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FREDDIE PHILLIPS

STATE
COST OK AMT.
FILED

DOCKET NUMBER C59336-SEC. 24

VERSUS

19TH JUDICIAL DISTRICT COURT
IN AND FOR PARISH OF EAST
BATON ROUGE

LOUISIANA AUCTIONEERS LICENSING
BOARD, ET AL.

SEP - 2, 2010
BY Tyler
DY, CLERK OF COURT
STATE OF LOUISIANA

ANSWER

Defendants LOUISIANA AUCTIONEERS LICENSING BOARD and JAMES KENNETH COMER, JR., appearing herein through undersigned attorney, respectfully responds to the petition of plaintiff as follows:

1.

Defendants do not dispute the allegations of paragraph one of the petition.

2.

Defendants admit the allegations contained in paragraph two of the petition, except to state that James Kenneth Comer, Jr., Chairman, is not the agent for service of process for the Louisiana Auctioneers Licensing Board pursuant to LSA-R.S. 13:5107, but is the head of the board, and as such appropriate agent.

3.

Defendants deny the allegations of paragraph three of the petition, which asks for a legal remedy.

4.

Defendants admit that the matter is governed by the Louisiana Public Records Act, LSA.R.S. 44:1 et seq. The duty to permit examination of public records is specifically contained in Section 32 of the Act.

5.

Defendants admit that a letter was sent to undersigned counsel at her private office requesting records from her regarding the Louisiana Auctioneers Licensing Board; in all other regards the allegations of Section II(1) are denied.

6.

Defendants admit that the certified, return receipt, was signed by the assistant to the undersigned counsel, as stated in Section II(1)[sic].

7.

Defendants deny the allegations of Section II(2), in that the undersigned informed the plaintiff that she did not have any financial records of the Louisiana Auctioneers Licensing Board and could provide records in response to his request. The undersigned counsel further stated in the letter that plaintiff should contact Defendant Comer, as Chairman of the Board, with regard to the request.

8.

Defendants deny the allegations of Section II(3), in that no further requests for the items were made to the Board, but the defendants admit that the letter attached as P4 was sent to all board members, including the plaintiff.

9.

Defendants deny the allegations of Section II(4) to state that defendant Comer, as Chairman of the Louisiana Auctioneers Licensing Board, has always been custodian of records for the Louisiana Auctioneers Licensing Board, and further state that undersigned counsel has never been the custodian of records for the board.

10.

Further answering Section II(4), defendants show that plaintiff was informed at the meeting of the Board, which was recorded, that plaintiff had only to ask for the records and that the Board would respond accordingly.

11.

Defendants deny the allegations of Paragraph 4 of the petition.

FURTHER ANSWERING THE PETITION:

12.

Plaintiff is a board member, and, as such, an employee of the Louisiana Auctioneers Licensing Board. As such, his remedies are as an employee requesting records, not as a citizen requesting records of a public agency.

13.

Further, plaintiff received a reply to his request for records, as noted in the pleadings filed herein.

14.

As of this date, plaintiff has not requested the records sought herein from the Louisiana

Auctioneers Licensing Board, or its Custodian of Records, except through this proceeding.

15.

Further, because the undersigned is counsel to the Board, and advised the Board of the requests and her response, the release of these records was not required by the Public Records Act, and that therefore upon advice of counsel the Board took no further action and awaited for the plaintiff to contact Mr. Comer to work out arrangements to see the records.

16.

As such, plaintiff is not entitled to any damages of any kind, including court costs.

17.

However, defendants respond to the request sent to undersigned counsel by stating that with respect to request number one, the Board can provide access to the travel records for all board members since 2000 to plaintiff, which can be accomplished by plaintiff coming to the Board office during regular working hours, with prior notice to the Board so that the records can be redacted if required.

18.

Defendants further respond to the plaintiff with regard to the second request by stating that plaintiff may come to the Board office during regular working hours so that he may review Board minutes to make the determination of whether there is any such written evidence as he alleges.

19.

Defendants further state that Plaintiff has been at the Board office on numerous occasions since May 28, 2010, as recently as September 1, 2010, at which time he could have looked at these records had he requested to do so.

20.

Defendants further state that Plaintiff was asked why he did not want to request this information from the Board, and that he responded that he wanted undersigned counsel to provide these records.

21.

Further, defendants state that plaintiff stated in his letter to the undersigned counsel, attached to the petition, that he never received any reimbursement for the cost of travel to the NAA conference in 2008. Defendants respond that he has never filed the necessary paperwork

to be reimbursed for that trip. Upon filing the travel request form with the Board, all funds allowed by law will be paid. These forms have been presented to plaintiff on numerous occasions, and he has refused to prepare or sign these forms for reimbursement.

22.

Further, defendants allege, based upon his letter attached to the petition herein, and his actions since that date, that plaintiff seeks only to harass defendants through this lawsuit for these alleged past wrongs done to him by not allowing him to go to the National Auctioneers Association conference at the cost of the Board. Paying for a board member to attend a national conference is not a right accorded to any board member.

23.

As such, defendants allege that this petition is brought for frivolous reasons, and not for the purposes stated within the petition.

24.

Therefore, defendants seek and are entitled to all attorneys fees and court costs, and for all other remedies which are allowed by LSA-R.S. 44:35 or by any other law.

25.

Further, defendants seek and are entitled to remedies as allowed by LSA-C.C.P. art. 863.

WHEREFORE, defendants pray that the petition of plaintiff be dismissed, and that defendants be awarded all attorneys fees incurred by defendants as well as all costs of these proceedings, and any further damages allowed by law.

Respectfully submitted,



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CERTIFIED TRUE COPY

CLERK OF COURT
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DEPUTY CLERK OF COURT
Anna E. Dow