

STATE OF MAINE

KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION

DOCKET NO. AP-08-46

JMS - KEN - 1/1 109

WILLIAM STEBBINS,

Petitioner

v.

DECISION AND ORDER

DEPARTMENT OF PUBLIC
SAFETY,

Respondent

Before the court is an appeal filed by the petitioner pursuant to M.R. Civ. P. 80C. The petitioner, William Stebbins, submitted an application for a permit to carry a nonconcealed firearm by a prohibited person pursuant to 15 M.R.S. § 393. The Department of Public Safety sent out a notice regarding the application on March 26, 2008. The Attorney General's Office responded on April 17, 2008, more than 22 days after the statutory deadline and 30 days had expired.

On May 23, 2008, the Department denied the permit stating that an objection had been received within 30 days and under the statute it is automatic-no permit shall be issued. From this decision, the petitioner has appealed.

Discussion

Pursuant to Title 15 M.R.S. § 393(4), the Department of Public Safety shall within 30 days of receiving a request for an application to carry a firearm by a prohibited person notify certain individuals. The proper notice did go out to the proper parties. However, a response from the Attorney General's Office objecting to the request for an application was not received within the statutory mandated 30 days. In its decision, the Department indicated that its decision was based on the fact that within 30 days of

sending out the notice someone entitled to receive the notice did object. Although the State in its brief argues other reasons why the Department was justified in denying the application, the sole reason stated in the decision by the Commissioner is that they had received an objection within the 30-day period.

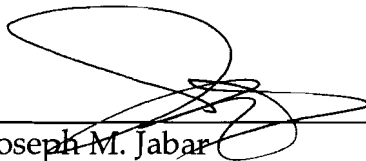
It is clear that under section 393(4), in the last sentence of the section, it states, "The Commissioner may deny an application even if no objection is filed."

The court hereby remands this case to the Department for clarification. The Department does not have the authority to deny the permit because it received an objection within the 30-day period, when in fact, they did not receive an objection within the 30-day period.

Since the statute gives the Department discretion to deny an application for any reason and if the Department believes it had no discretion to grant the license because of the objection by the Attorney General's Office, then the Department must consider this application on the merits. If the Department denies the application based on its discretion, then it must state its reason on the record, thereby giving the petitioner whatever rights of appeal he may have from the Department denying his application for the stated reason.

It is hereby ORDERED that the matter is REMANDED to the Department of Public Safety for further action consistent with this decision.

Dated: 7-24-04



Joseph M. Jabar
Justice, Superior Court

Attorney for Petitioner:

Newell Augur, Esq.
77 Water Street
Hallowell, ME 04347

Attorney for Respondent:

Lara Nomani, esq.
Assistant Attorney General
6 State House Station
Augusta, ME 04333

Date Filed 6/20/08 Kennebec County Docket No. AP08-46

Action Petition for Review
80C

~~J. Mills~~

J. JABAR

William Stebbins vs. Department of Public Safety, et al

Plaintiff's Attorney

Newell A. Augur, Esq.
77 Water Street
Hallowell, Maine 04347

Defendant's Attorney

Lara Nomani, AAG
6 SHS
Augusta, Maine

Date of
Entry

- 6/20/08 Notice of Appeal of Final Agency Action, filed. s/Augur, Esq.
- 7/14/08 Certification of record filed by Lara Nomani, AAG.
- 7/14/08 Entry of appearance for Dept of Public Safety, filed by Atty Nomani, AAG.
- 8/13/08 Notice And Briefing Schedule mailed to attorneys of record.
- 09/23/08 Filed 09/23/08: Petitioner's Brief in Support of his Request for Review of Final Agency Action Pursuant to Rule 80C filed by Atty Auger.
- 9/25/08 Letter referencing corrected copy of Brief, and Appellant's Brief In Support Of His Request For Review Of Final Agency Action Pursuant To Rule 80C, filed 9/24/08. s/Augur, Esq.
- 10/21/08 Respondent's Motion For Enlargement Of Time To File Brief, filed 10/17/08. s/Nomani, AAG
- 10/22/08 ORDER, Mills, J.
The Respondent's Motion for Enlargement of Time is hereby GRANTED by agreement of the parties. Respondent's Brief is due November 4, 2008. No objection.
Copy mailed to attorneys of record.
- 11/6/08 Respondent's Brief, filed on 11/4/08. s/Nomani, AAG
- 11/18/08 Petitioner's Motion for Enlargement of Time to File Reply Brief, filed. s/Augur, Esq.
Proposed Order, filed.
- 11/25/08 ORDER, Mills, J.
The Respondent's Motion for Enlargement of time is hereby granted by agreement of the parties. Respondent's Brief is due November 28, 2008. Copies mailed to attys. of record.
- 12/6/08 Petitioner's Reply Brief, filed 12/1/08. s/Augur, Esq.
- 12/6/08 Petitioner's Motion To Modify The Record, filed 12/5/08. s/Augur, Esq.

Date of
Entry

Docket No. _____

2/9/09

Proposed Stipulation , filed. s/Nomani, AAG
Copies mailed to attys. of record.

4/23/09

Documents, filed. s/Augur, Esq.

Notice of setting for 7/9/09
sent to attorneys of record.

7/8/09

Letter regarding hearing, filed. s/Augur, Esq.

7/8/09

Hearing had with the Hon. Justice Joseph Jabar, presiding.
Newell Augur, Esq. for the Petitioner and Lara Nomani, AAG for the
Respondent.
Oral arguments made to the court. Court to take matter under advisement.

7/24/09

DECISION AND ORDER, Jabar, J.
It is hereby ORDERED that the matter is REMANDED to the Department of
Public Safety for further action consistent with this decision.
Copies to attys. of record
Copies to repositories