

LOUISIANA AUCTIONEERS  
LICENSING BOARD

V.

ROBERT EDWIN BURNS

NO. *21,426* SECTION *27*

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

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

PETITION FOR WRIT OF ATTACHMENT

NOW INTO COURT, through undersigned counsel, comes the Louisiana Auctioneers Licensing Board ("LALB"), a state agency, empowered under Title 37, Chapter 42, Part II of the Louisiana Revised Statutes, and domiciled in the parish of East Baton Rouge, Louisiana, who petitions this court for a writ of attachment, as follows:

1.

Made defendant herein is Robert Edwin Burns, a person of the lawful age of majority and domiciled in the Parish of East Baton Rouge, State of Louisiana.

2.

It is the responsibility of the LALB to oversee the practice of auctioneers and auction houses within this State and, "to contribute to the safety, health, and property of the people of Louisiana in the transfer of property by auction." La. R.S. 37:3101

3.

In fulfilling its regulatory role, the LALB is charged by law to "make reasonable rules and regulations relating to the form and manner of filing applications for licenses; the issuance, denial, suspension, and revocation of licenses; and the conduct of hearings consistent with the provisions of the Administrative Procedure Act, R.S. 49:951 et seq." LA-R.S. 37:3106

4.

The legislature has decreed that the LALB, "is authorized to and shall...authorize and issue subpoenas to require attendance and testimony and the production of documents for the purpose of enforcing the laws relative to auctions and securing evidence of violations thereof. La. R.S. 37:3112B(4)

5.

Additionally, the LALB is authorized and may "select and appoint investigators to assist the board in investigating complaints filed against any licensed auctioneer. Such investigators may serve subpoenas, gather data, and investigate complaints in the scope and manner and within the authority prescribed by the board." La. R.S. 37:3112C(5)

6.

“The legal counsel of the board, or in his absence any other member of the board, may administer oaths in the taking of testimony upon any matter appertaining to the duties and powers of the board.” La. R.S. 37:3112D

7.

As a state agency, the LALB is also governed by Louisiana's Administrative Procedure Act, La. R.S. 49:950, *et seq.* (“LAPA”). La. R.S. 49:956(5)(a) states, in pertinent part, that, “[a]ny agency or its subordinate presiding officer conducting a proceeding subject to this Chapter shall have power to sign and issue subpoenas in the name of the agency requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence.”

8.

Moreover, Louisiana's Administrative Code grants the board the authority to “authorize and issue subpoenas to require attendance and testimony and the production of documents for the purpose of enforcing the laws relative to auctions and securing evidence of violations thereof.”

46 LA ADC Pt III, § 703

9.

Based upon the aforementioned authorities, a subpoena issued by a hearing officer of the LALB is entitled to the same force and effect as a court-issued subpoena.

10.

On March 26, 2013, LALB was conducting a hearing concerning Ken Buhler.

11.

Robert Burns attends nearly every meeting and was in fact videoing the proceedings of the hearing on March 26, 2013.

12.

Counsel for Buhler requested that an *instanter* subpoena be issued to Burns to testify. The LALB caused the issuance of an oral *instanter* subpoena to Defendant, Robert Burns who was present at the LALB adjudicatory hearing. (*See* Affidavit, attached hereto as “Exhibit A”.)

13.

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. (*See* Affidavit, attached hereto as "Exhibit A".)

14.

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.

15.

However, Burns left the hearing room and immediately left the building.

16.

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.

17.

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.

18.

Since there was no valid legal basis upon which Robert Burns could refuse to comply with the LALB's subpoena, he is subject to all measures available under law to ensure his compliance with the subpoena.

#### **WRIT OF ATTACHMENT**

19.

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."

20.

Pursuant to La. R.S. 49:956(5)(C), the LALB seeks the issuance of a Writ of Attachment by this Honorable Court against Robert Burns, requiring him to appear before the Court for a hearing on the matter of his failure to comply with the LALB's lawful subpoena. (The hearing of Ken Buhler has not yet been concluded by the LALB and is presently set for hearing on May 20, 2013.)

21.

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.

22.

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 the 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.

WHEREFORE, the LALB prays its Petition for Writ of Attachment be GRANTED and that a Writ of Attachment be issued by this Honorable Court against Robert Burns. The Board further prays that Robert Burns be cast for the LALB's court costs and reasonable attorney fees incurred in connection with this proceeding.

Respectfully Submitted,

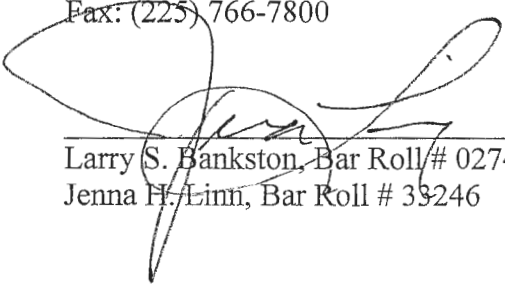
**Bankston & Associates, L.L.C.**

8708 Jefferson Hwy, Suite A

Baton Rouge, LA 70809

Telephone: (225) 766-3800

Fax: (225) 766-7800



Larry S. Bankston, Bar Roll # 02744  
Jenna H. Linn, Bar Roll # 39246

**PLEASE SERVE:**

Robert Burns

4155 Essen Lane, Ste 228

Baton Rouge, LA 70809

LOUISIANA AUCTIONEERS  
LICENSING BOARD

V.

ROBERT EDWIN BURNS

NO. SECTION  
19<sup>TH</sup> JUDICIAL DISTRICT COURT  
PARISH OF EAST BATO NROUGE  
STATE OF LOUISIANA

EX PARTE ORDER

CONSIDERING THE FOREGOING,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Louisiana Auctioneers Licensing Board's ("LALB") Petition for Writ of Attachment is hereby GRANTED, requiring Robert Burns to appear before the Court for a hearing on the matter of his failure to comply with the LALB's lawful subpoena.

IT IS FURTHER ORDERED that Robert Burns pay for the LALB's court costs and reasonable attorney fees, in the amount of \_\_\_\_\_, incurred in connection with this proceeding.

Baton Rouge, Louisiana, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

---

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

IN THE ALTERNATIVE:

IT IS HEREBY ORDERED ADJUDGED AND DECREED, that Robert Burns appear before this Court on the \_\_\_\_\_ day of \_\_\_\_\_, 2013 to show cause as to why the LALB's Petition for Writ of Attachment should not be granted and why he was not in contempt for failing to comply with *instanter* subpoena issued by the administrative hearing officer.

Baton Rouge, Louisiana, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

---

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

**ONCE SIGNED, PLEASE SERVE:**

Robert Burns  
4155 Essen Lane, Ste 228  
Baton Rouge, LA 70809

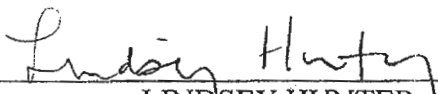
**AFFIDAVIT**

**STATE OF LOUISIANA**

**PARISH OF EAST BATON ROUGE**

**BEFORE ME**, the undersigned Notary Public, duly commissioned and qualified in and for the parish and state aforesaid, personally came and appeared LINDSEY HUNTER, who after being duly sworn did depose and say the following:

1. My name is Lindsey Hunter and I am an assistant attorney general.
2. I was appointed to act as hearing officer for the Louisiana Auctioneers Licensing Board's administrative adjudicatory hearing on March 26, 2013.
3. I am personally familiar with the activities that took place at the Louisiana Auctioneers Licensing Board's ("LALB") administrative adjudicatory hearing on March 26, 2013.
4. I was present at the LALB administrative hearing on March 26, 2013.
5. Robert Burns was also present at the LALB administrative hearing on March 26, 2013.
6. During the March 26, 2013 LALB administrative hearing, an oral *instanter* subpoena was issued to Robert Burns to testify at said hearing.
7. I issued the subpoena to Robert Burns at the LALB adjudicatory hearing, requesting Robert Burns testify regarding information relative to a possible violation of the Auctioneers Licensing Law.
8. In connection with the subpoena, Robert Burns was asked to step outside until he was called as a witness.
9. Robert Burns left the hearing room and left the building.
10. Robert Burns did not testify, in accordance with the subject subpoena, on March 26, 2013.

  
LINDSEY HUNTER

SWORN TO AND SUBSCRIBED before me this 25<sup>th</sup> day of April, 2013.

  
NOTARY PUBLIC

Emily G. Andrews  
Notary Public  
Bar Roll Number 31017  
Commission Expires at Death

