

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ST. LAWRENCE

In the Matter of the Application of

HCI DISTRIBUTION, INC.,

Petition

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

NEW YORK STATE POLICE, TROOP B.
COMMANDER, RAY BROOK, NY; NEW YORK
STATE POLICE EVIDENCE CUSTODIAN, RAY
BROOK, NY; ST. LAWRENCE COUNTY DISTRICT
ATTORNEY, NICOLE M. DUVE', ST. LAWRENCE
COUNTY ASSISTANT DISTRICT ATTORNEY,
JOHN BECKER; DOES 1-20,

Respondents

ANSWER

Index No. 138276
IAS No. 44-1-2012-0145

Return Date: April 6, 2012

Demarest, J.

Respondents NEW YORK STATE POLICE, TROOP B. COMMANDER, RAY
BROOK, NY and NEW YORK STATE POLICE EVIDENCE CUSTODIAN, RAY BROOK,
NY (hereinafter "the State Police respondents"), by their attorney, Eric T. Schneiderman,
Attorney General of the State of New York, Aaron M. Baldwin and Kelly L. Munkwitz,
Assistant Attorneys General of counsel, respond to the First Amended Petition ("Amended
Petition") as follows:

1. Deny each and every allegation contained in the Amended Petition that alleges or
tends to allege that the challenged actions were in any way contrary to constitutional, statutory,
regulatory or case law.

2. Admit that the Winnebago Tribe of Nebraska is a federally recognized tribe, but deny sufficient knowledge or information to form a basis for responding to the allegation in paragraph 1 of the Amended Petition that petitioner HCI Distribution, Inc. (hereinafter "HCI") "is an economic and political subdivision" of such Tribe.

3. Admit the allegations contained in paragraphs 2, 3, 4, and 5 of the Amended Petition.

4. Admit that petitioner's Exhibit A purports to be a bill of lading for sale of 26,160 cartons of cigarettes and cigars as well as 72 bags of pipe tobacco sold by Mohawk Distribution, Inc., to HCI, but otherwise deny sufficient knowledge or information to form a basis for responding to the balance of the allegations in paragraph 6 of the Amended Petition.

5. Admit that petitioner's Exhibit A indicates that the tobacco products were to be shipped to HCI at an address in the State of Nebraska, but otherwise deny sufficient knowledge or information to form a basis for responding to the balance of the allegations in paragraph 7 of the Amended Petition.

6. Admit in response to paragraph 9 of the Amended Petition that on January 23, 2012 a vehicle driven by Michael Cagle was stopped at a stationary United States Border Patrol checkpoint on State Route 37 in the Town of Waddington, County of St. Lawrence.

7. Admit in response to paragraph 10 of the Amended Petition that an officer of the New York State Police was present on January 23, 2012 at the aforementioned stationary United States Border Patrol checkpoint and was advised by Border Patrol agents that a vehicle driven by Michael Cagle had been stopped and directed to a secondary checkpoint, but otherwise deny the balance of the allegations in such paragraph.

8. Admit in response to paragraph 11 of the Amended Petition that the vehicle driven by Michael Cagle was searched by Border Patrol agents and the New York State Police, but deny that the seal on the cargo doors of the vehicle was broken by the New York State Police.

9. Admit in response to paragraphs 12 and 14 of the Amended Petition that no warrant was secured for the search and/or seizure of the vehicle or its contents, but deny that any warrant was required.

10. Admit in response to paragraph 13 of the Amended Petition that the New York State Police temporarily detained the driver and temporarily seized the truck and along with 26,160 cartons of cigarettes and cigars as well as 72 bags of pipe tobacco, but otherwise deny sufficient knowledge or information to form a basis for responding to the balance of the allegations in such paragraph.

11. Admit the allegations in paragraphs 15 and 33 of the Amended Petition, except deny that the seized tobacco products were still being held at the New York State Police location in Ray Brook as of the date of the filing of the Amended Petition.

12. Admit in response to paragraph 18 of the Amended Petition that no criminal charge has been filed against any person by the State Police respondents regarding the incident alleged in the Amended Petition and that the truck has since been released, but otherwise deny sufficient knowledge or information to form a basis for responding to the balance of the allegations in such paragraph.

13. Admit in response to paragraph 32 of the Amended Petition that there is no applicable administrative remedy that petitioner is presently required to exhaust in this instance, but otherwise deny the balance of the allegations in such paragraph.

14. As to the allegations contained in paragraphs 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 of the Amended Petition, deny all legal conclusions in such paragraphs, respectfully refer the Court to the referenced statutes, regulations and case law as the best evidence and most accurate version of their contents, properly leaving it to the Court to interpret such authorities and resolve any questions of law. Deny the allegations to the extent that they are inconsistent with those authorities or in any way allege that the respondents' actions were in contrary to constitutional, statutory, regulatory or case law.

15. Deny sufficient knowledge or information to form a basis for responding to paragraphs 8, 16, and 17 of the Amended Petition.

16. Deny the allegations contained in paragraphs 34, 35, 36, 37, 38, 39, 40, 41 and 42 of the Amended Petition and deny that petitioner is entitled to any of the relief requested in the "Wherefore" clause of the Amended Petition.

17. Deny each and every allegation of the Amended Petition not specifically responded to above.

OBJECTIONS IN POINT OF LAW

18. That the Court should abstain from hearing the claims made in the Amended Petition.

19. The Amended Petition fails to state a cause of action. CPLR §3211(a)(7).

STATE POLICE RESPONDENTS' RETURN & EXHIBITS

20. The following constitute the Return of the State Police respondents and the Exhibits and other evidence submitted in support of their Answer:

- Exhibits A – H as follows:

- A – Border Patrol Report of Apprehension or Seizure;
- B – Bill of Lading;
- C – Voluntary Statement on Form Genl. 19;
- D – Evidence Records;
- E – NYS Police Incident Report;
- F – www.hcidistribution.com screenshots;
- G – www.Indianz.com/News - editorial by Lance Morgan, CEO of HCI;
- H – HCI Distribution, Inc., past sales and marketing documents.

- Affidavit of Trooper Jason West;

- Affidavit of Investigator Timothy Peets;

- Affirmation of Richard Ernst, Deputy Commissioner of Enforcement of the New York State Department of Taxation and Finance,

- Affirmation of Assistant Attorney General Aaron M. Baldwin, and;


- Affirmation of Nebraska Assistant Attorney General Lynne R. Fritz with annexed Exhibits 1 through 6.

WHEREFORE, the State Police respondents respectfully request that the relief requested in the Amended Petition be denied, that the Amended Petition and this action be dismissed, and that respondents be awarded costs and disbursements, together with such other relief as may be right and just.

Dated: Albany, New York
April 4, 2012

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
Attorney for State Police respondents
The Capitol
Albany, New York 12224-0341

By: _____


Aaron M. Baldwin


& Kelly L. Munkwitz

Assistant Attorneys General, of Counsel
Telephone: (518) 473-6045
Fax: (518) 473-1572 (Not for service of papers)

TO: Ben Fenner, Esq.
Joseph Messineo, Esq.
FREDERICKS PEEBLES AND MORGAN, LLP
3610 N. 163rd Plaza
Omaha, NE 68116

Verification

Aaron M. Baldwin, being a duly licensed attorney in the State of New York and an Assistant Attorney General of counsel in this matter to Eric T. Schneiderman, Attorney General of the State of New York, affirms the following under penalties of perjury pursuant to CPLR 2106:

I have been assigned to defend the within proceeding and I am acquainted therewith, and I have personally examined the exhibits annexed to the foregoing Answer and the records of the State Police respondents provided herein.

I have read the foregoing Answer. The same is true to my knowledge, except as to those matters alleged on information and belief, and as to those matters, I believe them to be true.

This verification is made by me, pursuant to CPLR Section 3020(d)(2), because the State Police respondents are officers of the State of New York, and I am acquainted with the facts of this proceeding.

Dated: Albany, New York
April 4, 2012



Aaron M. Baldwin