

COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

CIVIL ACTION NO: 2014 – CA – 1166

ROBERT BURNS

Plaintiff – Appellant

VERSUS

**LOUISIANA AUCTIONEER’S LICENSING BOARD, CHARLES “HAL”
MCMILLIN, JAMES M. SIMS, DARLENE JACOBS-LEVY, GREGORY L.
“GREG” BORDELON, CHARLES “CLAYTON” BRISTOR**

Defendant – Appellee

CIVIL CASE ON APPEAL

FROM THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

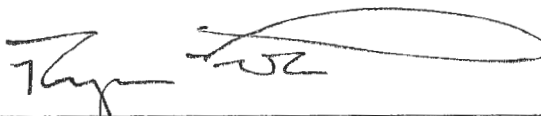
STATE OF LOUISIANA

HONORABLE WILSON FIELDS, JUDGE PRESIDING

ORIGINAL BRIEF OF ROBERT BURNS

APPELLANT AND PLAINTIFF

RESPECTFULLY SUBMITTED:



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JURISDICTION OF THE COURT

This is an appeal from two final judgments in a civil case. The judgments were signed by the trial court on April 22, 2014 and May 8, 2014 and mailed to the parties on April 24, 2014 and May 9, 2014 respectively. Robert Burns', appellant and plaintiff, motion for devolutive appeal was filed on June 6, 2014 and granted on June 13, 2014.

The judgments are appealable under La. C.C.P. Art. 2083(A), and the order of appeal was obtained timely under La. C.C.P. Art. 2087. Thus, this Honorable Court has jurisdiction here. Further, this Honorable Court has jurisdiction pursuant to Article V, §10 of the Louisiana Constitution of 1974, and as otherwise provided by law.

STATEMENT OF THE CASE

This dispute concerns an Open Meetings Law violation by a public body that entered into an Executive Session to discuss the character and professional competency of one of its licensees after the licensee demanded the hearing be held in an open meeting.

Plaintiff-Appellant, Robert Burns (hereinafter "Burns"), attended a meeting on September 17, 2012 of the Defendant-Appellee, Louisiana Auctioneer's Licensing Board (hereinafter "LALB") to discuss complaints against Burns, who is now a former licensee of the LALB. After recognizing the fact that Burns had for the discussion to be held in an open session and on the advice of the presiding hearing officer/administrative law judge, the LALB enter an Executive Session after Burns demanded that the discussion be held in an open meeting. After exiting the Executive Session, the LALB issued a public reprimand against Burns. In order to rectify the Open Meetings Law violation, the LALB held an open meeting to discuss the character and professional competence of Burns and again issued a public reprimand.

The LALB is a public body and held a meeting under the definition of the Open Meetings Laws, LSA R.S. 42:13(A)(3) and (2) respectively. The LALB held an Executive Session under LSA R.S. 42:16 to discuss complaints against Burns, which by its very nature includes the character and professional competency of Burns. However, the LALB violated LSA R.S. 42:17(A)(1) in that the Executive Session was held after Burns demanded that the discussion of his character and professional competency be held in open session. The individual board members of the LALB knew that Burns demanded the discussion to be held in an open session, which was Burns' right under LSA R.S. 42:17(A). This fact was reiterated by the hearing officer/Administrative Law Judge present at the meeting. Therefore,

the individual board members of the LALB knowingly and willfully participated in a meeting conducted in violation of the Open Meetings Laws, specifically LSA R.S. 42:17(A)(1) and civil penalties shall be assessed against them under LSA R.S. 42:28.

ACTION OF THE TRIAL COURT

Burns filed a petition against the LALB and its individual board members seeking to void a public reprimand issued by the LALB due to on Open Meetings Law violation under LSA R.S. 42:11 *et seq.* and to assess each member a civil penalty of \$100.00 each for such violation (R. 4-12). The trial court denied Motions for Summary filed by both Burns and LALB (R. 81). On April 9, 2014, the trial court held a bench trial on the merits.

The trial court signed two separate judgments on April 22, 2014 and May 8, 2014 (R. 225-228). The judgments differ in only one respect. The judgment signed on May 8, 2014 incorporated reason for judgment, while the April 22, 2014 judgment did not. The trial court also issued oral reasons for judgment on the day of the trial (R. 346-348).

In its oral reasons for judgment, the trial court found that the LALB was not going into an Executive Session or even having a meeting for the discussion of Burns character, professional competency or physical or mental health (R. 348). The trial court reasoned that the hearing was to discuss a complaint against Burns and for that purpose it “went into executive session to discuss their recourse as it relates to what they should do.” Therefore, the court found that the LALB did not violate the Open Meetings Law (R. 348). The trial court found that the individual board members of the LALB did not act knowingly and willfully in reference to going into an Executive Session in violation of the Open Meetings Law because the

hearing officer/Administrative Law Judge advised them that they could do so (R. 347). Therefore the court declined to issue civil penalties against the individual board members of the LALB.

Burns appealed seeking a decision from this Court on the merits.

ASSIGNMENTS OF ERROR

- I. The trial court erred to the prejudice of the Plaintiff-Appellant in finding that the LALB was not holding an open meeting under LSA R.S. 42:11, *et seq.*

- II. The trial court erred to the prejudice of the Plaintiff-Appellant in finding that the LALB did not go into an Executive Session under LSA R.S. 42:16 for the purpose of discussing the character, professional competency, or physical or mental health of Burns.

- III. The trial court erred to the prejudice of the Plaintiff-Appellant in finding that the LALB did not violate the provisions of the Open Meetings Law under, LSA R.S. 42:11, *et seq.* by going into an Executive Session to discuss the character, professional competency, or physical or mental health of Burns when he demanded that such discussion be held in an open meeting under LSA R.S. 42:17(A)(1) and in finding that each party shall bear own their own costs.

- IV. The trial court erred to the prejudice of the Plaintiff-Appellant in finding that no civil penalties be assessed to the individual board members of the LALB under LSA R.S. 42:28, because they did not knowingly and willfully go into an executive session in violation of the Open Meetings Law.

ISSUES PRESENTED FOR REVIEW

1. Whether a public body is subject to the Open Meetings Law under LSA R.S. 42:11 *et seq.*, when discussing a complaint of one its licensees.
2. Whether the actions of the individual board members of a public body to go into an illegally held Executive Session are knowing and willful when they are warned that such actions are a violation of the Open Meetings Law.

STATEMENT OF FACTS

Appellant-Plaintiff, Robert Burns (Burns), was a licensee of the Appellee-Defendant, Louisiana Auctioneer's Licensing Board (LALB). The LALB is an executive agency and public body of the State of Louisiana (R. 4, 26). Several complaints were made against Burns in connection with the New Orleans Auction Gallery and emails sent by Burns to the LALB, which was claimed to be in violation of the policies and procedures of the LALB (R. 313-314).

On September 17, 2012, the LALB held a hearing to discuss the possible violations by Burns as a licensee of the LALB (R. 5, 26). At the conclusion of the presentation of evidence and testimony of all witnesses, the LALB moved and held a vote to enter into Executive Session in order to discuss the complaints issued against Burns (R. 264). At the conclusion of the vote to enter into an Executive Session, Burns, who was represented by counsel, objected to the Executive Session and requested that any discussions regarding his character and professional competency be held in an open session (R. 315).

A hearing officer/Administrative Law Judge was present at the hearing, who was assigned by the Louisiana Attorney General's office to provide legal advice to the Board. The hearing officer/Administrative Law Judge denied Burns request for the hearing to be held in open session and stated that the LALB had a "right" to enter into Executive Session and that Burns had a right for the discussion to be in an open meeting (R. 272-273). The LALB entered into Executive Session to deliberate and discuss the complaints issued against Burns. The LALB exited the Executive Session and issued a public reprimand against Burns (R. 269).

Burns contended that the September 17, 2014 LALB meeting was in violation of the Open Meetings Law and filed the petition in this matter (R. 4). In response, the LALB held another hearing on January 8, 2013 to discuss the complaints against

Burns in an open meeting (R. 221, 229). During this hearing the LALB allowed Burns to issue an opening statement before it entered into a discussion of the alleged violations of Burns in open session. Following the discussion of the LALB, it was moved and voted in the affirmative to again publicly reprimand Burns (R. 221, 269).

SUMMARY OF ARGUMENT

This appeal concerns the Open Meetings Laws under LSA R.S. 42:11 *et seq.* and a violation that occurred by the LALB when it entered into an Executive Session to discuss the character and professional competency of one of its licensees after the licensees requested that the discussion be held in an open session.

The LALB is a public body under the definitions of LSA R.S. 42:13(A)(3). The LALB held a meeting on September 17, 2012, which constituted a meeting under the definition of LSA R.S. 42:13(A)(2). Therefore, the LALB is subject to Open Meetings Law and must hold such meetings in open to the public unless it may be closed pursuant to law.

In this case, the LALB held a hearing to discuss complaints against Burns. A complaint by its very nature deals with the character and professional competency of an individual. A public body may enter an executive session to discuss the character, professional competence, or physical or mental health of a person, provided that such person is notified in writing at least twenty-four hours before the meeting and that such person may require that such discussions be held at an open meeting. Upon the LALB voting to enter an executive session, Burns requested that the meeting be held in open session. After conferring with the hearing officer/Administrative Law Judge, the LALB entered into an Executive Session in direct violation of LSA R.S. 42:17(A)(1).

Louisiana Meetings Law shall be construed liberally under LSA R.S. 42:12. An Executive Session shall be limited to matters allowed to be exempted from discussion at open meetings by R.S. 42:17. Therefore, the LALB cannot rely on the fact that the Executive Session was held during an administrative hearing concerning complaints against Mr. Burns to circumvent the Open Meetings Laws.

The individual members of the LALB were aware that Burns requested for the

hearing on his complaints to be discussed in an open meeting. The hearing officer/Administrative Law Judge stated that the LALB could enter into Executive Session to discuss the character and profession competence of Burns. Ignorance to the law is no defense and the LALB cannot rely on erroneous advice given by its counsel to sidestep the law. Therefore, the individual members of the LALB knowingly and willfully participated in the Executive Session that was in violation of the Open Meetings Law. Thus, each member shall be subject to and personally liable for a civil penalty to not exceed one hundred dollars under LSA R.S. 42:28.

LAW AND ARGUMENT

This case comes before this Honorable Court to determine whether the trial court erred in finding that the LALB did not violate the Open Meetings Laws under LSA R.S. 42:11 *et seq.* The LALB is a public body and subject to all Open Meeting Laws. The LALB violated the Open Meetings Law when it went into an Executive Session to discuss the character and professional competency of Burns after he demanded that the discussion be held in an open session under LSA R.S. 42:17(A)(1). Burns' attorney stated to the LALB that Burns had a right for the meeting to be in an open session. Therefore, the individual board members must be assessed civil penalties under LSA 42:28 because they knowingly and willfully went into an Executive Session that was in violation of the Open Meetings Law. The fact that the Administrative Law Judge gave the individual board members erroneous advice has no bearing on the fact that they knew the Executive Session was held in violation of the law.

A. STANDARD OF REVIEW

Appellate courts may not disturb the fact findings of the trier of fact in the absence of manifest error. *Arceneaux v. Domingue*, 365 So.2d 1330, 1333 (La.1979). In *Arceneaux*, the Court posited a two part test for the appellate review of facts: 1) The appellate court must find from the record that there is a reasonable factual basis for the finding of the trial court; and 2) The appellate court must further determine that the record establishes that the finding is not clearly wrong (manifestly erroneous). *Arceneaux*, 365 So.2d at 1333; *B and L Associates, Inc. v. Crump*, 369 So.2d 1094, 1095 (La.App. 1st Cir.1979).

Accordingly, if an appellate court concludes that the trial court's factual findings are clearly wrong, the mere fact that some record evidence appears which would furnish a reasonable factual basis for the contested findings does not require affirmance. *Davis v. Owen*, 368 So.2d 1052, 1056 (La.1979). Although appellate courts must accord great weight to the factual findings of the trial judge, these same courts have a duty to determine if the fact finder was justified in his conclusions. See, e.g., *Parker v. Rhodes*, 260 So.2d 706, 717 (La.App. 2d Cir.1972). An appellate court is not required, because of the foregoing principles of appellate review, to affirm the trier of fact's refusal to accept as credible uncontradicted testimony or greatly preponderant objectively-corroborated testimony where the record indicates no sound reason for its rejection and where the factual finding itself has been reached by overlooking applicable legal principles. *West v. Bayou Vista Manor, Inc.*, 371 So.2d 1146, 1150 (La.1979).

B. THE LALB IS A PUBLIC BODY THAT IS SUBJECT TO THE OPEN MEETINGS LAW UNDER LSA R.S. 42:11 ET SEQ. WHEN DISCUSSING A COMPLAINT OF ONE ITS LICENSEES.

Firstly, it must be established that the LALB was subject to the Open Meetings Law under LSA R.S. 42:11 *et seq.* during the September 17, 2012 meeting held in order to discuss complaints against Burns.

The Open Meetings Law has established definitions for “meeting” and “public body” under LSA 42:13(A)(2) and (3) respectively which bear mentioning:

(2) “Meeting” means the convening of a quorum of a public body to deliberate or act on a matter over which the public body has supervision, control or jurisdiction, or advisory power. It shall also mean the convening of a quorum of a public body or by another public official to receive information regarding a matter over which the public body has supervision, control, jurisdiction, or advisory power.

(3) "Public Body" means village, town, and city governing authorities; parish governing authorities; school boards and boards of levee and port commissioners; boards of publicly operated utilities; planning, zoning, and airport commissions; and any other state, parish, municipal, or special district boards, commissions, or authorities, and those political subdivision thereof, where such body possesses policy making, advisory, or administrative functions, including any committee or subcommittee of any of these bodies.

The LALB admitted in its answer (R. 26) to the original petition filed by Burns that the LALB is an executive agency of the State of Louisiana (R. 4). It is clear that the LALB is a public body under the definition of LSA R.S. 42:13(A)(3).

The next question is whether the meeting held by LALB on September 17, 2012 fits the definition of meeting under LSA R.S. 42:13(A)(2). The LALB admitted in its answer (R. 26) to the original petition filed by Burns that the LALB held an Administrative Hearing entailed the matter of LALB v. Robert Burns on September 17, 2012 (R. 5). Therefore, it is also clear that the LALB held a meeting under the definition of LSA R.S. 42:13(A)(2). The trial court therefore erred in finding that the LALB was not holding a meeting under the Open Meetings Law, LSA R.S. 42:11 *et seq.*

LSA Constitution 1974, Art. XII, Sec. 3, states, "No person shall be denied the right to observe the deliberation of public bodies and examine public documents, except in cases established by law." It must also be noted that the provisions of the Open Meetings Law shall be construed liberally. LSA R.S. 42:12(A). The legislature has determined that it is public policy for meetings to be open, "It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that do into the making of public policy." *Id.* Given the express purpose of the law, our courts have stated that the purpose of the Open Meetings Law is to allow the

public to observe and evaluate public officials, public conduct, and public institutions. *Organization of United Taxpayers and Civic Associations of Southeast Baton Rouge, Inc., v. Louisiana Housing Finance Agency*, 96-2406, p. 5 (La. App. 1 Cir. 11/7/97), 703 So.2d 107, 110, writ denied, 97-3007 (La. 2/6/98), 709 So.2d 745. It is meant to protect citizens from secret decisions made without any opportunity for public input. *Id.*

The next question that must be answered in the matter before this Court is whether the LALB went into an Executive Session under LSA R.S. 42:16 to discuss the character, professional competency or physical or mental health of Burns. “Every meeting of any public body shall be open to the public unless closed pursuant to 42:16, 17, or 18.” LSA R.S. 42:14(A).” However, public bodies may enter into Executive Sessions, which are limited to matters allowed to be exempted from discussion at meetings by R.S. 42:17. LSA R.S. 42:16. No executive session shall be used as a subterfuge to defeat the purposes of the Open Meetings Law. *Id.*

The trial court seems to indicate in its oral reasons for judgment that the LALB did not even enter into an Executive Session during the September 17, 2012 meeting because the purpose of the meeting was regarding a complaint that was filed against Burns. (R.347-348). However, the trial court judge goes onto say “And for that purpose, they went into Executive Session to discuss their recourse as it relates to what they should do.” (R. 348). As the record shows throughout, the LALB never controverted that an Executive Session was entered into by the LALB. See LALB’s Pre-Trial Insert, which states under Established Facts that LALB entered into an Executive Session (R. 221). Therefore, the trial court erred in finding that the LALB did not go into an Executive Session.

Next, it must be determine whether the LALB violated the Open Meetings Law by going into an Executive Session to discuss the character, professional

competency, or physical or mental health of Burns after Burns demanded that the discussion be held an open meeting under LSA 42:17(A)(1).

The Open Meetings Law allows for public bodies to enter into Executive Session for the following reasons under LSA R.S. 42:17(A)(1), "Discussion of the character, professional competence, or physical or mental health of a person, provided that such person is notified in writing at least twenty-four hours before the meeting and that such person may require that such discussion be held at an open meeting." The exemptions contained in R.S. 42:17(A) are in derogation of the broad public policy of openness, the enumerated reason for an executive session are exclusive. *Brown v. East Baton Rouge Parish School Board*, 405 So.2d 1148 (La. App. 1 Cir. 1981).

In *Sandifer v. Louisiana State Board of Practical Nurse Examiners*, the plaintiff contended that the Board of Practical Nurse Examiners violated the Open Meetings Law by denying her the right to observe and participate in the deliberations of the matters involving her license, namely refusing to take a drug test after narcotics went missing. No. 2007 CA 1131, p. 3, (La. App. 1 Cir. 3/26/2008), *writ denied*, 8 So.3d 546 (La. 2009). The court found that the matter concerned the professional competence of the plaintiff and the Board was entitled to hold their discussions in Executive Session. "However it is undisputed that Ms. Sandifer requested in accordance with Paragraph (1) that the matter be reviewed in an open meeting, that the Board denied this request. Because Paragraph (1) clearly and unambiguously 'require[s] that such discussion be held at an open meeting' if so desired by the person at issue, the Board was in plain violation of the Open Meetings Law." *Id.* at p. 9. The Court went onto to find that no other law authorized an Executive Session in this case. Specifically finding that allowing closed sessions for investigative proceedings regarding allegations of misconduct under Paragraph

(4) of R.S. 42:17(A) was not applicable. *Id.* The court reasoned that the Board was making a final disposition in a formal disciplinary proceeding, rather than conducting an investigative proceeding. *Id.* at pg. 10.

The underlying facts before this Court regarding whether an Open Meetings Law violation occurred are substantially similar to the *Sandifer* case. Just as in *Sandifer*, Burns' license, and thus his character and professional competence, was at issue when a complaint was lodged against him. (R. 266). The LALB held a meeting on September 17, 2012 to discuss the complaint, in which they ultimately issued a final ruling to publicly reprimand Burns. The LALB had a right to enter into an Executive Session to discuss Burns' character and professional competence under LSA R.S. 42:17(A)(1). However, the LALB violated the Open Meetings Law when they entered the Executive Session after Burns demanded the discussion be held in an open session. (R. 272). Burns had a right to have the meeting discussing his character and professional competence to be held in an open session under LSA R.S. 42:17(A)(1).

Also like in *Sandifer*, the LALB was making a final disposition in the formal disciplinary proceeding against Burns (R. 263). The LALB could have held the entire investigative proceeding in an Executive Session, however they chose to close the meeting in order to discuss what disciplinary actions should be taken, (R. 325 and 327) which is a final disposition of matter. Therefore, LSA R.S. 42:17(A)(4) is not a justifiable reason for the LALB to enter into an Executive Session as the LALB was not conducting an investigative proceeding.

Thus, the trial court erred in finding that the LALB did not violate the Open Meetings Law when the LALB went into Executive Session to discuss the character, professional competency, and physical or mental health of Burns after he requested that such discussion be held in an open meeting under LSA R.S. 42:17(A)(1).

The LALB held a meeting on January 8, 2013 in order to rectify the Open Meetings Law violation on September 17, 2012 (R. 221 and 269). The LALB followed all Open Meetings Laws on January 8, 2013 by holding the entire meeting in an open session and thereafter again publicly reprimanded Burns (R. 221 and 270). A public entity can cure the relatively nullity of any injury or harm caused to the public by violating the Open Meetings Laws. *Delta Development Co., Inc. v. Plaquemines Parish Council*, 451 So.2d 134, 138 (La. App. 4 Cir. 1984). However, redoing a meeting correctly under the Open Meetings Law does not erase the fact that an Open Meetings Law violation occurred on September 17, 2012. Allowing a public body to cure the fact that an Open Meetings Law occurred by holding another meeting in compliance with the law would be in direct countersense to the public policy of the State of Louisiana under LSA R.S. 42:12 and LSA Constitution 1974, Art. XII, Sec. 3.

Finally, this Court should award all cost of litigation to Burns in this matter. The trial judge did not discuss taxing of costs in the oral reasons for Judgment, but assessed each party their own costs in each of the written judgments. Attorney fees are not at issue as Burns represented himself, pro se, at the trial court. LSA R.S. 42:26(C) states in pertinent part, "If a person who brings an enforcement proceeding prevails, he shall be awarded reasonable attorney fees and other costs of litigation. If such person prevails in part, the court may award him reasonable attorney fees or an appropriate portion thereof."

Burns was forced to bring this enforcement action after the Open Meetings Law violation occurred during the September 17, 2012 meeting. Burns filed his original petition on November 16, 2012 (R. 4). Only after the petition was filed by Burns did the LALB set another hearing to discuss the complaints against Burns in an open session. It is reasonable to say that the LALB would not have conducted

the January 8, 2013 meeting to fix its mistakes if Burns would not have filed this petition. Burns should not bear the burden of paying all his court costs and other costs of litigation by forcing the LALB to comply with the Open Meetings Law. It is the responsibility of the LALB and all other public entities to comply with the law and a citizen who tries to enforce his rights under the law should not be cast costs or cost of litigation. LSA R.S. 42:26(C) was put in place to protect public citizens from bearing the potentially high costs of litigation. Depending on the ruling of this Court, Burns should be recognized as the prevailing party in this matter and thus awarded all costs of litigation.

C. THE INDIVIDUAL BOARD MEMBERS OF THE LALB KNOWINGLY AND WILLFULLY ENTERED INTO AN EXECUTIVE SESSION THAT WAS IN VIOLATION OF THE OPEN MEETINGS LAW, SPECIFICALLY LSA R.S. 42:17(A)(1) .

If any member of a public body knowingly and willfully participates in an Executive Session under LSA R.S. 42:17(A), they shall be subject to a civil penalty and personally liable for the payment.

LSA R.S. 42:28 states, “Any member of a public body who knowingly and willfully participates in a meeting conducted in violation of this Chapter, shall be subject to a civil penalty not to exceed one hundred dollars per violation. The member shall be personally liable for the payment of such penalty. A suit to collect such penalty must be instituted within sixty days of the violation.” In order to assess civil penalties the individual members of the public body “must not only violate the open meetings laws to be fined, they must have done it “knowingly and

willfully.” *Courvelle v. Louisiana Recreational and Used Motor Vehicle Commission*, 21 So.3d 340, 347 (La. App 1 Cir. 2009).

In *Courvelle*, at the time the commission entered into an Executive Session, no objection was made by the commission’s attorney, nor did the attorneys opine that the commission had failed to provide a sufficient reason under the statutes to convene the Executive Session. *Id.* The Court found that the record provided a reasonable belief by the commissioners to justify an Executive Session and that there was no knowing and willful violation by the commission members. *Id.* at 347-348.

This matter is sustainably different from *Courvelle*, in that Burns’ attorney objected to the Executive Session. (R. 272 and 302). The LALB voted to enter into an Executive Session to discuss the character and professional competency of Burns (R. 221). At that time, Burns’ attorney objected to the Executive Session, stating that Burns had a right for the hearing to be held in open session (R. 302). The hearing officer/administrative law judge then stated,

“Well (Burns) has a right. They have a right to into Executive Session to discuss character and other type issues. He has a right to those issues outside of that realm to be heard in open session. So we’re going to go into Executive Session to discuss the character issues. Once we come out of Executive Session, we’ll be able to discuss those issues outside that realm. (R. 272-273)

Therefore, the hearing officer/Administrative Law Judge acknowledged and stated to the LALB that Burns had a right to have his character and professional competency discussed in an open session, but then gave the LALB erroneous advice regarding their ability to enter into an Executive Session. However, the LALB knowingly and willfully entered an Executive Session knowing that Burns wanted the discussion of his character and professional competency to be held in an open session.

No individual members of the LALB voted “no” regarding entering the Executive Session (R. 289). The LALB relies on the fact that the hearing officer/Administrative Law Judge advised the LALB that it was allowed to go into a Executive Session (R. 290). However, the record clearly shows the individual board members of LALB knew that Burns had a right to have the discussion in an open session and yet the LALB board members participated in an Executive Session that violated the Open Meetings Law.

Therefore, the individual board members of the LALB knowingly and willfully entered into an Executive Session that was in violation of the Open Meetings Law and therefore must be assessed civil penalties under LSA R.S. 42:28.

CONCLUSION

The LALB is subject to the Open Meetings Law under LSA R.S. 42:11 *et seq.* The meeting held by the LALB on September 17, 2012 was subject to the Open Meetings Law. The Executive Session was entered into by the LALB to discuss the character and professional competency of Burns over the insistence of Burns that the meeting be held in an open session in violation of LSA R.S. 42:17(A)(1).

The reason for which a public body may enter an Executive Session is limited to those reasons listed in LSA R.S. 42:16. The fact that the LALB received erroneous advice from the hearing officer/Administrative Law Judge bears no consequence, as the LALB board members were warned that Burns had a right to hear the discussions of his character and professional competence in an open meeting. Therefore, when the LALB board members entered into the Executive Session, they did so knowingly and willfully and should be subject to the civil penalties under LSA R.S. 42:28.

For the reasons stated above, this Court is respectfully urged to reverse the trial court in following instances:

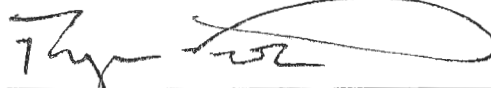
1. Finding that the LALB was not subject to the Opening Meetings Law during the September 17, 2012 meeting to discuss complaints against Burns.
2. Finding that the LALB did not hold an Executive Session to discuss the character, professional competence or physical or mental health of Burns.
3. Finding that the LALB did not violate the Open Meetings Law by holding an Executive Session to discuss the character of Burns after Burns demanded that such discussion of his character and professional competency be held in an open meeting and in finding that each party shall bear own their own costs.

4. Finding that the individual board members of the LALB did not knowingly and willfully participate in an Executive Session that was in violation of the Open Meetings Law.

Burns further request the following:

1. Finding that the LALB violated the Open Meetings Law, in particular LSA R.S. 42:17(A)(1), when the LALB entered into an Executive Session to discuss the character and professional competency of Burns after he demanding the meeting be held in an open session.
2. Finding that Burns was the prevailing party in these proceedings and awarding all costs of litigation in this matter to Burns.
3. Finding that the individual members of the LALB knowingly and willfully entered into an Executive Session that was in violation of the Open Meetings Law after they were warned that Burns had the right for the meeting to be held in an open session.
4. Assessing a civil penalty of one hundred dollars against the individual board members of the LALB, namely Charles McMillin, James M. Sims, Darlene Jacobs-Levy, Gregory L. Bordelon, and Charles Brister, under LSA R.S. 42:28.
5. Awarding Burns attorney fees for this appeal.

RESPECTFULLY SUBMITTED:



J. RYAN VIVIAN (LBRN: 33424)
JOHN C. HOPEWELL, III (LBRN: 20868)
HOPEWELL LAW FIRM, L.L.P.
21122 OLD SCENIC HWY., SUITE B
ZACHARY, LOUISIANA 70791
TELEPHONE: (225) 658-7958
FACSIMILE: (225) 658-9906
EMAIL: Ryan@certaintitle.com
Appeal Counsel for Plaintiff/Appellant Robert Burns

COURT OF APPEAL FOR THE FIRST CIRCUIT

STATE OF LOUISIANA

CIVIL ACTION NO: 2014 – CA – 1166

ROBERT BURNS

VERSUS

LOUISIANA AUCTIONEER'S LICENSING BOARD, CHARLES "HAL"
MCMILLIN, JAMES M. SIMS, DARLENE JACOBS-LEVY, GREGORY L.
"GREG" BORDELON, CHARLES "CLAYTON" BRISTOR

CERTIFICATE OF SERVICE

I HEREBY certify that a copy of the above and foregoing Appellant's
Original Brief has this day been mailed, postage prepaid, by U.S. Mail, to:

Honorable Wilson Fields
300 North Blvd.
Baton Rouge, LA 70802

Larry S. Bankston
Jenna H. Linn
8708 Jefferson Hwy., Ste. A
Baton Rouge, LA 70809.

on this the 17th day of September, 2014.



J. RYAN VIVIAN

ROBERT BURNS

NUMBER 616,916

SECTION 25

DEPUTY CLERK OF COURT

APR 17 2014

VERSUS

19TH JUDICIAL DISTRICT COURT

LOUISIANA AUCTIONEER'S LICENSING BOARD, CHARLES "HAL" McMILLIN, JAMES M. SIMS, DARLENE JACOBS-LEVY, GREGORY L. "GREG" BORDELON, CHARLES "CLAYTON" BRISTER

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

POSTED APR 17 2014

JUDGMENT OF TRIAL ON THE MERITS

This matter came before this Honorable Court on the 9th day of April, 2014 for a bench trial on the merits. Present were

PRESENT: Robert Burns

Pro se Plaintiff

Larry S. Bankston

Counsel for the Defendants, Louisiana Auctioneers Licensing Board, Charles McMillin, James M. Sims, Darlene Jacobs-Levy, Gregory L. Bordelon, and Charles Brister

RECEIVED APR 17 2014 DIVISION 0 JUDGE FIELDS

After presentation of and completion of all evidence, argument of counsel, the Court rendered a verdict in favor of Defendants, Louisiana Auctioneers Licensing Board, Charles McMillin, James M. Sims, Darlene Jacobs-Levy, Gregory L. Bordelon, and Charles Brister, finding that the Defendants did not violate Louisiana's Open Meetings Law, La. R.S. 42:11, et seq., and Defendants are not liable to Plaintiff.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Judgment be entered in FAVOR of Defendants, Louisiana Auctioneers Licensing Board, Charles McMillin, James M. Sims, Darlene Jacobs-Levy, Gregory L. Bordelon, and Charles Brister, dismissing all claims of the Plaintiff, Robert Burns, with prejudice. Each party shall bear their own costs.

Accordingly, this matter is dismissed in its entirety, with prejudice.

Signed in chambers this 22 day of Apr. 2014 at Baton Rouge,

EBR2308866

FILED EAST BATON ROUGE PARISH, LA. 2014 APR 17 AM 8:00 W. WILSON FIELDS DEPUTY CLERK OF COURT

HONORABLE WILSON FIELDS Judge, 19th Judicial District Court

REC'D C.P.

Costs Due Form: COSTS DUE \$ 814.32 PARTY: THE AUCTIONEERS AMOUNT: \$ 814.32 Are hereby assessed to... in the amount of \$... Are hereby assessed to the party who incurred the costs. JUDGE Date: 22/04/14

I hereby certify that on this day a notice of the above judgement was mailed by me, with sufficient postage affixed, to: L. Bankston, R. Burns and signed on 24 April 2014

REC'D C.P.


W. Wilson Deputy Clerk of Court

APR 25 2014

EXHIBIT A 1

Respectfully submitted:

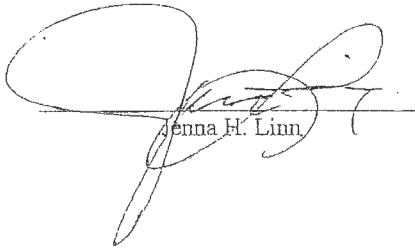
Bankston & Associates, L.L.C.
8708 Jefferson Hwy, Suite A
Baton Rouge, LA 70809
Telephone No.: (225) 766-3800
Fax: (225) 766-7800




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

CERTIFICATE OF SERVICE AND RULE 9.5

I hereby certify that the above and foregoing has been served on all parties of record by placing same in the United States Mail, properly addressed and postage paid, and/or by facsimile transmission, and/or by electronic mail on the 10th day of April, 2014. I further certify that Plaintiff has objected to the language of the Judgment to the extent the Judgment does not include a paragraph regarding the Court's reasoning. Such language that the Plaintiff desires to include in the Judgment is attached hereto.



Jenna H. Linn

FILED
EAST BATON ROUGE PARISH, LA
2014 APR 17 AM 8:40

DEPUTY CLERK OF COURT

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APR 17 2014
DIVISION C
JUDGE FIELDS

ROBERT BURNS

NUMBER 616,916 SECTION 25

VERSUS

19TH JUDICIAL DISTRICT COURT

LOUISIANA AUCTIONEER'S
LICENSING BOARD, CHARLES
"HAL" McMILLIN, JAMES M. SIMS,
DARLENE JACOBS-LEVY, GREGORY L.
"GREG" BORDELON, CHARLES
"CLAYTON" BRISTER

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

COST OK \$ 85.⁰⁰

JUDGMENT OF TRIAL ON THE MERITS

APR 11 2014
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DEPUTY CLERK OF COURT

This matter came before this Honorable Court on the 9th day of April, 2014 for a bench trial on the merits. Present were

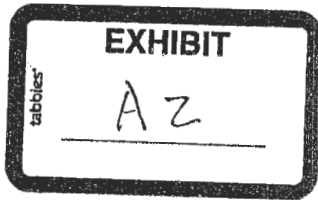
PRESENT:	Robert Burns	<i>Pro se</i> Plaintiff
	Larry S. Bankston	Counsel for the Defendants, Louisiana Auctioneers Licensing Board, Charles McMillin, James M. Sims, Darlene Jacobs-Levy, Gregory L. Bordelon, and Charles Brister

After presentation of and completion of all evidence, argument of counsel, the Court rendered a verdict in favor of Defendants, Louisiana Auctioneers Licensing Board, Charles McMillin, James M. Sims, Darlene Jacobs-Levy, Gregory L. Bordelon, and Charles Brister, finding that the Defendants did not violate Louisiana's Open Meetings Law, La. R.S. 42:11, *et seq.*, and Defendants are not liable to Plaintiff.

The Court adopts as its reasons for this judgment in favor of Defendants the Court's finding that Mr. Burns' character was not discussed in an Executive Session and also that the guidance of the Attorney General's office as demonstrated by that office's acquiescence to any discussion of Mr. Burns' character in Executive Session absolves Defendants of any liability to Mr. Burns.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Judgment be entered in FAVOR of Defendants, Louisiana Auctioneers Licensing Board, Charles McMillin, James M. Sims, Darlene Jacobs-Levy, Gregory L. Bordelon, and Charles Brister, dismissing all claims of the Plaintiff, Robert Burns, with prejudice. Each party shall bear their own costs.

EBR2265352



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APR 11 2014

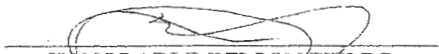
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JUDGE FIELDS

REC'D C.P.
MAY 13 2014

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Accordingly, this matter is dismissed in its entirety, with prejudice.


Signed in chambers this 08 day of May, 2014 at Baton Rouge, Louisiana.

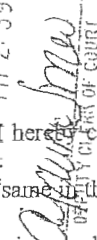

HONORABLE WILSON FIELDS
Judge, 19th Judicial District Court

Respectfully submitted:

Robert Burns, in proper person
4155 Essen Lane, Apt. 228
Baton Rouge, LA 70809-2142
Telephone No.: (225) 235-4346
Email: Robert@auctionsellsfast.com

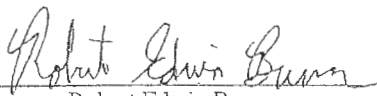

Robert Burns, in proper person

I hereby certify that on this day a notice of the above judgment was filed by me, with sufficient postage affixed, to: L. Bankston, R. Burns
done and signed on 09 May 2014

Deputy Clerk of Court

FILED
EAST BATON ROUGE PARISH, LA
2014 APR 11 PM 2:39

DEPUTY CLERK OF COURT

CERTIFICATE OF SERVICE AND RULE 9.5

I hereby certify that the above and foregoing has been served on all parties of record by placing same in the United States Mail, properly addressed and postage paid, and/or by facsimile transmission, and/or by electronic mail on the 11th day of April, 2014. I further certify that Defense Counsel Jenna Linn has indicated to Plaintiff that it is not proper for written reasons to be included in the judgment. Plaintiff has no reason to doubt Ms. Linn, but many things are likely not proper, including failing to supply a trial brief prior to trial (as Defendants did). Therefore, Plaintiff submits this proposed judgment, which differs from one expected to be submitted by Ms. Linn identical in nature but devoid of written reasons, in order that the Court may avail itself of the ease and convenience of signing this judgment. If not, Plaintiff will research the required filing and deadline for obtaining written reasons from this Honorable Court and submit the necessary filing for same within the statutory period.

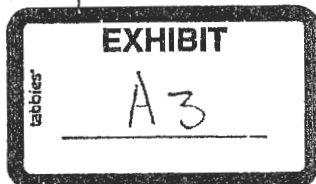

Robert Edwin Burns

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DIVISION 0
JUDGE FIELDS

US GOING INTO EXECUTIVE SESSION. AND HE IS CORRECT ABOUT WHEN MY ATTORNEY ACKNOWLEDGED. HE WAS RESPECTFUL AND HE WAITED. AND THE TRANSCRIPT CLEARLY REFLECTS THAT NO ONE SPOKE IN BETWEEN THAT. AND MR. KLEINPETER IMMEDIATELY SAID, TO THAT END, HE HAS A RIGHT TO HAVE IT HELD IN AN OPEN SESSION. AND I KNOW THEY WANT TO BLAME THE ATTORNEY GENERAL'S OFFICE. AND IF POTENTIALLY THEY MIGHT HAVE GOTTEN BAD GUIDANCE FROM THE ATTORNEY'S GENERAL'S OFFICE, THEY CAN SEEK RECOURSE AGAINST THE ATTORNEY GENERAL'S OFFICE. I NOTICE THEY DIDN'T BRING ANY WITNESSES FROM THE ATTORNEY GENERAL'S OFFICE. NONE. THEY COULD SEEK RECOURSE AGAINST THEM. THEY CONTRACTED WITH THE ATTORNEY GENERAL'S OFFICE. I DIDN'T. SO MY RIGHTS CANNOT BE VIOLATED BY -- I MADE THE ANALOGY, YOUR HONOR, YOU MAY REMEMBER ON MARCH 25TH. I SAID IT'S LIKE A DELTA AIRLINES FLIGHT FROM CHICAGO TO SAN FRANCISCO AND THE PILOT CRASHES IT. AND THEN THEY WANT TO SAY, DELTA, IT WOULD SAY, WELL, YOU CAN'T BLAME US. IT WAS THAT PILOT'S FAULT. IT DOESN'T WORK, YOUR HONOR. AND I WOULD ASK -- THEY KNEW. AND THEY HAVE BEEN KNOWING FOR YEARS, BECAUSE I'VE KEPT DRILLING IT INTO THEIR HEADS EVEN AS RECENTLY AT MAY 21, 2012. I SAID DO NOT GO INTO EXECUTIVE SESSION. AND THEY REVERSED THEMSELVES AND THE RECORD CLEARLY REFLECTS THAT THEY REVERSED THEMSELVES AND CAME OUT. THANK YOU, YOUR HONOR. I APPRECIATE YOUR TIME.

THE COURT: ALL RIGHT. I AGREE WITH YOU, MR. BURNS THAT -- I DON'T KNOW IF THAT'S EXACTLY WHAT



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I STATED, BUT IT SEEMS LIKE THAT WAS SOMETHING THAT I MAY HAVE TALKED ABOUT IN ONE OF THE MOTIONS FOR SUMMARY JUDGMENT OR ONE OF THE MOTIONS ABOUT THE BOARD GOING BACK AND TRYING TO CORRECT WHAT MAY HAVE BEEN A VIOLATION. AND THAT WAS FOR THE SUMMARY JUDGMENT. AS IT RELATES TO THIS HEARING TODAY, OR THIS TRIAL AND ASKING FOR CIVIL PENALTIES AGAINST THESE BOARD MEMBERS, THE COURT DOES NOT FIND THAT THEY ACTED KNOWINGLY IN REFERENCE TO GOING INTO AN EXECUTIVE SESSION. THEY GOT ADVICE OF THE ATTORNEY FOR THE BOARD AND THEY -- THE ATTORNEY ADVISED THEM THAT THEY COULD DO SO. SO THE COURT DOES NOT FIND THAT THEY -- THAT THEY WAS KNOWINGLY AND WILLINGLY GOING INTO AN EXECUTIVE SESSION KNOWING THAT IT WOULD BE CONTRARY TO LAW. AS IT RELATES TO THE EXECUTIVE SESSION ITSELF, REVISED STATUTE 42:7 (A) 17, WITH THE EXCEPTIONS TO THE OPEN MEETINGS STATE A PUBLIC BODY MAY HOLD AN EXECUTIVE SESSION PURSUANT TO REVISED STATUTE 42:16 FOR ONE OR MORE OF THE FOLLOWING REASONS: DISCUSSION OF THE CHARACTER, PROFESSIONAL COMPETENCY OR PHYSICAL OR MENTAL HEALTH OF A PERSON, PROVIDED THAT SUCH PERSON IS NOTIFIED IN WRITING AT LEAST 24 HOURS BEFORE THE MEETING AND THAT SUCH PERSON MAY REQUIRE THAT SUCH DISCUSSION BE HELD IN AN OPEN MEETING. SO WHEN I READ THAT STATUTE AND GO TO THE NOTICE THAT WAS SENT TO MR. BURNS AND WHAT WAS THE PURPOSE OF THIS HEARING ON MR. BURNS, AND THE NOTICE OF THE HEARING FOR THE SEPTEMBER 17TH, 2012, IT STATES THAT THE HEARING WOULD BE BASED UPON A COMPLAINT FILED AGAINST YOU BY NEW ORLEANS AUCTION GALLERY.

IN ADDITION, THE BOARD HAS BEEN MADE AWARE OF
EMAILS CONCERNING FALSE STATEMENTS CONCERNING THE
EMPLOYMENT ISSUES OF THE EXECUTIVE DIRECTOR. AND
WHEN I READ WHAT THE PURPOSE OF THE MEETING IS FOR
AND THE BOARD GOING INTO EXECUTIVE SESSION AND TRY
TO PUT THAT OVER 42:16, I DON'T FIND WHERE THE
BOARD WAS GOING INTO AN EXECUTIVE SESSION OR EVEN
HAVING A MEETING FOR THE DISCUSSION OF CHARACTER,
PROFESSIONAL COMPETENCY OR PHYSICAL OR MENTAL
HEALTH. IT SEEMS LIKE THERE WAS A COMPLAINT THAT
WAS FILED AND THEY WAS HAVING A HEARING ON IT.
AND FOR THAT PURPOSE, THEY WENT INTO EXECUTIVE
SESSION TO DISCUSS THEIR RECOURSE AS IT RELATES TO
WHAT THEY SHOULD DO. SO THE COURT DOESN'T FIND
THAT THEY VIOLATED THE PUBLIC HEARING LAW. MR.
BANKSTON, PREPARE A JUDGMENT FOR THE COURT'S
SIGNATURE.