

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D31675
H/ct

_____AD3d_____

Submitted - May 24, 2011

MARK C. DILLON, J.P.
RUTH C. BALKIN
ARIEL E. BELEN
SANDRA L. SGROI, JJ.

2011-01655

DECISION, ORDER & JUDGMENT

In the Matter of Werner S. Graefe, petitioner, v
County of Westchester, et al., respondents.

(Index No. 800022/10)

Marcus, Ollman & Kommer, LLP, New Rochelle, N.Y. (Jonathan S. Klein of counsel), for petitioner.

Robert F. Meehan, County Attorney, White Plains, N.Y. (Sara M. Beaty of counsel), for respondent County of Westchester.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Monica A. Connell), respondent pro se and for respondent Robert K. Holdman.

Proceeding pursuant to CPLR article 78 to review a determination of the respondent Robert K. Holdman, a Judge of the County Court, Westchester County, entered October 13, 2010, which, without a hearing, revoked the petitioner's pistol license. Motion by the respondent County of Westchester to dismiss the petition for failure to state a cause of action insofar as asserted against it.

ORDERED that the motion is granted; and it is further,

ADJUDGED that the determination is confirmed, the petition is denied, and the proceeding is dismissed on the merits; and it is further,

ORDERED that one bill of costs is awarded to the respondents.

June 7, 2011

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Contrary to the petitioner's contention, Penal Law § 400.00(11) authorized the respondent Robert K. Holdman (hereinafter the respondent), as a Judge of the County Court, to revoke the petitioner's license to possess a pistol or revolver, even in the absence of any proof that such license had been automatically revoked as a result of the petitioner's conviction of a felony or serious offense (*see Matter of Dorsey v Teresi*, 26 AD3d 635, 636; *Matter of Peterson v Kavanagh*, 21 AD3d 617, 617-618; *Matter of Biganini v Gallagher*, 293 AD2d 603, 603-604; *Matter of Romanoff v Lange*, 281 AD2d 551, 551-552; *Matter of Porter v Kelly*, 272 AD2d 333, 333; *Matter of Moulton v City of New York*, 271 AD2d 337, 337; *Matter of Davi v Cosgrove*, 211 AD2d 788, 788-789; *Matter of Marlow v Buckley*, 105 AD2d 1160, 1160). Moreover, the evidence credited by the respondent supports the conclusion that the petitioner does not possess the moral character or temperament necessary to possess a firearm. Thus, the respondent's determination to revoke the petitioner's firearm license had a rational basis and was not arbitrary or capricious (*see Matter of Hassig v Nicandri*, 2 AD3d 1118, 1119; *Matter of Panaro [County of Westchester]*, 250 AD2d 616, 616; *see also Matter of Saccoccio v Lange*, 194 AD2d 794, 794-795; *Matter of County of Westchester v D'Ambrosio*, 244 AD2d 334, 334).

The County of Westchester and the Attorney General of the State of New York are not proper parties to this proceeding (*see Matter of Romanoff v Lange*, 281 AD2d 551, 552; Penal Law § 265.00[10], 400.00[1], [3], [10]).

The parties' remaining contentions are without merit or not properly before this Court.

DILLON, J.P., BALKIN, BELEN and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court