

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 CA 2074

A.M.E. SERVICES, INC.

VERSUS

HOUSING AUTHORITY OF THE CITY OF SLIDELL

Judgment Rendered: May 7, 2010

Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 2009-12974

Honorable Raymond S. Childress, Judge

Mark A. Balkin
Joseph C. Chautin
Mandeville, LA

Attorneys for
Plaintiff – Appellant
A.M.E. Services, Inc.

Terrance L. Brennan
Keith J. Bergeron
Scott J. Hedlund
New Orleans, LA

Attorneys for
Defendant – Appellee
Housing Authority of the
City of Slidell

BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

WELCH, J.

A.M.E. Services, Inc. (“AME”) appeals a judgment in favor of the Housing Authority of the City of Slidell (“housing authority”), denying and dismissing AME’s petition for injunction and mandamus. We affirm in compliance with Uniform Rules—Courts of Appeal, Rule 2-16.1(B).

Pursuant to a bid invitation previously issued and published, the housing authority accepted sealed bids and held a bid opening on February 18, 2009, for Hurricane Katrina repairs and renovations in seventy-six residential units in the Washington Heights housing development. Approximately eight companies submitted bids for the project. The apparent low bidder for the project was MBD Maintenance, LLC (“MBD”). The apparent second lowest bidder was M. Natal Contractor, Inc. (“Natal”). AME was the apparent third lowest bidder.

After the bid opening, AME reviewed the two lower bids, and on April 3, 2009, filed a protest of the potential award of the bid with the housing authority. The bid protest was denied, and AME was advised of the internal procedure for appealing that decision. The basis of AME’s bid protest was that the bids of MBD and Natal were non-conforming, and therefore, the housing authority was required by law to reject those bids. See La. R.S. 38:2211, *et seq.* Specifically, AME contends that MBD’s bid was non-conforming or non-responsive because it did not include a properly notarized Non-Collusive/Non-Identity of Interest Affidavit, as was required. AME contends that Natal’s bid was non-conforming in that its bid bond did not include the attestation required on the bid bond form.¹

AME then instituted these proceedings seeking to enjoin the housing authority from awarding the contract for the project to a non-conforming bidder, or alternatively, if the contract had already been awarded, a judgment finding that the

¹ For purposes of these proceedings, the housing authority has conceded that Natal’s bid was non-responsive.

contract, awarded in violation of the law, was a nullity. Further AME requested an order requiring the housing authority to award the contract for the project to AME, as the lowest bidder whose bid was in conformity with law. After a hearing, by judgment signed on August 6, 2009, the trial court denied AME's request for injunctive relief and dismissed AME's petition. From this judgment, AME appeals.

The sole issue raised on appeal is whether the Non-Collusive/Non-Identity of Interest Affidavit submitted with MBD's bid complied with applicable law. The trial court made a specific factual finding that it did comply.² AME asserts that the affidavit does not comply with the requirements of La. R.S. 35:12(D)(2) because it does not contain the typed, printed, or stamped name of the notary.

Louisiana Revised Statutes 35:12(D)(2) provides:

Except as otherwise provided in this Section, no state office, agency, department, or political subdivision shall accept, file, or record any document notarized in this state on or after January 1, 2005, unless the document contains the notary identification or attorney bar roll number and the typed, printed, or stamped name of the notary and the witnesses.

The Non-Collusive/Non-Identity of Interest Affidavit submitted with MBD's bid contains the notary's legible signature, the notary's identification number, and the notary's embossed seal/stamp for the notary that witnessed the affidavit. The notary's embossed seal/stamp contains the notary's printed name, the notary's identification number, and the notary's parish of commission. AME contends the affidavit is non-conforming because although the document is embossed with the

² The correct standard of review by the appellate court for factual findings is manifest error. The two-part test for the appellate review of a trial court's factual finding is: (1) whether there is a reasonable factual basis in the record for the finding of the trier of fact; and (2) whether the record further establishes that the finding is not manifestly erroneous. **Mart v. Hill**, 505 So.2d 1120, 1127 (La. 1987). Thus, if there is no reasonable factual basis in the record for the trier of fact's finding, no additional inquiry is necessary to conclude that there was manifest error. However, if a reasonable factual basis exists, an appellate court may set aside a factual finding only if, after reviewing the record in its entirety, it determines that the factual finding was clearly wrong. See Stobart v. State, DOTD, 617 So.2d 880, 882 (La. 1993); **Moss v. State**, 2007-1686 (La. App. 1st Cir. 8/8/08), 993 So.2d 687, 693, writ denied, 2008-2166 (La. 11/14/08), 996 So.2d 1092.

notary's name, the embossed seal is not a stamp. Notably, however, the embossed seal/stamp contains the notary's printed name. Thus, the Non-Collusive/Non-Identity of Interest Affidavit submitted with MBD's bid contains both the notary's identification number and the notary's printed name as required by La. R.S. 35:12(D)(2). Thus, the trial court's conclusion that the Non-Collusive/Non-Identity of Interest Affidavit submitted with MBD's bid complied with applicable law is reasonably supported by the record and is not clearly wrong.

Accordingly, the August 6, 2009 judgment of the trial court denying AME's request for injunctive relief and dismissing AME's petition is affirmed.

All costs of this appeal are assessed to the plaintiff/appellant, A.M.E. Services, Inc.

AFFIRMED.