 3/17/09).

3. Claims of Other Parties and Supporting Legal Authorities:

_____None.

4. Established Facts:

1. An Administrative Hearing was held on September 17, 2012 regarding the matter of LALB v. Robert Burns
2. At the conclusion of the presentation of evidence and testimony of all witnesses during the Administrative Hearing, LALB moved to enter into Executive Session.
3. The presiding Administrative Law Judge ruled that LALB could enter into an Executive Session at that time.
4. In compliance with such ruling, LALB entered into an Executive Session.
5. LALB decided to issue Mr. Burns a public reprimand for his violations of the rules, regulations, and statutes of the LALB.
6. On December 26, 2012, LALB notified Mr. Burns that the Board had reset the deliberation on his hearing for January 8, 2013.
7. Mr. Burns made an opening statement in the proceedings held on January 8, 2013.
8. As per the request of Robert Burns, the Board deliberated in Open Session at the January 8, 2013 hearing.
9. LALB members disclosed oral reasons how Robert Burns violated rules, regulations, and statutes of LALB and should receive a public reprimand.
10. At the conclusion of the January 8, 2013 meeting, LALB members, again, decided to issue Mr. Burns a public reprimand.

5. Contested Facts:

1. Plaintiff was provided notice of the hearing held on September 17, 2012, calling for deliberations on the complaints that he violated policies and procedures of the LALB.
2. LALB members did not go into executive session for the purpose of discussing plaintiff's character.
3. Defendants dispute assertion that defendants failed to provide plaintiff notice that hearing would involve deliberation on his character.
4. Robert Burns was provided with notice of the hearing held on September 17, 2012.
5. Robert Burns participated in the hearing held on September 17, 2012.
6. Robert Burns' character was not at issue in the deliberations.
7. Deliberations held in Executive Session pertained to plaintiff's violations of policies and procedures of the LALB.
8. Defendants did not knowingly and willfully violate Open Meetings Law.
9. Plaintiff has not suffered any damages herein.
10. Administrative hearing held on January 8, 2013 ratified the action taken by the LALB during the meeting held on September 17, 2012.

6. Contested Issues of Law:

1. Whether the a good faith reliance on the advice of the presiding administrative hearing officer on the ability of the LALB to deliberate in Executive Session as to allegations of violations of rules, regulations, and statues violated Open Meeting Law.
2. A purely technical violation of a meeting in executive session in which the plaintiff can show no harm thereby should not result in voiding the disciplinary action against the plaintiff.
3. Any claim for damages or injury Robert Burns had after the September 17, 2012 deliberation become moot following the deliberations held on January 8, 2013 as the actions were ratified by the LALB in Open Session.
4. Any action taken in violation of the Open Meetings Law is "voidable" and not void ab initio.

7. Exhibits:

ARBD may introduce the following documents:

1. Transcripts of argument and decision from the hearing held on September 17, 2012
2. Transcripts from the hearing held on January 8, 2013
3. Findings of Fact and Conclusions of Law, *In the Matter of Robert Burns*, Case No. 12-0005
4. Any and all pleadings herein.
5. Any and all discovery responses produced herein.

8. Exhibit Authenticity:

9. Plaintiff's Witnesses:

10. ARBD's Witnesses:

The ARBD may call the following witnesses to testify at trial:

1. Charles "Clayton" Brister
2. Gregory "Greg" Bordelon
3. James M. Sims
4. Charles "Hal" McMillin
5. Darlene Jacobs-Levy
6. Lindsey Hunter
7. Michael J. Vallan
8. Robert Burns
9. Any witness listed by the Plaintiff.

11. Additional Matters:

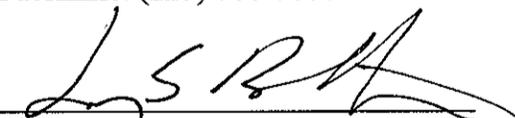
Pending Motions and Outstanding Legal Issues:

12. Estimated Trial Time:

Defendants anticipate that their case can be presented in half of a day.

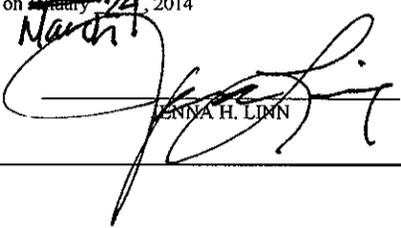
Respectfully submitted,

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Larry S. Bankston, Bar Roll No.: 02744
Jenna H. Linn, Bar Roll No. 33246

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing pleading upon all counsel of record, via electronic delivery or electronic mail, on ~~January~~ ^{March} 24, 2014


LINNA H. LINN