

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

D32513
W/prt

_____AD3d_____

Argued - September 19, 2011

REINALDO E. RIVERA, J.P.
RUTH C. BALKIN
L. PRISCILLA HALL
JEFFREY A. COHEN, JJ.

2010-06906
2010-08987

DECISION & ORDER

In the Matter of People of State of New York, etc.,
petitioner-respondent, v Imported Quality Guard
Dogs, Inc., et al., respondents, Perry Reich, appellant.

(Index No. 259/10)

Perry Reich, Oakland Gardens, N.Y., appellant pro se.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Alison Nathan and Simon
Heller of counsel), for petitioner-respondent.

In a proceeding pursuant to Executive Law § 63(12) and § 175, and General Business Law §§ 349 and 350, inter alia, to permanently enjoin Perry Reich, among others, from operating, promoting, or participating in any business relating to the selling, breeding, training, boarding, or care of animals, or relating to animals in any way, Perry Reich appeals, as limited by his brief, from (1) so much of an order of the Supreme Court, Nassau County (Adams, J.), entered May 17, 2010, as denied his motion to disqualify the petitioner's Nassau County Regional Office from prosecuting this proceeding pursuant to Rules of Professional Conduct (22 NYCRR 1200.0) rule 1.7(a)(2) and rule 1.10(a) based on a conflict of interest, and (2) so much of an order of the same court entered July 12, 2010, as amended July 26, 2010, as denied his motion to compel the petitioner to respond to his demand for a bill of particulars and, upon renewal and reargument, adhered to the determination in a second order entered May 17, 2010, granting that branch of the petition which was pursuant to Executive Law § 63(12) to permanently enjoin him from selling, breeding, or training dogs, or advertising or soliciting the sale, breeding, or training of dogs, for an award of restitution, and for

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ancillary relief, and directed a hearing on the issues of the amount of restitution to be paid and the award of ancillary relief.

ORDERED that the notice of appeal from so much of the order entered July 12, 2010, as amended July 26, 2010, as directed a hearing on the issues of the amount of restitution to be paid and the award of ancillary relief is deemed to be an application for leave to appeal from those portions of that order (*see* CPLR 5701[c]), and leave to appeal is granted; and it is further,

ORDERED that the orders entered May 17, 2010, and July 12, 2010, as amended July 26, 2010, are affirmed insofar as appealed from; and it is further,

ORDERED that one bill of costs is awarded to the petitioner-respondent.

In this summary proceeding, the petitioner submitted evidence establishing, *prima facie*, that Perry Reich (hereinafter the appellant) was an officer of a corporation that he knew had engaged “in repeated fraudulent or illegal acts or otherwise demonstrate[d] persistent fraud or illegality in the carrying on, conducting or transaction of business” (Executive Law § 63[12]; *see* General Business Law §§ 349, 350; *People v Apple Health & Sports Clubs*, 80 NY2d 803, 807; *Matter of People v Applied Card Sys., Inc.*, 27 AD3d 104, 106-107; *People v General Elec. Co.*, 302 AD2d 314, 314-315). In opposition, the appellant failed to raise a triable issue of fact (*see* CPLR 409[b]; *Matter of Bahar v Schwartzreich*, 204 AD2d 441, 443).

The Supreme Court correctly determined that the appellant was not entitled to the bill of particulars he demanded. “The purpose of a bill of particulars is to amplify the pleadings, limit proof, and prevent surprise at trial; it is not an evidence-gathering device” (*Scalone v Phelps Mem. Hosp. Ctr.*, 184 AD2d 65, 76; *see Hillside Equities v UFH Apts.*, 297 AD2d 704, 705; *Sager v Rochester Gen. Hosp.*, 170 AD2d 949; *Jericho Water Dist. v Zara & Sons Contr. Co.*, 116 AD2d 622, 624). The demanded bill of particulars largely sought disclosure, rather than amplification, and it was unduly burdensome and oppressive. Under the circumstances, the proper remedy, as the Supreme Court concluded, was to vacate, rather than prune, that demand (*see 176-178 Ashburton Ave. Corp. v New York Prop. Ins. Underwriting Assn.*, 125 AD2d 653; *Nazario v Fromchuck*, 90 AD2d 483, 484; *cf. Renucci v Mercy Hosp.*, 124 AD2d 796).

The Supreme Court did not err in declining to disqualify the Nassau County Office of the Attorney General based on an alleged conflict of interest (*cf. Matter of Schumer v Holtzman*, 60 NY2d 46, 55; *Matter of Soares v Herrick*, __ AD3d __, __, 2011 NY Slip Op 06158,**4-5 [3d Dept 2011]).

The appellant’s remaining contentions either are not properly before this Court, have been rendered academic, or are without merit.

Accordingly, the Supreme Court properly granted that branch of the petition which was pursuant to Executive Law § 63(12) to permanently enjoin the appellant from selling, breeding, or training dogs, or advertising or soliciting the sale, breeding, or training of dogs, for an award of

restitution, and for ancillary relief. Moreover, the Supreme Court properly referred the matter for a hearing regarding the issues of the amount of restitution to be paid and the award of ancillary relief.

RIVERA, J.P., BALKIN, HALL and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court