

ROBERT BURNS

NUMBER 616916 DOCKET: 25

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

VERSUS

PARISH OF EAST BATON ROUGE

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

STATE OF LOUISIANA

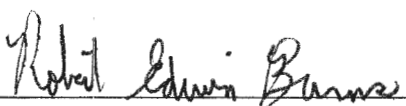
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**MOTION FOR SUMMARY JUDGMENT**

NOW UNTO COURT comes Plaintiff, Robert Edwin Burns, in proper person, who pursuant to Article 966 of the Louisiana Code of Civil Procedure and for reasons expanded upon in the attached memorandum, moves this Honorable Court for a Summary Judgment, granting Plaintiff a Judgment against each named individual Defendant, JAMES M. SIMS, CHARLES "HAL" McMILLIN, DARLENE JACOBS-LEVY, CHARLES "CLAYTON" BRISTER, and GREGORY L. "GREG" BORDELON, in the amount of \$100 in Civil Penalties pursuant to LA R. S. 42:28 along with each Board Member being assessed a 20% (one-fifth) share of Defendant's court costs in initiating this Petition as provided for under LA R. S. 42:26(C) and further granting Plaintiff a Judgment against Defendant Louisiana Auctioneer's Licensing Board rendering its members' action of "reprimanding" Plaintiff void pursuant to LA R. S. 42:26(A)(4) as a result of Defendant Louisiana Auctioneer's Licensing Board having rendered its ruling based upon an illegal Executive Session and with such Judgment from this Honorable Court available to Plaintiff as a remedy in accordance with the voidability provisions of LA R. S. 42:24.

Respectfully Submitted,

Robert Edwin Burns, in proper person  
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E-mail: [Robert@AuctionSellsFast.com](mailto:Robert@AuctionSellsFast.com)

  
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EAST BATON ROUGE PARISH, LA

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Certificate of Service on Next Page:

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 23<sup>rd</sup> day of January, 2013.

Robert Edwin Burns

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**MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

MAY IT PLEAE THE COURT:

Plaintiff, Robert Edwin Burns, moves for Summary Judgment on the grounds that there are no genuine issues of material fact, thus entitling him to judgment as a matter of law. In support of Plaintiff's Motion for Summary Judgment, Plaintiff submits this Memorandum to this Honorable Court.

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**I. FACTUAL BACKGROUND**

Defendant, Louisiana Auctioneer's Licensing Board (LALB) conducted a hearing on September 17, 2012 entitled, "LALB v. Robert Burns." At the conclusion of testimony of all witnesses, LALB Vice Chairman James Sims, moved the Board into Executive Session. Plaintiff's Legal Counsel, Robert Loren Kleinpeter, stated that Plaintiff had the right to have the deliberations heard in open session if he so desired. The Administrative Law Judge, notwithstanding the clear wording of LA R. S. 42:17(A)(1), nevertheless stated that the Board had the "right" to enter into Executive Session and, as stated in Paragraph Seven (7) of Plaintiff's original pleadings, made the following verbatim quote: "Well, he has a right...They have a right to go into Executive Session to discuss **character** and other type issues. He has the right to have those issues outside.....to be heard in an open session, so **we're going to go into Executive Session to discuss character issues** and once we come outside of Executive Session, we'll be able to **discuss those issues outside of his character.**"

Upon this petition being filed, all Defendants have offered are statements of "Oops, we messed up," or "Oops, we're sorry," or "Well, we relied upon the Administrative Law Judge," or "We'll reset deliberations to 'cure' the 'defects.'" These statements by Defendants are all attempts to "place the genie back in the bottle." Furthermore,

Defendants' mere action to "reset deliberations" on January 8, 2013 was a point-blank, prima facie act constituting an admission of guilt regarding failing to adhere to LA R. S. 42:17(A)(1). If Defendants conformed to the Statute, why were such "reset deliberations" scheduled? Defense Counsel Bankston himself reinforced Plaintiff's argument in that regard when he stated on January 8, 2013 that Defendants were doing so to "**correct or comply**" with the Statute! None of these excuses, including an argument that Defendants "reset deliberations" for January 8, 2013 (at a time when Plaintiff did not even hold an auction license) are relevant in any manner whatsoever regarding the fundamental question at hand: Did Defendants conform to LA R. S. 42:17(A)(1)? The undeniable answer, even admitted to by Defendants, is "no." Moreover, Defense Counsel has made assertions that Defendants attempted to "cure defects," relating to the proceedings of September 17, 2012 and that Defendants actions on January 8, 2013 "cured injury" sustained on September 17, 2012. The mere use of phrases like "cure defects" and "cured injury" by Defendants constitutes additional prima facie evidence that Defendants failed to conform to the provisions of LA R. S. 42:17(A)(1), that they readily admit to same, and that they are therefore subject to the Civil Penalties as specified under LA R. S. 42:28 as a matter of law.

## II. **MATTERS OF UNCONTESTED FACTS**

1. An Administrative Hearing was held on September 17, 2012 entitled LALB v. Robert Burns.
2. At the conclusion of the presentation of evidence and testimony of all witnesses, LALB moved to enter into an Executive Session.
3. Plaintiff's attorney, Robert Loren Kleinpeter, made known the fact that Plaintiff wished to invoke his right to have the deliberations heard in an open session.
4. The presiding Administrative Law Judge ruled that the LALB could enter into an Executive Session **for the express purpose of discussing Plaintiff's character**, thus making the provisions of LA R. S. 42:17(A)(1) applicable for that discussion. Further, the Administrative Law Judge made that ruling notwithstanding Plaintiff's stated insistence that such deliberations transpire in an open session.
5. Defendants failed to do as they had done so many times in the past and provide Plaintiff with the required written notice of their intention to enter into Executive Session

at least 24 hours before the hearing and affording Plaintiff the option to **REQUIRE** that such deliberations entailing his character take place in open session (see Exhibit P-1).

### III. **PETITIONER HARMED BY SECRETIVE DELIBERATIONS**

Defendant LALB failed to cite a single auction statute for which Plaintiff was even alleged to have violated. That fact was made abundantly clear during a four-minute elaboration of all twelve (12) provisions of Auctioneer Statute 3121 by Plaintiff's Counsel, Robert Loren Kleinpeter, with Mr. Kleinpeter even stating, "I don't know of a single one of these provisions that my client is even alleged to have violated." In particular, when Mr. Kleinpeter referenced provision number five (5), incompetency or gross negligence, he stated, "I don't even have to discuss that." However, Plaintiff wishes to reiterate in this Memorandum as he did in his pleadings that provision number five (5) was the core provision Defendants provided for convening the hearing!! Upon conclusion of the enumeration of those 12 provisions by Mr. Kleinpeter, Board Member Darlene Jacobs-Levy, an attorney with 43 years of practicing law in Louisiana, stated her observation that she was so unimpressed with the evidence advanced by Defense Counsel that **she** urged that the Administrative Law Judge issue a Directed Verdict in favor of Plaintiff. As if that weren't bad enough, Defendants then ultimately failed to state any definitive justifiable reason as to why they chose to "publicly reprimand" Plaintiff. Plaintiff was therefore unequivocally harmed by the secretive deliberations! Such harm is evident in that Plaintiff was denied added ammunition for a future Defamation lawsuit against Defendants because he was denied the opportunity to hear (and film) just what all was said regarding Plaintiff's character. Defendants then clearly lacked the courage and conviction to make those statements publicly on January 8, 2013.

Plaintiff argues through this Memorandum that LA R. S. 42:17(A)(1) was created for, and is intended to, serve that very purpose: to permit a person whose character is being discussed to observe such discussions! If Defendants had derogatory statements to make regarding Plaintiff's character, including but not limited to their stated purpose in convening the hearing (i.e. that Plaintiff is incompetent), they should have no qualms about making those statements, including providing their rationales as to why they believe Plaintiff may be "incompetent," in a public format! Truth is an **absolute** defense to a Defamation of Character lawsuit; therefore, if Defendants are speaking the truth, they

have nothing to fear. If, on the other hand, they are making outlandish, unfounded, unsupported, false, and scurrilous statements about Plaintiff, Plaintiff has the right to observe such statements in an open forum, and that is why LA R. S. 42:17(A)(1) is worded exactly the way it is: to afford the individual whose character is being discussed the option to REQUIRE (not request, with the public body having the authority to grant or deny the open format setting) a public format if he so desires! Instead of agreeing to Plaintiff's insistence on an open-format format, Defendants took nearly an hour to conduct secretive deliberations about Plaintiff during which derogatory statements undoubtedly were made about Plaintiff, less there be no justification whatsoever for Defendants' "public reprimand" issued against Plaintiff upon reconvening from Executive Session. In sharp contrast, at the "reset deliberations" of January 8, 2013, Defendants seemed nearly afraid of their own shadows in that such "deliberations" lasted three (3) minutes with no Board Member wanting to say a word! Ms. Lindsey Hunter, Administrative Law Judge for the January 8, 2013 "reset deliberations," after about 15 seconds of utter silence by Defendants, inquired, "Are you going to provide your reasons for issuing a public reprimand of Mr. Burns?" Thereafter, Vice Chairman James Sims spoke in a voice so low that it was barely audible! Plaintiff was undeniably harmed by Defendants' defiance of LA R. S. 42:17(A)(1) for the very reasons just espoused. Plaintiff anticipates Defense Counsel arguing that Plaintiff had opportunity to speak at the hearing, which he went on record as stating that he had no intention whatsoever of doing, nor would he even agree to be sworn in for the proceeding. The reality is that it was Defendants' opportunity to, albeit meaningless because the Statute violations had already transpired, provide public "deliberations" on January 8, 2013. Instead, with a camera rolling, all Defendants suddenly became very bashful and clamed up! What little discussion transpired was a mere statement of what defendants had already done (which everyone already knew!). There were no "deliberations" at the January 8, 2013 "reset deliberations" and, as Plaintiff has stated in his amended pleadings and prior to the commencement of the proceedings, they were a "complete farce."

#### IV. CONCLUSION

Plaintiff is entitled to a Judgment as a matter of law because there are no genuine issues of material fact to dispute that Defendants: #1) conducted an illegal Executive

Session in which the notice requirements of LA R. S. 42:17(A)(1) were blatantly ignored (in contrast with past practice – Exhibit P-1) with Defendants not even providing any document into evidence to refute that neglect; #2) Defendants knowingly, willfully, and even defiantly entered into Executive Session notwithstanding Plaintiff’s legal counsel having clearly invoked his right to have those deliberations transpire in open session; # 3) Defendants have offered no statements, responsive pleadings, or any other evidentiary material to refute Plaintiff’s assertion that Defendants failed to adhere to the requirements of LA R. S. 42:17(A)(1); #4) Defendants have offered nothing but excuses and lame attempts, pathetic as they are, to “cure defects” and “cure injury” (Defendants’ own words!) inflicted upon Plaintiff by Defendants; and #5) Defendants knew of Plaintiff’s repeated past insistence that discussions of his character transpire in an open session and his repeated recitation of the Statute affording him that “right,” with that knowledge readily substantiated through Exhibit P-1, a certified letter to Plaintiff from Defendants stating that he could “require” such discussions of his character to take place in an open meeting regarding the May 21, 2012 meeting.

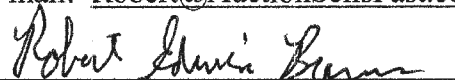
Therefore, Summary Judgment in favor of Plaintiff is appropriate as a matter of law. That Judgment, as provided by R. S. 42:28, should be comprised of an award of \$100 in Civil Penalties from each Defendant. Each Board Member, as provided for under LA R. S. 42:26(C), should additionally be assessed a 20% (one-fifth) share of Defendant’s court costs in initiating this Petition. Further, a Declaratory Judgment should be entered in favor of Plaintiff and against Defendant Louisiana Auctioneer’s Licensing Board rendering its members’ action of “reprimanding” Plaintiff void pursuant to LA R. S. 42:26(A)(4) as a result of Defendant LALB having rendered its ruling based upon an illegal Executive Session in accordance with the voidability provisions of LA R. S. 42:24. That Judgment is particularly appropriate given that Plaintiff was denied the opportunity to observe the rationale of why Defendants issued a “public reprimand” of Plaintiff, nor were any logical or applicable reasons provided to Plaintiff regarding same upon the conclusion of Executive Session on September 17, 2012 or at the “reset deliberations” of January 8, 2013.

Were this Honorable Court to deny Plaintiff’s Motion for Summary Judgment, it would send a signal to all Louisiana citizens that public bodies are free to violate

Louisiana's Open Meetings Laws as much as they wish. Were the Court to rely upon the lame excuses expected to be presented by Defense Counsel in opposition to this Motion and espoused upon previously in this Memorandum to deny Plaintiff's Motion, it would send a signal to Louisiana citizens that public bodies can trample all over Louisiana citizens' rights. Further, it would send a signal that public bodies may do so in a defiant manner and with full knowledge that their actions violate the law. The consequences for violating Louisiana's Open Meetings Laws are relatively minor at a \$100 personal liability for each Board Member and, at least in the present case, mere court costs since Plaintiff is pro-se even though he could have sought reasonable attorney fees via LA R. S. 42:28 had he opted to employ an attorney. Were this Honorable Court to deny Plaintiff's Motion for Summary Judgment, it would send a chilling message to Louisiana citizens that even sham "reset deliberations" could be used to, quoting Defense Counsel's own words, "cure defects," and "cure injury" inflicted by the trampling of citizens' rights as afforded under LA R. S. 42:17(A)(1). In short, such a denial of Plaintiff's Motion for Summary Judgment would make an absolute mockery of Louisiana's Open Meetings Laws. What public agency would make any attempt whatsoever to conform to Louisiana's Open Meetings Laws if such a denial were to be issued by this Honorable Court? For that reason, Plaintiff urges this Honorable Court to grant Plaintiff's Motion for Summary Judgment as supported in this Memorandum in order to send a clear and unambiguous message to Louisiana citizens that public agencies are not free to trample on Louisiana citizens' rights afforded to them through such laws as LA R. S. 42:17(A)(1).

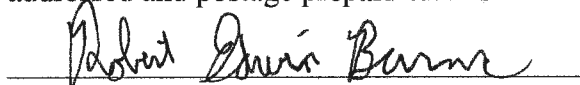
Respectfully Submitted,

Robert Edwin Burns, in proper person  
4155 Essen Lane, Apt 228  
Baton Rouge, LA 70809-2152  
(225) 201-0390 (office) (225) 235-4346  
E-mail: [Robert@AuctionSellsFast.com](mailto:Robert@AuctionSellsFast.com)



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 23<sup>rd</sup> day of January, 2013.





ROBERT BURNS

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BORDELON, CHARLES "CLAYTON" BRISTER

STATE OF LOUISIANA

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**RULE TO SHOW CAUSE**

CONSIDERING THE FOREGOING Motion for Summary Judgment filed by  
Plaintiff, in proper person:

IT IS ORDERED that Defendants, Louisiana Auctioneer's Licensing Board,  
Charles "Hal" McMillin, James M. Sims, Darlene Jacobs-Levy, Gregory L. "Greg"  
Bordelon, and Charles "Clayton" Brister, appear and show cause, if any they may have,  
on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, at \_\_\_\_\_ o'clock  
\_\_\_\_\_m., why the motion should not be granted.

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

\_\_\_\_\_  
JUDGE

PLEASE SERVE:

Larry S. Bankston, Attorney for Defendants  
8708 Jefferson Highway, Suite A  
Baton Rouge LA 70809

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