

ROBERT BURNS

NUMBER 616916 DOCKET: 25

19TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

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

STATE OF LOUISIANA

AMENDMENT TO PLEADINGS

NOW UNTO COURT comes Plaintiff, Robert Edwin Burns, in proper person, who asserts to this Honorable Court that he wishes to amend his pleadings by adding the following paragraphs to his Petition immediately prior to his prayer for relief:

20.

On December 26, 2012, Petitioner received an email from collective Defendants' Defense Counsel, Larry Bankston, indicating that Defendant LALB had "reset the deliberation on your hearing" and informing Petitioner that he was "required" to appear on January 8, 2013 for such "reset deliberation" (notwithstanding the fact that Petitioner was and is no longer a licensee of the LALB on January 8, 2013).

21.

Petitioner attended the January 8, 2013 meeting and remained present for the "reset" deliberations.

22.

Ms. Lindsey Hunter, the Administrative Law Judge employed by the Attorney General's Office for these "reset" deliberations, informed Petitioner prior to the "reset" deliberations that the proceeding was "unprecedented" and that she wasn't even sure how the proceedings should transpire; however, she indicated that she would "most certainly" permit Petitioner to make an opening statement.

23.

Petitioner made only an opening statement and informed the LALB that the "reset deliberations" were a "complete farce," that he would not agree to be sworn in for them, nor would he take place in any manner whatsoever regarding them. Petitioner then further made the analogy of a shopper having walked out of a department store with merchandise and who was approached by police upon attempting to place the

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merchandise in that shopper's vehicle. Just as the shopper cannot be absolved by indicating a willingness to return the merchandise, likewise the LALB cannot be absolved by a subsequent willingness to conduct an open deliberation (return the merchandise) or actually conducting the open deliberation (actually returning the merchandise). Petitioner indicated that the appropriate time for the shopper to have made the decision to place the merchandise back on the shelf was while he was "within the four walls of the department store" (at the time of initial LALB deliberations). Once that shopper exited the four walls of the store, it's too late! Similarly, once the LALB opted to proceed with a closed-door Executive Session, it became too late to say, "We'll redo it now that we've been caught and you sued us." That's why Ms. Hunter would have little choice but to describe the proceeding as "unprecedented."

24.

Petitioner also emphasized that the "reset deliberations" were a "last ditch effort to put the genie back in the bottle," and Petitioner has little doubt that the "reset deliberations" will be argued by Defense Counsel Bankston as an utterly desperate attempt to explain not only the LALB's failure to conform to its statutory obligation under LA R. S. 42:17(A)(1) but also his own failure to advise properly the Board of its obligation to conduct the deliberations in an open session on September 17, 2012. Were such an argument permitted to succeed, it would state to all public bodies that they are free to ignore Louisiana's Public Meetings Laws because if they aren't "called on the carpet" as Petitioner has done, they get away with it. If they are "called on the carpet," then they just remedy it after having been called on the carpet, thus negating the Law's requirements totally. That's why Petitioner referenced the LALB's pathetic attempt to cure its obvious violation as a "complete farce." The LALB's action is no different whatsoever from an NFL team being permitted to go for a fourth-down conversion and then, upon being unsuccessful, telling the referees, "We'd like to punt now." The referee would indicate that no NFL team gets five (5) downs to make a first down and that the offense needs to leave the field and tell its defense to take the field.

25.

Defense Counsel Bankston, moments after being hired by the LALB on May 21, 2012, did provide guidance to the LALB by informing the body that the prerequisites for

entering into Executive Session were **not** in place for that May 21, 2012 meeting (even reading from the Statute!) and, as a result, and as previously indicated, the LALB reversed itself and canceled its intention to enter into Executive Session. The mere fact that the LALB, upon the advice of Defense Counsel Bankston, initiated “reset deliberations” for January 8, 2013 is itself an admission on the LALB’s part that it had indeed violated LA R. S. 42:17(A)(1) and that Defense Counsel Bankston failed in his legal obligation to advise Defendant LALB and its Members properly of their obligations under the Statute.

26.

Petitioner also indicated that, in sharp contrast to September 17, 2012, Petitioner held no license on January 8, 2013. Petitioner therefore stated that “real money” was on the table on September 17, 2012 whereas anything transpiring on January 8, 2013 entailed “monopoly money” and could in no way be equated with the deliberations of September 17, 2012 for that reason.

27.

After Petitioner made his opening statement, Defense Counsel Bankston made his opening statement, which included referencing the fact that the Hearing Officer had informed the Board that it could enter into Executive Session, and Defense Counsel then indicated, “Whether that is correct or not is a question into law at this particular time, but in order to **correct or comply** completely with that issue, the recommendation has been that the Board reinstitute or reopen the hearing for this particular matter that was set for September 17, 2012.” As previously referenced in this Petition, Petitioner’s rights under LA R. S. 42:17(A)(1) cannot be violated as the result of a potentially-misguided attorney employed by the Attorney General’s Office. Furthermore, as counsel for the LALB, it was Defense Counsel Bankston’s responsibility to know Louisiana’s Open Meetings Laws (as Petitioner’s counsel, Robert Loren Kleinpeter, did in making it known that Petitioner wished to insist upon open deliberations as was Petitioner’s “right”) and inform his own client that they were defying LA R. S. 42:17(A)(1) and also acting contrary to its own previous actions entailing no less than six (6) prior Board Meetings for which the LALB **did** adhere to the Statute by providing 24-hour written notice to Petitioner (see Exhibit P-1) and permitting him to **require** that the deliberations take place in an open

forum. Thus, the LALB knowingly and willfully violated LA R. S. 42:17(A)(1)! It's that simple!

28.

In sharp contrast to the deliberations timeframe of September 17, 2012, which was nearly an hour, the “reset deliberations,” which were not even deliberations but merely several Board Members restating what they had stated in the prior deliberations, lasted less than three (3) minutes. Ms. Hunter, the Hearing Office, after observing 10-15 seconds of utter silence, inquired of the Board, “Are you going to explain why you chose to give him a public reprimand?” Only four responses were uttered. Board Member and Vice Chairman James Sims indicated, in a barely audible voice, that he did not believe Petitioner's actions warranted revoking his license. Board Member Hal McMillin reinforced Member Sims' comments and stated that he felt the public reprimand was the equivalent of the extension of an “olive branch” to Petitioner in order to enable the Board to “work in a positive manner.” Petitioner finds this to be an utterly striking statement by Board Member McMillin given that Petitioner was never accused of violating a single auction statute whatsoever (as noted by Board Member Darlene Jacobs-Levy in recommending Directed Verdict), yet in the November 5, 2012 LALB meeting, Board Member McMillin indicated that he was fully aware of an individual conducting auctions with no license (a clear violation of auction Statutes) but Member McMillin stated, “I'm not going to rat him out because he's a reporter for the local paper and it would come back to me and he'll write a negative article about me, so I just kind of eat that pile of doo and go on.” Board Member McMillin has clearly and unequivocally violated his oath of office as an LALB Member, and his illogical rationale for “publicly reprimanding” Petitioner is so absurd given the preceding revelation and rationale for failing to adhere to his moral and legal obligation as a Board Member that it constitutes an absolute insult to Petitioner and to the citizens of Louisiana who look to him for protection from rouge auction practices. Board Member Darlene Jacobs-Levy indicated that she favored the public reprimand to deter Petitioner from making “harassing comments as he has made in the past toward Members of this Committee.” Board Member Jacobs-Levy failed to cite a single such example which she had witnessed during her then six-month (three meeting) tenure with the LALB, nor did she even cite

such an example through indirect knowledge from another Board Member with a longer tenure. Petitioner can only assume that Board Member Jacobs-Levy references Petitioner's questioning of the issue of alleged payroll fraud on the part of its Executive Assistant, Ms. Sandy Edmonds, which has been the subject of a multi-year investigation by the Louisiana Legislative Auditor's Office and which comprised the vast majority of the discussion of the so-called original "hearing" of September 17, 2012. Ms. Jacobs-Levy's statements of January 8, 2013, in concert with even stronger such statements as the "spokesperson" for the LALB at the September 17, 2012 hearing, regarding her rationale for public reprimand are baseless, defamatory, and unsubstantiated in any manner whatsoever! Finally, Board Member Greg Bordelon stated that he was advised by his attorney not to comment on the entire incident, but he did express that he voted not to reprimand Petitioner, preferring instead for the entire matter to be deferred without any action on the part of the LALB.

Respectfully Submitted,

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Certificate of Service:

I certify that a copy of the foregoing has been served upon counsel for all parties to this proceeding by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 14th day of January, 2013.

