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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DENNIS NAPIER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

1:10-cv-00040 OWW GSA

ORDER RE DISPOSITION OF FIREARMS

A show cause hearing was held September 19, 2011 to determine whether firearms seized from Mr. Napier's residence cannot be sold at auction with the proceeds being returned to Mr. Napier. Doc. 82. The United States presented the results of Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") traces run on each of the 10 firearms in question:

1. Rohm, Model 57, .44 caliber, revolver, bearing serial number: LG5891
2. Sturm, Ruger & Co., Inc., Model P85, 9mm, pistol, bearing serial number: 300- 51055
3. Mossberg, Model 500, 12 gauge, shotgun, bearing serial number: K500339
4. Winchester, Model 94, 30-30 caliber, rifle, bearing serial number L203728

- 1 5. New England Firearms Co., Pardner Model, 12 gauge,
2 shotgun, bearing serial number: ND259016
- 3 6. Marlin, Model 60, .22 caliber rifle, bearing serial
4 number:16394321;
- 5 7. Russian Model 191/30, 7.62 x54R, rifle, bearing
6 serial number 9130102189
- 7 8. Savage, Model Stevens, .410 gauge, shotgun, bearing
8 no serial number
- 9 9. Browning Arms, Model Buckmark, .22 caliber, pistol,
10 bearing serial number: 655NZ16161
- 11 10. Hi-Point, Model C9, 9mm, pistol, bearing serial
12 number: P1426321

11 The ATF traces revealed that three weapons, Numbers 7, 9, and 10,
12 were purchased by Mr. Napier, but only Number 7 was purchased at
13 a time when Mr. Napier was arguably permitted to lawfully
14 purchase firearms. Doc. 76 at 4-5. Firearm Number 5 was
15 purchased by Mr. Napier on October 1, 1991, which weapon he
16 should have divested himself of between his 1993 conviction and
17 the 2003 order Mr. Napier argues lifted his firearms prohibition.
18 *Id.* As to the remaining weapons, the traces indicate either that
19 there was no record of the firearm's purchaser at all (Numbers 1,
20 2, 4, and 8); or the weapon was purchased by another person with
21 no record of Napier's subsequent lawful ownership (Numbers 3
22 (reported as lost or stolen), and 6).

23 The government agreed that it would be appropriate to sell
24 firearm Number 7 by transferring it to a legitimate and bona fide
25 Federal Firearms Licensee ("FFL") for sale, with remission of the
26

1 proceeds to Mr. Napier. In addition, the Court orders that, as a
2 matter of equity in light of the record of confusion regarding
3 Mr. Napier's firearms prohibition and the fact that he purchased
4 them with the reasonably mistaken belief he could possess them,
5 the Number 9 and Number 10 firearms should also be sold by an
6 FFL, with the proceeds returned to Mr. Napier.
7

8 Mr. Napier requested and was granted until Friday, September
9 23, 2011 to provide the government with proof of lawful ownership
10 of any of the other firearms. As of the date of electronic
11 filing of this Order, September 30, 2011, Mr. Napier has not
12 provided any such ownership documentation. Instead, on September
13 28, 2011, he filed an "opposition" that simply rehashes legal
14 arguments the Court has previously rejected.
15

16 Although the Court had previously determined that the time
17 for filing a notice of appeal had expired, under the most liberal
18 interpretation of the relevant appellate rules, Mr. Napier would
19 have had until September 26, 2011¹ to file a notice of appeal.
20 The Court ordered that, if Mr. Napier filed a notice of appeal by
21 that date, the firearms should all be held pending the resolution
22 of any appeal. The September 26, 2011 deadline passed without
23 Mr. Napier filing a notice of appeal. He has been warned on many
24 occasions about the necessity of filing notices of appeal to
25 perfect his rights.
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28 ¹ The date discussed during the hearing was September 24, 2011, which is a
Saturday, making the deadline the next business day, September 26, 2011.

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Accordingly, and for all the reasons set forth orally on the record in the September 19, 2011 hearing, the United States is directed to sell the Number 7, 8 and 9 firearms to an FFA with the proceeds remitted to Mr. Napier. The remaining nine firearms shall be destroyed, as no appeal has been taken.

SO ORDERED
Dated: September 30, 2011

/s/ Oliver W. Wanger
United States District Judge