

BETTY JO STORY

NUMBER 633073 DOCKET: 24

19<sup>TH</sup> JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

LOUISIANA AUCTIONEER'S LICENSING BOARD

STATE OF LOUISIANA

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**MEMORANDUM IN OPPOSITION TO EXCEPTION OF PRESCRIPTION AND, ALTERNATIVELY, NO CAUSE OF ACTION**

NOW UNTO COURT comes Plaintiff, Betty Jo Story, in proper person, who provides this Memorandum in Opposition to Defendant's Exception of Prescription and, alternatively, No Cause of Action scheduled for a hearing at 9:30 a.m. on Monday, January 26, 2015.

Following Defendant's filing of the subject exceptions, a trial transpired on October 29, 2014 in 36<sup>th</sup> Judicial District Court regarding the subject matter of Plaintiff's disastrous auction. Judge Martha O'Neal presided over that trial. After Plaintiff called only her second witness, Mr. Schmidt himself, Judge O'Neal stated that she'd "heard all I need to hear." When witness-auctioneer Schmidt inquired if he would be able to present a defense and call his witnesses, Judge O'Neal stated: "Yes, but you're not going to be able to undo the testimony you've already provided in response to my inquiries."

Judge O'Neal then proceeded to render a Judgment in Plaintiff's favor for \$4,102.29, with her rationale being that Mr. Schmidt had admitted on the witness stand that shell bidding had transpired at the auction (a violation of Louisiana Auction Statute 3129) and that the contract he executed with Plaintiff made no provision for charging 40% of the final bids for the purchase of Plaintiff's own items back to avoid sales at artificially low prices. Judge O'Neal also had harsh words for auctioneer-witness Schmidt when, upon reviewing the HUD-1 settlement statement for his purchase of Plaintiff's Roberts Street home, Schmidt failed to account for all funds relevant to the transaction. Instead, Schmidt admitted that he remitted the balance of the purchase price, (\$42,500 - \$25,000) \$17,500, well over sixty days after settlement (and then only under threat of a lawsuit by Plaintiff). Judge O'Neal stated: "As a real estate broker, you should know that a HUD-1 settlement statement should account for all funds applicable for the transaction."

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DEPT. CLERK OF COURT

Judge O'Neal indicated that, beyond the obvious shill bidding Mr. Schmidt admitted transpired regarding Plaintiff's bidding, for which Plaintiff has stated both under oath at the LALB hearing of September 10, 2013 and at trial on October 29, 2014, that she was **not** bidding but instead utilizing an agreed-upon hand signal (a scissor-like motion) to indicate Plaintiff would not accept the high bid. In accordance with Louisiana Auction Law, Mr. Schmidt should have permitted the requested reserves to be placed on the items which were itemized in Plaintiff's Petition, yet he did not. When Judge O'Neal asked why Schmidt failed to permit the reserves to be incorporated into the contract, he stated that his rationale for not permitting the reserves was that the items were "already on the trailer" at the point he alleges Plaintiff made known her desire for reserves and after the contract had been executed. Such claims by witness-auctioneer Schmidt are flatly false! As Plaintiff testified at the LALB hearing on September 10, 2013, Plaintiff made known her desire for such reserves on auctioneer Schmidt's **initial** visit to Plaintiff's home as she pointed the items out to Mr. Schmidt.

The reality is that Mr. Schmidt wanted to be compensated for attempting to sell the items irrespective of whom the buyer turned out to be. Therefore, over Plaintiff's objection and intent, he took it upon himself to insert Plaintiff as high bidder and then charge a 40% commission (in addition to a 10% buyer's premium) on those item (an amount Defendant LALB Member Darlene Jacobs-Levy characterized as "usurious,") and that is the amount upon which Judge O'Neal computed her judgment. Judge O'Neal indicated that she was only awarding contractual damages for the amount Mr. Schmidt had no legal authority to assess Plaintiff as the contract did not provide for such charges. Judge O'Neal relayed that any formal findings of auction statute violations would be the responsibility of the LALB, and she provided Mr. Schmidt with no assurance whatsoever that the proceeding of October 29, 2014 would fully close the matter but rather that it was fully closed only from 36<sup>th</sup> Judicial District Court's involvement.

Plaintiff objects to Defendant's reference that she seeks "review" of Defendant's decision (see top of page two of Defendant's memorandum). Plaintiff's cause of action lies in the fact that the entire board was derelict in their collective duties in performing no meaningful investigation of any kind. Instead, they merely accepted Mr. Schmidt's word for what transpired, as lame as the excuse he gave for his nephew ending up as high

bidder on Plaintiff's Roberts Street home was (i.e. that he was simultaneously negotiating with Mr. Gordon Jenkins for a flip of the home). Plaintiff called Mr. Jenkins as a witness at trial, and Jenkins flatly and categorically denied that he had any such negotiations with Mr. Richard Schmidt. In fact, Mr. Jenkins relayed under oath that he bid himself on the property "until the level I was comfortable at, after which I dropped out." The reality is that Mr. Richard Schmidt, nephew of auctioneer Marlo Schmidt, was clearly serving as a shill bidder and, when he ended up as high bidder, he said, "No way. I'm not buying the home." Thus, auctioneer Marlo Schmidt, already having legal title to the home on the day of the auction (a fact Judge O'Neal referenced and relayed that he should have divulged to the public that he was acting as owner/agent), had to reluctantly remit the remaining \$17,500 of the purchase price he'd "promised" Plaintiff. This fact demonstrates Mr. Schmidt never had any real intent of being the owner after the auction but instead was "backed into" being the owner (for more than a temporary period) as a result of his shill bidding efforts having failed to produce a genuine third party buyer.

If an 84-year-old pro se Plaintiff in a lawsuit can expose these facts in an open courtroom, how can a board comprised predominantly of auctioneers, two attorneys, and an investigator not expose it? The answer is simple: they did not **want** to expose it because shill bidding, illegality notwithstanding, is rampant in the auction industry in Louisiana.

Given Plaintiff's assertion that her cause of action is dereliction of duty on the part of LALB members (not a mere seeking of a "review" of their decision), Defendant's arguments of No Cause of Action are clearly not applicable; furthermore, based on her dereliction of duty Cause of Action, Defendant's argument of prescription is also clearly not applicable since Plaintiff has one year from the date of obtaining knowledge that Defendant board members would shirk their investigative duties and fail to conduct even a modest line of questioning of the circumstances of the auction which, had they done so (including making inquiry of and subpoenaing Mr. Gordon Jenkins), Plaintiff contends their findings of fact would have been markedly different than it was.

Upon the conclusion of the trial, Plaintiff drafted a second complaint against Mr. Schmidt to incorporate the facts uncovered at the October 29, 2014 trial. That complaint, dated November 4, 2014, is attached hereto and made a part hereof as Exhibit MO-1. In

MO-1, Plaintiff outlines in extensive detail the proceedings of 36<sup>th</sup> Judicial District Court and the basis of new charges against Mr. Schmidt as a result.

In response, Defendant LALB sent Plaintiff a letter dated November 17, 2014. That letter is attached hereto and made a part hereof as Exhibit MO-2. The letter makes vague reference to “proceeding with the investigation of the complaint” but relays the LALB will do so only “upon the decision by the court on the exceptions and ultimate decision by the court.”

Upon receipt of the vague letter of MO-2, Plaintiff drafted a letter representing an offer to suspend these court proceedings and permit defendant LALB’s members to adjudicate the matter given the mountain of new evidence available from the transcript of the 36<sup>th</sup> Judicial District Court trial on October 29, 2014 and the previously-unasserted auction statute violations which clearly transpired as evidenced from that courtroom testimony. That letter proposal is attached hereto and made a part hereof as Exhibit MO-3.

In defense of the members of Defendant, they trusted auctioneer Schmidt to do as board member Darlene Jacobs-Levy admonished him to do and “work this situation out in the hallway with Ms. Story.” As admitted to in court by auctioneer Schmidt, he made no such effort whatsoever. If he had, Plaintiff would not have filed the lawsuit in 36<sup>th</sup> Judicial District Court nor the Petition before this Honorable Court. Nevertheless, Plaintiff remains deficient in recovery approximately \$3,250 beyond the \$4,102.29 Judge O’Neal awarded Plaintiff.

Plaintiff readily admits that auction matters are properly adjudicated by the LALB members and not 19<sup>th</sup> Judicial District Court. Therefore, just as LALB members placed faith in auctioneer Schmidt (which he violated), through MO-3, Plaintiff has extended an offer to permit the LALB to adjudicate the matter with all of the new evidence available. As such, Plaintiff is extending the same demonstration of faith in Defendant LALB with the obvious hope and expectation that Defendant LALB members, with the advantage of an abundance of sworn-testimony evidence made available through Plaintiff’s efforts, will not violate Plaintiff’s faith in Defendant LALB and will instead conduct a thorough investigation, leading to a hearing, leading to Defendant filing a bond claim against Mr. Schmidt’s auction bond for the remaining \$3,250 in damages Plaintiff is out. As MO-3

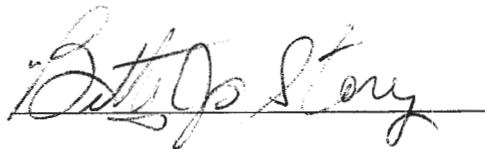
outlines, if Mr. Schmidt would prefer to fully satisfy this matter with Plaintiff, he is welcome to remit the \$3,250 and avoid any Administrative Hearing and potential blemish on his auction record.

So, Petitioner states her desire for this Honorable Court to Deny Defendant's Exceptions of Prescription and No Cause of Action, and Plaintiff further asks that this Honorable Court instruct Defendant LALB to proceed with the investigation it has stated in writing that it is willing to conduct. Upon the conclusion of the investigation and a hearing (should that become necessary), Plaintiff has committed in writing via MO-3 to dismiss this present Petition with prejudice irrespective of the determination of Defendant LALB's members (thus an extreme demonstration of faith). Under that scenario, however, Plaintiff would seek to recover the costs of this proceeding as a result of Defendant LALB members' dereliction of duty in failing to conduct any substantive investigation into the circumstances of the auction which resulted in Plaintiff's present Cause of Action against Defendant.

WHEREFORE, Plaintiff, BETTY JO STORY, prays that Defendant's Exception of Prescription and, alternatively, No Cause of Action be DENIED and that the court further order a suspension of proceedings pertaining to this Petition and instruct Defendant LALB to do as it has indicated in writing that it is willing to do and conduct an investigation into Plaintiff's complaint against auctioneer Marlo Schmidt dated November 4, 2014.

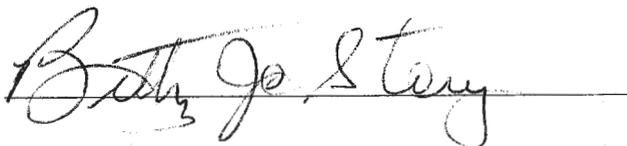
Respectfully Submitted,

Betty Jo Story, in proper person  
209 Broad Street  
DeRidder, LA 70634-3837  
(337) 202-7033 (res.) (337) 396-4655 (cell)



Certificate of Service:

I hereby certify, on this 13<sup>th</sup> day of January, 2015, that a copy of the foregoing has been served upon counsel for all parties to this proceeding by submitting a copy of same via electronic mail, facsimile, or First Class United States Mail, properly addressed and postage prepaid.





**AUCTIONEER CONSUMER COMPLAINT FORM**

**THIS FORM IS TO BE USED IF YOU ARE FILING A COMPLAINT AGAINST A LICENSED AUCTIONEER BECAUSE HE OR SHE HAS VIOLATED A STATUTE, RULE OR ORDINANCE. PLEASE FILL OUT THE FORM AND RETURN IT TO THE ADDRESS STATED ON THE FORM.**

**THIS COMPLAINT IS FILED AGAINST THE INDIVIDUAL/BUSINESS BELOW:**

AUCTIONEER'S NAME: Marlo Schmidt

LICENSE # (if known): 1594

ADDRESS: 2674 Highway 394, DeRidder, LA 70634-7640

PHONE NUMBER(S): 337-463-8251

COMPANY NAME: \_\_\_\_\_

PHONE NUMBER(S): Southwest Auction Company, LLC (337-463-8251)

**PLEASE STATE THE EXACT NATURE OF YOUR COMPLAINT INCLUDING DATES.**  
Give as much detail as possible. You may attach a separate sheet if necessary.

At a civil trial in DeRidder, LA on October 29, 2014, Mr. Schmidt, under  
affirmation, stated: "Ms. Story engaged in shill bidding, which is illegal."  
Therefore, by Mr. Schmidt's own affirmed testimony, he stated that he  
knowingly permitted shill bidding to transpire, which is a violation of  
LA Auction Statute 3129. Furthermore, Mr. Gordon Jenkins stated  
on the witness stand, under oath, that he did NOT agree to, nor even  
negotiate with, Mr. Richard Schmidt, to acquire my Roberts street  
property upon any successful high bid by Mr. Richard Schmidt. Mr. Jenkins  
testified that he "bid on the property myself and dropped out once it got  
past my stopping point." Therefore, Mr. Marlo Schmidt permitted his  
nephew to serve as a shill bidder, and he testified falsely in that regard  
at an LALB hearing on September 10, 2013. (continued)

MO-1

**COMPLAINANT INFORMATION:**

NAME: Mr. Betty Jo Story

ADDRESS: 209 Broad Street, DeRidder, LA 70634-3837

PHONE NUMBERS: HOME 33-202-7033 WORK (cell) 337-396-4655

**DID YOU HAVE A WRITTEN CONTRACT WITH THE AUCTIONEER?**

YES  NO

If yes, attach copy of contract.

**ATTEMPTS TO RESOLVE THE PROBLEM:**

What attempts, (if any) have been made to resolve this complaint prior to filing with the board?

(see attached document). Mr. Schmidt adamantly refused to negotiate with me after the 9/10/13 LALB hearing. Judge O'Neal even asked if he'd made made effort to settle, and he said, "no." Thus, we had a civil trial on 10/29/14.

Date of demand letter(s) (if any) asking for refund or other demand: LALB (Jacobs) instructed 9/10/13.  
(Attach copies of any correspondence)

Date of formal complaint (if any) filed in any court: Trial conducted 10/29/14 (see attached)  
(Attach copies of documents)

Response (if any) by Auctioneer or Business: Will pay judgment of 10/29/14 but I'm still out.  
(Attach copies of any correspondence)

Are you willing to appear before the Board at a formal hearing on this matter? YES  NO

Filling out this form with as much information as is known will expedite the investigation of your complaint.

Please sign this document and mail it along with copies of supporting documents.

The complainant states that he/she is the complainant in the foregoing complaint and that all of the allegations contained therein are true and correct to the best of Complainant's knowledge, information and belief.

Betty Jo Story  
COMPLAINANT'S SIGNATURE

November 4, 2014

DATE

Continuation of LALB complaint of Betty Story against Marlo Schmidt dated November 4, 2014:

Mr. Schmidt's false testimony before the LALB on September 10, 2013 is a violation of Louisiana Auction Statute 3121(A)(3). Furthermore, as I testified to under oath at the LALB hearing on September 10, 2013, I was not making an attempt to bid on my prized items for which I wanted to set reserves (which Mr. Schmidt refused to permit me to do) but instead was merely indicating (with a scissor-like motion with my hands) that I would not accept the high bid which he had attained. Mr. Schmidt took it upon himself to insert me as a high bidder both against my wishes and in violation of Louisiana's shill bidding laws.

Because Mr. Schmidt and I reside in a relatively small community, most bidders were likely aware of my identity as owner of the prized items on which Mr. Schmidt inserted me as a bidder. The result was that bidders were aware that shill bidding was transpiring, and several auctioneers, including Rev. Freddie Lee Phillips and Mr. Robert Burns (a long-time real estate auctioneer) have informed me that, when the bidding public is aware that shill bidding is transpiring, the impact upon the auction's results is devastating.

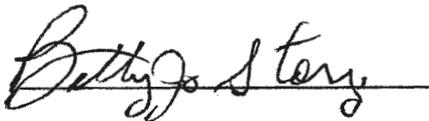
At the civil proceeding, Judge O'Neal wasted no time in awarding me approximately \$4,109 plus my court costs based solely upon what I was charged to buy my own items back from Mr. Schmidt. She indicated, however, that her action was merely to adequately provide redress for me from the actual results of the auction and not to address any impacts upon my auction from auction statute violations which may have transpired. Judge O'Neal did indicate, however, that evidence from testimony was pretty strong that Mr. Richard Schmidt did in fact serve as a shill bidder and that, by Mr. Marlo Schmidt's own affirmed testimony, he put me in the position (against my wishes) of being a shill bidder.

The fact that Mr. Schmidt remitted \$17,500 to me on January 1, 2013 (well over 60 days after he'd first advanced \$25,000) to complete the purchase of my Roberts Street home is compelling evidence that Mr. Schmidt had promised me a result of \$42,500 for that home. I want this complaint to also include the fact that, in addition to promising me \$42,500 for my Roberts Street house, he also promised me \$68,000 for my Broad Street home (my personal residence). Mr. Schmidt did not purchase my Broad Street home after the auction as he'd promised to do. Therefore, Mr. Schmidt violated Louisiana Auction Statute 3121(A)(4) in that he made a concerted effort to deceive me in promising I would attain \$42,500 for my Roberts street home (which he ultimately honored under direct threat of legal action after he'd advanced \$25,000 in October of 2012 but dragged his heels on remitting the other \$17,500 until January 1, 2013) and \$68,000 for my Broad Street home.

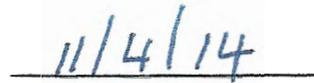
Based on Mr. Schmidt's assurances, I moved into an assisted living facility in Alexandria, only to have to remit \$1,500 to that facility for my three-night stay after I informed them I had no choice but to return to my Broad Street home once I was informed that Mr. Schmidt would not honor his promise to me of purchasing the home for \$68,000 if it failed to sell at auction.

I contend that my remaining damages after Judge O'Neal's judgment against Mr. Schmidt approximate \$3,250. The figure is derived from taking the approximate purchases of other bidders at my auction of \$5,800 and using a very conservative impact of shill bidding to have deflated those results by 30%. Thus,  $0.30 \times \$5,800 = \$1,740$ . The \$1,500 I remitted to the assisted living facility based upon Mr. Schmidt's deceit of me regarding the Broad Street property are unequivocal damages I incurred directly from Mr. Schmidt's deceit.

What I am therefore seeking is a hearing for Mr. Schmidt to be charged with three auction violations: 3129, 3121(A)(3), and 3121(A)(4). These violations emanate from either sworn or affirmed testimony at my civil trial against Mr. Schmidt which transpired on October 29, 2014 and which the LALB did not have the benefit of at the September 10, 2013 hearing. Clearly, the trial revealed auction statute violations for which Mr. Schmidt was not even alleged to have violated in the initial hearing. Upon a hearing and Mr. Schmidt being found guilty of multiple auction statute violations, I seek for the LALB to initiate a bond claim as I am informed it has done for Mr. David Swift (with whom I have spoken), and Mr. Brant Thompson, who happens to be the son of State Senator Francis Thompson and is a gentleman for whom I'm told the LALB "closed" an investigation (finding no auctioneer wrongdoing), only to "reopen" the investigation upon receipt of a letter from Mr. Thompson relaying his dismay at the LALB's action.



Betty Jo Story



Date



Louisiana  
Office of the Governor  
Auctioneers Licensing Board

Bobby Jindal  
Governor

November 17, 2014

Betty Story  
2674 Highway 394  
DeRidder, LA 70634

11738 Newcastle Avenue  
Bldg. 2, Suite C  
Baton Rouge, LA 70816

Dear Ms. Story:

Telephone: 225.285.8420  
Fax: 225.372.8584

We have received your complaint with regard to Marlo Schmidt dated November 4, 2014. ~~However, we have been advised by our attorney that upon the decision by the court on the exceptions and ultimate decision by the court we will proceed with the investigation of the complaint.~~

Email: [admin@LALB.org](mailto:admin@LALB.org)  
Web Address: [www.LALB.org](http://www.LALB.org)

Sincerely,

Sandy Edmonds

Sent via certified mail 7007256015484125

An Equal Opportunity Employer

F-053 P-001/001 T-409

+337 453 9852

FROM-SEAUVEGARD PARISH SHERIFFS OFFICE

NOV-24-2014 08:27

MO-2

**BETTY STORY**  
**209 Broad Street**  
**DeRidder LA 70634-3837**  
**337-202-7033 (home) 337-396-4655 (cell)**

November 25, 2014

LOUISIANA AUCTIONEERS LICENSING BOARD  
ATTN: SANDY EDMONDS  
11736 NEWCASTLE AVE  
BLD 2 STE C  
BATON ROUGE LA 70816-9102

Dear Ms. Edmonds:

I am in receipt of your letter dated November 17, 2014 and, in light of its contents, I would like to propose that we suspend all court proceedings in 19<sup>th</sup> JDC and, given the Board's willingness to investigate my complaint dated November 4, 2014, permit the proper adjudicatory authority, the LALB, to handle the matter.

If this proposal is acceptable and the Board commences with a formal investigation and hearing, in signing this letter below, I make a firm written commitment to dismiss my lawsuit against the LALB pending in 19<sup>th</sup> JDC. All I sought on September 10, 2013 and at a future hearing, for which I am more than willing to attend, is a true investigation and presentation of my victimization arising from Mr. Schmidt's conduct.

It should not cost the LALB more than \$250-\$300 or so to obtain a transcript of the 36<sup>th</sup> JDC proceeding on October 29, 2014, and that transcript should clearly demonstrate what my complaint asserts. As my complaint also says, I am only seeking \$3,250 as my remaining damages from this whole unfortunate incident. I feel that a bond claim, given the overwhelming evidence of deceit and shill bidding violations, would readily be paid by Mr. Schmidt's bonding company upon filing by the LALB.

At the conclusion of the trial in 36<sup>th</sup> JDC, Mr. Schmidt asked Judge O'Neal if that day's ruling meant the whole incident was now "over with." Judge O'Neal responded that the matter was fully concluded in 36<sup>th</sup> JDC; however, she relayed she had no control over whether the LALB or the Louisiana Real Estate Commission may have involvement in the matter after the civil trial.

All I am seeking is to be back where I was before this incident transpired. Judge O'Neal rectified the improper charges I was assessed for the purchase of my own merchandise back, and I merely seek the remaining \$3,250 I was damaged by this incident. It doesn't matter to me what the source is (Mr. Schmidt, a bond claim, or whatever). Therefore, if the Board wants to negotiate on my behalf for him to resolve this matter with me without even the necessity for another hearing (by remitting \$3,250), that is perfectly acceptable with me, and my lawsuit against the LALB will be dismissed with prejudice. As the Board is aware, Ms. Jacobs-Levy admonished him to negotiate with me after the first

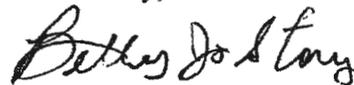
M0-3

hearing, but he steadfastly refused once the Board found him not guilty. Perhaps with the knowledge that a court transcript will be introduced at a second hearing which would be devastating evidence against Mr. Schmidt, he may desire to conclude the matter once and for all without a blemish to his auction record or a bond claim being filed. If not, however, I desire a formal hearing in order that the Board may then file a bond claim upon a finding of guilt.

I hope the Board appreciates my willingness to go on faith that it will do the right thing in its finding on a second hearing. By my signature below on this letter, I'm indicating a firm commitment to, upon a hearing's conclusion, dismiss my lawsuit against the LALB irrespective of the outcome of the hearing. I don't think at this point anyone even questions whether or not Mr. Schmidt victimized me. Being blunt, just as Mr. Thompson expressed, I feel that, at the hearing of September 10, 2013, the system designed to protect me failed. Moreover, I felt victimized a second time. Judge O'Neal advised me not to sign any more contracts without first obtaining assistance from my son or a lawyer, and I think that was her indication that I'd been taken advantage of due to my age and trusting nature of Mr. Schmidt. I intend to heed Judge O'Neal's advice, but there's nothing I can do about the mistake I made with Mr. Schmidt. Therefore, I respectfully ask that the LALB adjudicate my complaint in the most expeditious manner in order that all of us can move on from this unfortunate incident.

Thank you for taking the time to read my letter, and I look forward to hearing back from you with your response to my proposal

Sincerely,

A handwritten signature in cursive script that reads "Betty Jo Story". The signature is written in black ink and is positioned above the printed name.

Betty Jo Story