ROBERT BURNS	NUMBER _616916_ DOCKET: 25
	19TH JUDICIAL DISTRICT COURT
VERSUS	
LOUISIANA AUCTIONEER'S LICENSING BAORD, CHARLES "HAL" McMILLIN, JAMES M SIMS, DARLENE JACOBS-LEVY, GREGORY L. "GREG" BORDELON, CHARLES "CLAYTON" BRISTER	PARISH OF EAST BATON ROUGE
	STATE OF LOUISIANA

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MEMORANDUM IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

NOW UNTO COURT comes Plaintiff, Robert Edwin Burns, in proper person, who submits to this Honorable Court this Memorandum in Opposition to Defendants' Motion for Summary Judgment which is scheduled for hearing on Monday, March 25, 2013 at 9:30 a.m.

Plaintiff asserts to this Honorable Court that, in sharp contrast to Defendants' statements that no issues of material fact exist in this case, numerous issues of material fact exist in this case; furthermore, the facts surrounding those issues support this Honorable Court granting Plaintiff's Motion for Summary Judgment. To wit:

1. Did Defendants provide Plaintiff with the required advanced written notice of their intent to discuss his character? Defendants admit the answer is "no," and they have introduced nothing to suggest that they did.
2. Did Defendants conduct an Executive Session at the September 17, 2012 meeting notwithstanding failing to provide the notice referenced in #1)? Yes.
3. Did Plaintiff make known his desire to **<u>require</u>** that such discussion take place in an open format? Yes (not even challenged by Defendants).

To suggest that no issues of material fact exist in this case, Defendants would need to answer the above questions, "yes," "no," and "no." Instead, the answers, not even disputed by Defendants, are "no," "yes," and "yes." Plaintiff has no further obligation to defeat Defendants' Motion for Summary Judgment pending before this Honorable Court than presenting the preceding issues of material fact.

While Defendants, in their Motion for Summary Judgment, strive to "get into the minds" of State Legislators who crafted the Administrative Procedures Act and speculate on their intent (see page 6 of Defendants' Memorandum, 3rd line from the bottom, "Legislature.....<u>surely **INTENDED** that agencies....."</u>), Plaintiff has no such necessity to

"get into the minds" of State Legislators regarding Title 42, specifically LA R. S. 42:17(A)(1). The Statute is crystal clear what the State Legislators indicated **must** transpire, and Defendants knowingly, willfully, and even defiantly opted to disregard the specific requirements of the Statute (and deviate from their own past adherence to same). Furthermore, Plaintiff does not have to "get into the minds" of State Legislators and speculate on what State Legislators intended the consequences to be for violating LA R. S. 42:17(A)(1). Those Legislators specified **exactly** what penalty they intended for the Courts to impose via LA R. S. 42:28. That penalty is $100 each, court costs, and reasonable attorney fees (not applicable in this case due to Plaintiff representing himself).

Since Defendants' argued court cases don't definitively conclude with Judgments buttressing their position, Defendants merely resort to stating "the court's actions are unclear." In seeking a Judgment "as a matter of law," such historical case law argued by Defendants ought to be clear. Conversely, as already demonstrated by Plaintiff, LA R. S. 42:17(A)(1) and LA R. S. 42:28 are **crystal** clear.

Defendants assert Plaintiff has not been "harmed" by Defendants' conducting deliberations in an illegal Executive Session. While "harmed" is subjective, Plaintiff has already clearly asserted in his own Motion for Summary Judgment that he most certainly was harmed in that added ammunition for a Defamation of Character lawsuit against Defendants was denied him as a result of the secretive deliberations. If Defendants want to add legitimacy to their contention that Plaintiff was "not harmed," all they need do is produce an audio tape of the illegal Executive Session in order that Plaintiff can listen to what all was said about him during that illegal Executive Session. Of course, Defendants can't do that because they turn the recorder off for Executive Sessions. Thus, regarding Defendants' assertion that Plaintiff was not "harmed," by the deliberations of the illegal Executive Session as well as their assertion that "injury was cured" by subsequent farce "reset deliberations," each assertion is absurd on its face. As previously referenced in Plaintiff's amended pleadings and his own Motion for Summary Judgment, there were no "deliberations" on January 8, 2013; furthermore, all Defendants appeared afraid of their own shadows with Vice Chairman James Sims speaking in a barely audible voice.

Further, Defendants' statement that "ratification cures defect which resulted from open meetings violation," is a point-blank, prima-facie statement that Defendants did in

fact violate LA R. S. 42:17(A)(1). Additionally, to suggest that a Public Agency can "ratify" an illegal act is absurd. Furthermore, Defense Counsel, even at this late stage (see top of page 4 of Defendants' Memorandum) states that, "LALB decided to issue Mr. Burns a public reprimand **for his violations**." Defense Counsel fails to state what those violations are. Plaintiff's Counsel, Robert Loren Kleinpeter, repeatedly asked for the LALB and Defense Counsel to specify what Auction Statute Plaintiff was even alleged to have violated, and Defense Counsel failed to assert one. As a result, LALB Member Darlene Jacobs-Levy, an attorney who touts her 43 years of practicing law in Louisiana, **herself** stated that she could observe **no** violation, and she accordingly advised Plaintiff's Counsel to move for a Directed Verdict, which he did. Could there possibly be a more embarrassing episode for Defense Counsel? Both episodes, September 17, 2012 and January 8, 2013 were combinations of ineptitude and reckless disregard for the Administrative Procedures Act and Louisiana's Open Meetings Laws, and for disregarding the latter, Defendants are liable unto Plaintiff per LA R. S. 42:28.

WHEREFORE, petitioner, ROBERT EDWIN BURNS, prays that this Honorable Court deny Defendants' Motion for Summary Judgment. Numerous issues of material fact exist in this case making such a Judgment inappropriate as a matter of law. To the contrary, it is Plaintiff who has demonstrated that Defendants will be unable to meet its burden of proof at trial, and it is therefore he who is entitled to a Judgment as a matter of law.

Respectfully Submitted,

Robert Edwin Burns, in proper person
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Robert Edwin Burns

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 4th day of March, 2013.

Robert Edwin Burns