

City Prevails In Gun Shop Nuisance Case

BY MARK FASS

IN A SURPRISE turn of events on the eve of opening arguments, New York City prevailed yesterday in its public nuisance lawsuit against Georgia gun dealer Adventure Outdoors when Eastern District Judge Jack B. Weinstein granted the city's motion for a default judgment.

The ruling gave the city a victory in the most high-profile case in Mayor Michael R. Bloomberg's fight against the dealers of guns used in crimes within the city. Of the 27 original defendants, three have now defaulted, 20 settled, three won dismissal and one is scheduled to go to trial in September.

The case came to its rapid denouement yesterday morning, when Adventure Outdoors' attorney moved to withdraw, citing the expense of defending a case that, following Judge Weinstein's decision two weeks ago ordering a bench trial, had become unwinnable.

"Adventure Outdoors has decided that it does not intend to defend itself at a bench trial. Unlike the City, which can spend unlimited amounts of the taxpayers' money, Adventure Outdoors is a small retail dealer with limited resources and cannot afford to participate in a four-week bench trial, the result of which is a foregone conclusion," wrote John F. Renzulli, the head of Renzulli Law Firm in White Plains.

The attorneys for the two sides in *City of New York v. A-1 Jewelry and Pawn*, 06-cv-2238, originally expecting to wrap up jury selection and exhibit lists yesterday, instead debated Mr. Renzulli's motion to withdraw and the city's motion for a default judgment.

In a heated back and forth with Mr. Renzulli, Judge Weinstein denied the motion to withdraw. He cited the ethics of withdrawing on the eve of trial and ordered the two sides to appear before a special magistrate judge to hammer out the specifics of the default judgment.

"It's too late to withdraw," Judge Weinstein said. "The financial relationship between Renzulli and Adventure Outdoors Inc. is for the two sides to decide upon. A lawyer may not abandon his client in the midst of litigation at this stage."

Mr. Renzulli countered, "You're keeping me captive now in a case my client can't afford. I find that repugnant. I will fight that. I will fight that hard, and I will not give up."

Outside the courtroom after the hearing, attorneys for the city said they would seek from Magistrate Judge Cheryl L. Pollak a judgment similar to the 20 settlements the city had hammered out with other gun dealers.

In those deals, the defendants agreed to allow a special master oversee their operations, to refrain from selling firearms to either straw purchasers or people posing as straw purchasers and to subject themselves to additional penalties if found in violation of state or federal laws.

Kenneth W. Taber, a Pillsbury Winthrop Shaw Pittman partner and co-lead counsel for the city, told reporters that there may be minor differences between the default judgment and the agreements, such as who pays for the special master, noting that in this case the city need not provide the defense with incentives to settle.

In an ad hoc courthouse news conference yesterday, Mr. Renzulli said the decision to withdraw was not an "explicit strategy" to circumvent Judge Weinstein and instead fight the case before the U.S. Court of Appeals for the Second Circuit.

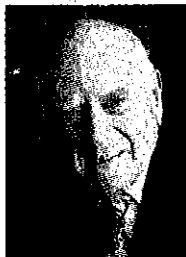
"We're not cutting and running," Mr. Renzulli said. But, he added, "We're not spending hundreds of thousands of dollars to fight something that is a foregone conclusion. We were in this case until we had our constitutional jury taken away from us."

The city's attorneys expected yesterday to be the quiet before today's storm. The Law Department's lawyers first learned of their imminent victory via a ping to senior counsel Richard J. Costa's BlackBerry shortly after 9 a.m.: Mr. Costa, just about to walk from his Brooklyn Heights home to the downtown Brooklyn court, had received an automatic update from the court's electronic filing system, notifying him of the motion to withdraw. Mr. Costa immediately forwarded the e-mail to his colleagues from the Law Department and Pillsbury Withrop.

By the time the attorneys arrived at the courthouse over the next hour, the issue of the day was no longer finalizing the jury and exhibits, but rather Mr. Renzulli's motion.

The two sides must now brief the issue of whether, and to what degree, Mr. Renzulli and his firm should be required to participate in those proceedings.

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Judge Weinstein