INDEX No. 08-020230

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 6 - SUFFOLK COUNTY

PRESENT:

Hon. Gary J. Weber
Acting Justice of the Supreme Court

MOTION DATE July 21, 2008
Motion Seq. # 001- MG

In the Matter of the Revocation of the Pistol License of JOSEPH L. COLAIACOVO,

Petitioner

-against-

RICHARD DORMER, as the Statutorily Designated Handgun Licensing Officer, and as the Police Commissioner of the County of Suffolk, and His Successors in Office,

Respondent

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The Petitioner, by Order to Show Cause granted July 7, 2008 has demanded that the Respondent Show Cause why his right to a pistol permit should not be completely restored. Respondent has now submitted a Verified Answer dated October 7, 2008, an Administrative Return dated October 7, 2008, and a Memorandum of Law dated October 7, 2008. The Petitioner has submitted an "Affirmation in Sur-Reply", dated September 22, 2008.

DECISION

The Petitioner was possessed of a pistol permit with a sportsman endorsement that was issued on June 7, 2005 and was not due to expire until June 1, 2010. On March 7, 2008 the Respondent revoked the Petitioner's pistol permit altogether based upon circumstances surrounding the death of Petitioner's wife which was found to be a suicide. Apparently, the Respondent determined that the Petitioner's failure to keep his weapon in a locked safe, or otherwise inoperable was an unspecified rule violation. Respondent terminated the Petitioner's license to possess a weapon predicated upon this alleged failure. Thereafter, the Respondent modified this determination so as to permit the Petitioner to possess a pistol in his dwelling, but without the sportsman endorsement, which would allow him to possess the pistol outside the home.

The Supreme Court of the United States rendered its determination in ***District of Columbia v. Heller on June 26, 2008.***[1] ***___ US___, 128 S.Ct. 2783.*** In ***Heller*** the Court held that there is a personal right to bear arms protected by the 2nd Amendment to the Constitution. The Court further held that requirements that a handgun be rendered inoperable, or locked in such a manner so that it is not immediately accessible when possessed in the owner's dwelling also transgresses upon this right to bear arms, because the 2nd Amendment recognizes that the right to bear arms includes a corollary right to self defense. The Respondent had previously determined that the Petitioner met the qualifications for a pistol permit with a sportsman's endorsement. In view of ***Heller*** there is a question as to

[1]The Court in ***Heller*** did not create a new right, it only interpreted the 2nd Amendment to the Constitution and the rights recognized at the time it was ratified by the States. It can be said that the ***Heller*** decision did, for the first time, make a clear statement of each citizen's 2nd Amendment rights. ***See Scott v. Harris,___ US___, 127 S.Ct. 1769 (2007).***