

FREDDIE PHILLIPS

NUMBER 593366 SECTION: 24

19TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

LOUISIANA AUCTIONEER'S LICENSING BOARD, and
JAMES KENNETH COMER, JR., Chairman & Custodian of
Records, Louisiana Auctioneer's Licensing Board

STATE OF LOUISIANA

ORDER FOR HEARING FOR WRIT OF MANDAMUS

Considering the foregoing:

IT IS ORDERED that a hearing be held in open court for the purpose of posing oral arguments regarding Petitioner's request of this Honorable Court that a Writ of Mandamus be issued by the court commanding that Defendants, LOUISIANA AUCTIONEER'S LICENSING BOARD and JAMES KENNETH COMER, JR. provide the records sought by Petitioner in his certified letter drafted to Defense Counsel Anna Dow on May 28, 2010 and received by Defense Counsel on June 1, 2010. The hearing for posing oral arguments is scheduled on the _____ day of _____, 2010.

Baton Rouge, Louisiana, this _____ day of _____, 2010.

DISTRICT JUDGE

Respectfully Submitted,

Freddie Phillips, in proper person
Member, LA Auctioneer's Licensing Board
8055 Hanks Drive
Baton Rouge, LA 70812
(225) 229-3341 (cell)
E-mail: freddiephillips@bellsouth.net

Freddie Phillips

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 13th day of September, 2010.

Freddie Phillips

CERTIFIED TRUE COPY
007331
DEPUTY CLERK OF COURT

FILED
2010 SEP 13 PM 5:01
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EAST BATON ROUGE, LOUISIANA

FREDDIE PHILLIPS

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Records, Louisiana Auctioneer’s Licensing Board

STATE OF LOUISIANA

**MEMORANDUM IN SUPPORT OF ORDER FOR HEARING FOR POSING
ORAL ARGUMENTS FOR WRIT OF MANDAMUS**

MAY IT PLEASE THE COURT:

NOW UNTO COURT comes Plaintiff, in proper person, who asserts to this Honorable Court certain responses to Defendants’ Answer to his petition which, in concert with other relevant assertions posed in this memorandum, support Petitioner’s request for an order for hearing for posing oral arguments for the issuance of a Writ of Mandamus by this Honorable Court.

Defense counsel poses the argument that she informed Petitioner that she did not have financial records of the Louisiana Auctioneer’s Licensing Board (LALB) and instructed Petitioner to contact LALB Chairman Comer. Petitioner did in fact contact Chairman Comer as instructed by defense counsel. In actuality, Petitioner and Chairman Comer engaged in extensive telephone conversations on or around June 5, 2010 regarding Petitioner’s request. Chairman Comer inquired of Petitioner as to exactly what Petitioner was requesting. Petitioner responded to Chairman Comer that the certified letter sent to defense counsel Dow specified exactly what records and LALB information he was seeking.

Chairman Comer emphasized at the August 2, 2010 LALB meeting that a “chain of command” had to be followed and that the request should have been submitted directly to him. As mentioned in the petition, that statement was on the heels of Chairman Comer having issued a letter to that effect to all Board members dated June 18, 2010. Despite defense counsel having forwarded personal copies of her response regarding Petitioner’s initial request to Chairman Comer and LALB Executive Assistant Sandy Edmonds, all three parties acknowledged at the LALB meeting of August 2, 2010 that Ms. Dow did not forward Petitioner’s actual certified request letter on to either Chairman Comer or

Executive Assistant Edmonds. Instead, as Mr. Comer emphasized, Petitioner was ordered to follow a “chain of command.”

Further, the tone and tenor of the Chairman’s remarks to Petitioner at the August 2, 2010 LALB meeting indicated that, far from Petitioner “having only to ask for the records” (which Petitioner had clearly done in his certified letter dated May 28, 2010), Chairman Comer openly questioned the motives of Petitioner at the August 2, 2010 LALB meeting. As referenced in the original petition, Board Member Delmar E. “Buster” Gay made inquiry of Petitioner as to “Why...why....why is this necessary? What is the point?” Mr. Comer immediately chimed in with a very sharp tone, “That’s what I wonder! That’s exactly what I wonder!” Then again, about 90 seconds later, Chairman Comer inquired, in a most angry and hostile tone, “What’s...let me ask you this: What’s behind all this? Are you planning on....you got something in the plans?” Therefore, far from having reason to believe Petitioner would receive a cordial reaction to merely requesting the records a second time (which he felt should not be a necessary act on his part and that defense counsel Dow, serving as general counsel for the LALB, had a fiduciary duty to forward the request to the appropriate party), Petitioner felt he had little choice but to seek a Writ of Mandamus commanding the issuance of the records.

Defense counsel Dow indicates the records can “easily be provided by coming to the Board office during regular working hours.” Defense counsel Dow knows that the LALB office is essentially a phantom office. It has a physical location but, as per the agreement with Executive Assistant Edmonds of September of 2009, no working hours apply in any manner whatsoever at the LALB office.

Defense counsel asserts Petitioner has been to the office on “numerous occasions since May 28, 2010 at which time he could have looked at the records had he requested to do so.” The reality is Petitioner has been to the LALB office twice since May 28, 2010: August 2, 2010 (for the LALB meeting) and September 1, 2010. Given the extreme hostility to which Petitioner was subjected at the August 2, 2010 Board meeting, it would have hardly seemed reasonable to believe Petitioner would have been afforded courtesy and respect in any request after that 2-½ hour meeting, and further complicating such a request is the fact that Executive Assistant Edmonds has no office working hours and sought to leave like everyone else after the lengthy and highly contentious meeting.

Regarding the September 1, 2010 office visit, a request for records was made by a member of the public. While Petitioner, along with fellow Board Member Robert Burns, did accompany that member of the public for the office visit scheduled for 10:30 a.m. that morning, Executive Assistant Edmonds limited her role to opening the building, setting up Mr. Terry Shirley, an auctioneer holding auction license # 1422 in the conference room to “oversee the day’s proceedings.” Ms. Edmonds, who was the only person in the building in an official capacity with the LALB aside from Petitioner and Board Member Burns, made an almost-immediate exit from the building and did not return. Mr. Shirley, meanwhile, greeted all three participants in a most testy tone stating, “Each one of you must sign this sign-in sheet before you can see the first record.” A copy of that sign-in sheet is included as P-5 and accompanies this memorandum. The member of the public inquired who Mr. Shirley was, to which Mr. Shirley responded, “That’s none of your business other than to know I’m overseeing this proceeding today.” The public member then inquired if Mr. Shirley had been declared custodian of records, to which Mr. Shirley responded, “I am today.” Given that the environment differed significantly from what the public member was assured would be the case via email (which was that Executive Assistant Edmonds would oversee the proceedings), the public member opted not to examine the records at all, and he, along with Petitioner and Board Member Burns, exited the building. Mr. Shirley indicated he was “fine with that. I get paid the same for the day no matter what transpires here today.” Board Member Burns followed the meeting with a certified letter to Ms. Edmonds inquiring by whose authority that arrangement was set up given that Mr. Shirley, as a licensee, would have a blatant conflict in being employed in any capacity by the LALB. As of the date of this filing, Mr. Burns has received no response to his certified letter, which he also sent via email and regular mail.

Defense counsel asserts that Petitioner indicated to Chairman Comer that he “wanted undersigned counsel to provide the records.” That statement is blatantly false. Petitioner requested that Chairman Comer request that defense counsel forward his certified letter on to Chairman Comer as Petitioner contends should have been done at the outset.

Regarding the 2008 Conference reimbursement, defense counsel asserts that Petitioner “has never filed the necessary paperwork to be reimbursed for that trip.” Defense counsel further relays “those forms have been presented to plaintiff on numerous occasions, and he has refused to prepare or sign these forms for reimbursement.” First, Petitioner made a conscious decision to decline to pursue 2008 reimbursement based on the now obviously-mistaken belief he would be permitted to attend the 2010 Conference as a representative of the Board and be reimbursed by the Board for that trip. During the May 17, 2010 LALB meeting, when the tone and tenor of the deliberations was such that it was appearing Petitioner would be denied that privilege, Board Member Burns made inquiry regarding the status of Petitioner’s 2008 reimbursement. Defense counsel, along with Board Members Steinkamp and Gay, emphatically stated that the Board had never approved reimbursing Petitioner for that 2008 trip and that, in fact, no such vote had ever taken place. Board Member Burns subsequently scheduled an office visit for the week of June 7, 2010 to examine records. Petitioner wishes to note that, despite the fact Board Member Burns was making this request at the exact same time Petitioner was making his request, Board Member Burns was not informed of having to follow any “chain of command” and go through Chairman Comer to set up the meeting and review records. Further, he has email correspondence between himself and Executive Assistant Edmonds to substantiate that fact. While on that office visit, which he patiently and agreeably waited two weeks to set up (which the aforementioned email correspondence will substantiate), he examined the November 2008 minutes. His observation revealed the fact that, just as Petitioner and Board Member Burns had asserted at the May 17, 2010 LALB meeting, the LALB had in fact unanimously approved Petitioner’s reimbursement. When Petitioner pointed this fact out to defense counsel, she stated, “I stand corrected.” Executive Assistant Edmonds then did in fact prepare reimbursement forms as indicated by defense counsel; however, Ms. Edmonds relayed to Petitioner that she had “found” a travel regulation that would reduce Petitioner’s mileage reimbursement since she could substantiate that he could have flown at a cheaper price. Petitioner inquired if past Board members had similar “lower-of” restrictions imposed upon them and inquired how the airfare comparison figure was derived two years after the fact. Petitioner then sought to utilize any information he may be able to gain from the records requested by the public

member to ascertain if in fact other Board members had historically had such “lower-of” restrictions placed upon them. If they have, Petitioner will gladly sign the reimbursement documents referenced by defense counsel, but Petitioner feels he is justifiably skeptical of Executive Assistant Edmonds’ tactic, especially since she relayed she had “found” a restriction in the travel regulations. At any rate, defense counsel is correct that the forms have been presented to Petitioner for signature, and he has respectfully declined to sign them at present for the foregoing reasons. Petitioner realizes, however, that, if past Board Members have encountered similar “lower-of” reimbursement restraints, then he is obviously most receptive to having those same restrains placed upon his own reimbursement claims.

Defense counsel’s speculation regarding Petitioner’s motive for requesting the records is not relevant in any way whatsoever to the petition before this Honorable Court and therefore is not addressed in this memorandum. Petitioner will only assert that he concurs that attendance at the Conference is, as defense counsel asserts, not a right afforded to any Board Member. Petitioner wishes to also assert, however, that, over the last decade, approximately 25 such requests on the part of Caucasian auctioneers have all been approved as a matter of routine practice. Petitioner is the only African American auctioneer in the history of the State of Louisiana, and he also holds the distinction of being the only auctioneer ever to endure the humiliation of a formal vote taken to decline his request to attend the Conference as a Board representative.

Defense counsel asserts that Petitioner seeks “only to harass defendants through this lawsuit.” Quite to the contrary, Petitioner has always maintained a very calm demeanor in Board meetings and has been meek in all of his requests of the Board. The reality is that Petitioner himself has been the brunt of harassment by Board Members at meetings, and this fact is readily demonstrated by the following quotations at the August 2, 2010 LALB meeting on the part of two Board Members:

Tessa Steinkamp:

"Freddie, I'm going to be quite honest with you. I voted no not to send you because of your behavior that you're doing right here: being so combative and non-collegial. I wouldn't want you to represent this Board.....Could you stop being so combative....? To be combative and non-collegial for what? ..Whatever.....The Board didn't see a benefit [to sending Freddie Phillips]."

Delmar E. "Buster" Gay:

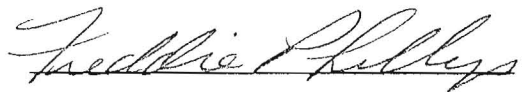
"I think a lot of it's got to do with the Board thinking somebody would not be a liability at the convention also.

We censured a Board member once before for making derogatory remarks at a convention and, uh, I won't go into detail into what it was but after that and we have been kind of careful about who we send to the convention."

Petitioner asserts that discovery is not applicable for this requested hearing to pose oral arguments regarding the issuance of a Writ of Mandamus; furthermore, no status conference is applicable. Therefore, Petitioner respectfully requests that this Honorable Court schedule a hearing to be held in open court, at which time oral arguments may be presented regarding the issuance of the Writ of Mandamus.

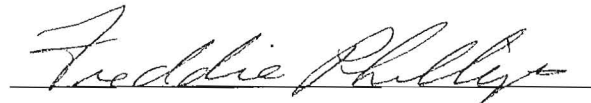
Respectfully Submitted,

Freddie Phillips, in proper person
Member, LA Auctioneer's Licensing Board
8055 Hanks Drive
Baton Rouge, LA 70812
(225) 229-3341 (cell)
E-mail: freddiephillips@bellsouth.net



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 13th day of September, 2010.





Louisiana

Office of the Governor
Auctioneers Licensing Board

Bobby Jindal
Governor

September 1, 2010

This form is to acknowledge that I / We are here to view the following publicly requested documents:

5222 Summa Court
Suite 352
Baton Rouge, LA 70809

Telephone: 225.763.5568
Fax: 225.763.5598

Email: admin@LALB.org
Web Address: www.LALB.org

1. 'Travel records for former board member Brian Fourroux for the 2007 NAA Convention'
2. 'Travel records for board member Buster Gay for the dates of Sept. 2001- May 2008.'
3. 'Travel records for former board member Ray Camp for the dates of Sept 2001- May 2008'

Please note that these records have been redacted according to Louisiana Statute.

Please print and sign your name(s) below:

Print Name

Signature

