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ATTORNEYS AT LAW

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June 13, 2013

Jenna H. Linn
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Clerk of Court
19th JDC, Parish of East Baton Rouge
P.O. Box 1991
Baton Rouge, LA 70821

ATTN: CIVIL SUITS DEPARTMENT

RE: LA Auctioneer's Licensing Board vs. Robert Burns
My File No.: 1107-0003

Dear Sir/Madam:

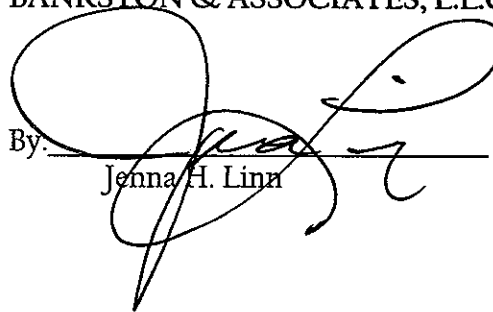
Enclosed for filing please find an *Opposition to Memorandum in Support of Motion for Sanctions* on behalf of plaintiff, Louisiana Auctioneers Licensing Board. Please file the original into the suit record and return a conformed copy to our office in the enclosed self-addressed, stamped envelope.

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 have any questions or comments, please do not hesitate to contact our office.

Sincerely,

BANKSTON & ASSOCIATES, L.L.C.

By: 
Jenna H. Linn

JHL: jmr
Enclosure: Petition/envelope
cc: Sandy Edmonds (via email only)
Tessa Steinkamp

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LOUISIANA AUCTIONEERS
LICENSING BOARD

NO. 621426

SECTION 27

19TH JUDICIAL DISTRICT COURT

V.

PARISH OF EAST BATON ROUGE

ROBERT EDWIN BURNS

STATE OF LOUISIANA

OPPOSITION TO MEMORANDUM IN SUPPORT OF MOTION FOR SANCTIONS

NOW INTO COURT, through undersigned counsel, comes the Louisiana Auctioneers Licensing Board (“LALB”), who respectfully opposes Defendant, Robert Burns’ Memorandum in Support of Motion for Sanctions.

I. FACTUAL BACKGROUND

On March 26, 2013, LALB was conducting a hearing concerning Ken Buhler (“Buhler”). Robert Burns (“Burns”) was present at such hearing. Counsel for Buhler requested that an *instante* subpoena be issued to Burns to testify. The LALB caused the issuance of an oral *instante* subpoena to Defendant, Robert Burns who was present at the LALB adjudicatory hearing.¹ The subpoena issued by the hearing officer, Lindsey K. Hunter, at the LALB adjudicatory hearing, requested Robert Burns testify regarding information relative to a possible violation of the Auctioneers Licensing Law.²

In connection with the subpoena requested by counsel for Ken Buhler, Robert Burns was asked to step outside until he was called as a witness. However, Burns left the hearing room and immediately left the building. As a result of Robert Burns’ noncompliance with the subpoena, the hearing was delayed and necessitated a continuance. Upon information and belief, there is no privilege or other ground of confidentiality that justified the Robert Burns’ refusal to testify at the LALB hearing sought through the subpoena.

Robert Burns’ refusal to comply with the LALB’s subpoena in this instance is an impingement upon the LALB’s legislatively-mandated duty to investigate a potential violation of the Auctioneers Licensing Law and the LALB’s rules and regulations. Accordingly, Plaintiff, LALB, filed the subject Petition for Writ of Attachment, requesting that this Honorable Court require Burns to appear before the Court concerning his failure to comply with the LALB’s lawful subpoena.

¹ See Affidavit, of Lindsey Hunter, attached to Plaintiff’s Petition for Writ of Attachment as “Exhibit A”.

² See Affidavit, of Lindsey Hunter, attached to Plaintiff’s Petition for Writ of Attachment as “Exhibit A”.

II. LAW & ARGUMENT

A. A PETITION FOR WRIT OF ATTACHMENT MAY BE FILED *EX PARTE*

Defendant, Burns, has now requested that this Court issue sanctions against Plaintiff. Burns alleges that Plaintiff has violated La. C.C.P. Art. 863(B)(3) by filing its Petition for Writ of Attachment *ex parte*. La. C.C.P. Art. 863(B)(3) provides, in pertinent part, that:

the signature of an attorney or party shall constitute a certification by him that he has read the pleading, and that to the best of his knowledge, information, and belief formed after reasonable inquiry, he certifies...:

(3) Each allegation or other factual assertion in the pleading has evidentiary support or, for a specifically identified allegation or factual assertion, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.³

Defendant further alleges that he is entitled to sanctions pursuant to La. C.C.P. Art 863(D), which provides that:

If, upon motion of any party or upon its own motion, the court determines that a certification has been made in violation of the provisions of this Article, the court shall impose upon the person who made the certification or the represented party, or both, an appropriate sanction which may include an order to pay to the other party the amount of the reasonable expenses incurred because of the filing of the pleading, including reasonable attorney fees.⁴

Defendant's argument simply lacks merit.

LALB filed its Petition for Writ of Attachment pursuant to La. R.S. 49:956(5)(C). La. R.S. 49:956(5)(C) addresses the refusal to obey an administrative subpoena and states,

“Whenever any person summoned under this Section neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, **the agency may apply to the judge of the district court for the district within which the person so summoned resides or is found, for an attachment against him as for a contempt.** It shall be the duty of the judge to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him, to proceed to a hearing of the case; and upon such hearing, the judge shall have power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.”⁵

In accordance with La. Code Civ. Proc. art. 194(2), an order directing the issuance of a writ of attachment may be filed *ex parte*. La. C.C.P. art. 194(7) further provides that “any other order of judgment not specifically required by law to be signed in open court may be signed by

³ La. Code Civ. Proc. Ann. art. 863

⁴ La. Code Civ. Proc. Ann. art. 863

⁵ La. R.S. 49:956(5)(C), *emphasis added*.

the district judge in chambers.” Burns has not cited, nor is Plaintiff aware of, any law that specifically requires the subject order to be signed in open court.

B. DEFENDANT IS AFFORDED THE OPPORTUNITY TO ASSERT DEFENSES

Burns further alleges that Paragraph 21 of LALB’s Petition for Writ of Attachment “sought to thwart any attempt by Defendant to even be afforded the opportunity to assert...defense”.⁶ However, that is not the case. Paragraphs 21 and 22 of LALB’s Petition for Writ of Attachment provide:

The LALB asserts that the allegations contained within this petition, as well as the exhibits attached hereto, should be deemed satisfactory proof in order for the Court to issue the Writ of Attachment. However, should the Court determine that an initial hearing is warranted under La. R.S. 49:956(5)(C), then such hearing should be held *ex parte* and be appropriately limited to the threshold issue of whether the Writ of Attachment is warranted by the fact of defendants' noncompliance with the LALB’s subpoena and should not address the merits herein or any defenses.

Upon the issuance of the Writ of Attachment, **a full contradictory hearing should thereafter be held** on a date assigned by this Court and conducted as a summary proceeding, **wherein Robert Burns shall be required to show cause why he should not be made to comply with the LALB’s subpoena, under penalty of law.**

Pursuant to La. Code Civ. Proc. Ann. art. 3501, a writ of attachment shall issue only when the nature of the claim and the grounds relied upon for the issuance of the writ clearly appear from specific facts shown by the petition verified by, or by the separate affidavit of, the petitioner, his counsel or agent.⁷ Furthermore, in accordance with La. R.S. 49:956(5)(C) the agency may apply to the judge of the district court for an attachment against him as for a contempt, and it shall be the duty of the judge to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him, to proceed to a hearing of the case.⁸

As noted in Paragraph 21 of Plaintiff’s Petition for Writ of Attachment, Plaintiff fully avers that the allegations contained within its Petition, along with the affidavit attached thereto, fully satisfy the requirements contained in La. C.C.P. art. 3501 and La. R.S. 49:956(5)(C) in order for this Honorable Court to issue a writ of attachment. However, in an abundance of caution, if this Court found that LALB had not satisfied its burden of proof to issue a writ of attachment, the LALB requested an *ex parte* hearing limited to the threshold issue of whether the

⁶ See Burns’ Memorandum in Support of Motion for Sanctions.

⁷ La. Code Civ. Proc. Ann. art. 3501

⁸ La. R.S. 49:956(5)(C)

writ of attachment is warranted. Upon this Court's finding of satisfactory proof to issue a writ of attachment, Defendant is then provided an opportunity to establish his defense during the contradictory hearing.

C. PLAINTIFF DID NOT MISLEAD THE COURT

Additionally, Defendant alleges that Plaintiff "misled this Honorable Court by failing to assert the facts Defendant relayed in [his] Memorandum."⁹ Such allegation is unfounded. Counsel for Plaintiff was present at the subject hearing which took place on March 25, 2013. The factual assertions contained in the Petition for Writ of Attachment are true and correct to the best of Plaintiff's knowledge, information, and belief. In accordance with La. C.C.P. Art. 863(B)(3), each allegation of factual assertion contained in the Petition for Writ of Attachment has evidentiary support, as is provided in the Affidavit attached as "Exhibit A" to Plaintiff's Petition.

D. DEFENDANT FAILED TO COMPLY WITH LA. C.C.P. ARTICLES 854, 863(D), 961, AND 962.

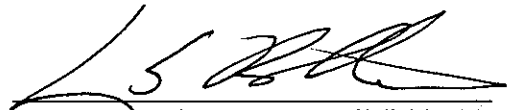
Defendant argues that he is entitled to sanctions against Plaintiff in accordance with La.C.C.P. Art. 863(D). However, La.C.C.P. Art. 863(D) allows for sanctions upon motion of any party. No such motion has been filed by Defendant.

Furthermore, an application to the court for an order shall be by motion¹⁰, and such written motion shall comply with La. C.C.P. Art. 854¹¹, which requires all allegations of fact to be set forth in concise numbered paragraphs.¹² Defendant's Memorandum fails to comply with the requirements outlined in the Louisiana Code of Civil Procedure.

For all of the aforementioned reasons, Defendant's Memorandum in Support of Motion for Sanctions should be stricken from the record and/or denied in its entirety.

Respectfully Submitted,

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Larry S. Bankston, Bar Roll # 02744
Jenna H. Linn, Bar Roll # 33246

⁹ See Burns' Memorandum in Support of Motion for Sanctions.


¹⁰ La. C.C.P. Art. 961.

¹¹ La. C.C.P. Art. 962.

¹² La. C.C.P. Art. 854.

CERTIFICATE

I hereby certify on this 3rd day of June, 2013, a copy of the foregoing pleading was served on counsel for all parties to this proceeding, by transmitting a copy of same via electronic mail, facsimile or regular United States mail, properly addressed, and first class postage prepaid.



Larry S. Bankston