

ROBERT BURNS, ET AL

: NUMBER 619707 SECTION 27

VS.

: 19TH JUDICIAL DISTRICT COURT

LOUISIANA AUCTIONEER'S
LICENSING BOARD, ET AL

: PARISH OF EAST BATON ROUGE

: STATE OF LOUISIANA

RULING

THIS MATTER CAME BEFORE THE COURT ON AUGUST 4, 2014 AND SEPTEMBER 15, 2014 FOR MOTIONS FOR SUMMARY JUDGMENT. BOTH MATTERS WERE TAKEN UNDER ADVISEMENT.

SUIT WAS FILED BY ROBERT BURNS, A FORMER LICENSEE OF THE LOUISIANA AUCTIONEER'S LICENSING BOARD, AND FREDDIE PHILLIPS, A CURRENT LICENSEE OF THE BOARD. THE DEFENDANT BOARD IS AN EXECUTIVE AGENCY OF THE STATE OF LOUISIANA. PLAINTIFFS HAVE FILED WHAT IS TITLED A "PETITION FOR DAMAGES" BUT ACTUALLY APPEARS AS A SUIT CLAIMING A VIOLATION OF THE OPEN MEETINGS LAW. DEFENDANTS ARE THE BOARD AND THREE INDIVIDUALS WHO ARE MEMBERS OF THE BOARD. PLAINTIFFS ALLEGE THAT AT THE JANUARY 8, 2013 MEETING PLAINTIFF PHILLIPS WAS NOT ALLOWED TO COMMENT ON THE MINUTES OF THE NOVEMBER 5, 2012 MEETING. AFTER THE MEETING OF JANUARY 8TH, PLAINTIFF BURNS SENT AN E-MAIL TO THE BOARD'S ATTORNEY LARRY BANKSTON COMPLAINING THAT THIS DECISION WAS ABSURD, AN EFFORT TO DENY THE PUBLIC THE RIGHT TO SPEAK ON AGENDA ITEMS PRIOR TO A VOTE AND INCONSISTENT WITH PAST LALB PRACTICE. PLAINTIFF ALSO ALLEGES THAT THE BOARD'S ACTION DENYING SUCH SPEECH WAS IN DIRECT VIOLATION OF R.S. 42:14(D). PLAINTIFFS FURTHER STATE THAT THE BOARD EXPANDED ITS MINUTES IN A PRIOR MEETING SO THEY COULD CERTAINLY EXPAND THE MINUTES FROM THE NOVEMBER 5, 2012 MEETING. THEY ALLEGE THAT THE INDIVIDUALLY NAMED DEFENDANTS "KNOWINGLY AND WILLFULLY DENIED HIM THE RIGHT TO VOICE HIS SENTIMENTS REGARDING THOSE NOVEMBER 5, 2012 MINUTES AT ITS REGULARLY SCHEDULED JANUARY 8,


2013 MEETING.” ADDITIONALLY, PLAINTIFFS ALLEGE THAT PLAINTIFF BURNS REQUESTED TO SPEAK ON THE TOPIC OF PER DIEM PAYMENTS AND THAT HE WAS TOLD THAT THAT ISSUE WAS NOT ON THE AGENDA. PLAINTIFF CLAIMS THAT THE ISSUE OF PER DIEM PAYMENTS CONSTITUTES A LINE ITEM WITHIN THE FINANCIALS WHICH WAS ON THE AGENDA. PLAINTIFFS ALSO ALLEGE A VIOLATION OF R.S. 42:14(D) WHICH PROVIDES THAT A PUBLIC COMMENT PERIOD BE HELD PRIOR TO ACTION ON AN AGENDA ITEM UPON WHICH A VOTE IS TO BE TAKEN. PLAINTIFFS CLAIM THAT BECAUSE OF A VIOLATION OF THIS STATUTE AND PURSUANT TO R.S. 42:28, EACH INDIVIDUAL DEFENDANT IS PERSONALLY LIABLE IN THE AMOUNT OF \$100 TO EACH PLAINTIFF IN CIVIL PENALTIES.

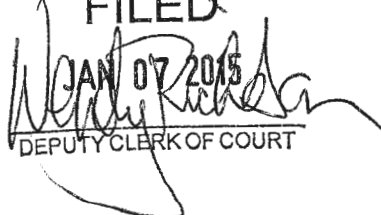
AFTER A REVIEW OF THE ARGUMENT OF THE PARTIES AND THE LAW, THE JUDGE GRANTS THE DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT DENYING PLAINTIFFS’ CLAIM OF A VIOLATION OF THE OPEN MEETINGS LAW. THE COURT FINDS THAT UNDER THE OPEN MEETINGS LAW, THE PUBLIC IS ALLOWED TO COMMENT ON ITEMS LISTED ON THE AGENDA. THE AGENDA DID NOT INCLUDE THE SUBJECT OF PER DIEM PAYMENTS. THE AGENDA DID INCLUDE THE CATEGORY OF “APPROVAL OF FINANCIALS” BUT IT DID NOT INCLUDE ANY DETAIL. WHEN THE AGENDA FAILS TO INCLUDE ANY DETAIL, IT IS NECESSARY FOR THE BOARD TO VOTE ON SUCH MATTER TO ADD THE ITEM TO THE AGENDA. THAT WAS NOT DONE BY THE BOARD IN THIS INSTANCE. WITH REGARD TO THE MINUTES, PLAINTIFF PHILLIPS WAS ALLOWED TO COMMENT ON THE UNAPPROVED MINUTES. THEREFORE, HE WAS NOT DENIED HIS RIGHT TO SPEAK. THE COURT DOES NOT FIND THAT THAT THE DEFENDANTS “KNOWINGLY AND WILFULLY” VIOLATED THE OPEN MEETINGS LAW AS IS REQUIRED BY THE STATUTE. THE NAMED DEFENDANTS RELIED ON THE AGENDA AND LEGAL COUNSEL WHEN IT DENIED PLAINTIFF THE RIGHT TO COMMENT ON WEBSITE LINKS AND ON PER DIEM PAYMENTS. THE COURT FURTHER FINDS THAT AT THE MARCH 4, 2013 MEETING, PUBLIC COMMENT WAS ALLOWED. THEREFORE, ANY VIOLATION, IF THERE WAS ONE, WAS RENDERED MOOT AT THE LATER MEETING. THE COURT FINDS THERE ARE NO MATERIAL ISSUES OF LAW AND FACT AND THUS GRANTS DEFENDANTS’ MOTION.

gwa


JUDGMENT TO BE SIGNED ACCORDINGLY.

SIGNED THIS 30th DAY OF DECEMBER, 2014


TODD W. HERNANDEZ, JUDGE
19th Judicial District Court
Parish of East Baton Rouge
State of Louisiana

FILED
JAN 07 2015

DEPUTY CLERK OF COURT

I hereby certify that on this day a copy of the written reasons for Judgment was mailed by me, with sufficient postage affixed to.

Done and signed on January 7, 2015

Deputy Clerk of Court

Robert Burns, Jenna Linn,
Larry Bankston, Freddie Phillips