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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

BRUCE R. BARANY,
2424 N. Division
Spokane, WA 99207

NO. CV-09-253-RHW

Petitioner,

v.

JANET C. VAN HAELEST,
Acting Director of
Industry Operations
Seattle Field Division
Bureau of Alcohol, Tobacco,
Firearms & Explosives
915 Second Avenue
Suite 790
Seattle, WA 98174

Respondent.

PETITION FOR JUDICIAL REVIEW

1) This is a petition for *de novo* judicial review of the denial of an application by Petitioner for a license as a dealer in firearms, other

1 than destructive devices. This action is brought pursuant to 18 U.S.C.
2 § 923(f)(3).

3 JURISDICTION AND VENUE

4 2) This court has subject matter jurisdiction over this action
5 pursuant to 28 U.S.C. § 1331 as it arises under the laws of the United
6 States.
7

8 3) Venue is proper in the Eastern District of Washington as
9
10 Spokane, Washington is the principal place of business of Bruce R.
11 Barany.
12

13 PARTIES

14 4) Bruce R. Barany (hereinafter "Barany") is over the age of 21
15 years, a citizen of the United States and not disqualified by law to be
16 issued a federal license as a dealer in firearms and is otherwise not
17 prohibited from transporting, shipping, or receiving firearms and
18 ammunition in interstate or foreign commerce and has not willfully
19 violated any provisions of 18 U.S.C. § 923.
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21 5) Janet C. Van Haelst ("Van Haelst") is believed to be the acting
22 Director of Industry Operations, Seattle Field Division, Bureau of
23 Alcohol, Tobacco, Firearms & Explosives (hereinafter "BATFE").
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FACTS

1 6) On or about June 10, 2008, Barany submitted an application
2 to the BATFE for a license as dealer in firearms, other than destructive
3 devices. Said application was proper in form and complete and met
4 the requirements of 18 U.S.C. § 923(d)(1).
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8 7) On or about November 24, 2008, Richard Van Loan, then
9 Director of Industry Operations ("DIO"), BATFE, issued Notice of
10 Denial of Application for License to Barany.
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13 8) Barany timely requested a hearing pursuant to 18 U.S.C. §
14 923(f)(2).
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17 9) An informal hearing was held before Walter Nishikawa,
18 Hearing Officer, BATFE, on May 12, 2009 in Spokane, Washington.
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21 10) On June 30, 2009, Van Haelst mailed a Final Notice of
22 Denial of Application or Revocation of Firearms License ("Final
23 Notice") to Barany.
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COUNT 1

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27 11) Paragraphs 1-10 are incorporated herein by reference.
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29 12) In the Final Notice, Van Haelst made Findings of Fact and
30 Conclusions of Law and signed the same on June 30, 2009.
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 13) In the Final Notice, Van Haelst found that Barany

1 previously had served as a corporate officer for The General Store
2 ("TGS"), reciting therein the facts and circumstances upon which the
3 BATFE revoked the license of TGS, which revocation was affirmed by
4 this court in The General Store, Inc. v. Richard Van Loan, Civ. No. 06-
5 103, 2006 WL 1455645 and by the Ninth Circuit Court of Appeals.
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8 14) In the Findings of Fact, Van Haelst wrongfully and
9 erroneously asserted that this court, and the Ninth Circuit, affirmed the
10 revocation of TGS's license on the four (4) grounds set forth in
11 Paragraph 5 of the Findings of Fact.
12
13

14 15) In fact, this court, and the Ninth Circuit, affirmed the
15 revocation of TGS's license on two (2) grounds only (those set forth in
16 Subparagraphs (a) and (d) of Paragraph 5 of the Findings of Fact). In
17 particular, that TGS willfully violated 18 U.S.C. § 923(g)(1) and 27
18 C.F.R. § 478.125(e) because GS did not maintain an Acquisition &
19 Disposition Record ("A&D Record") for repair firearms in the required
20 format; and that TGS willfully violated 18 U.S.C. § 922(b)(2) because
21 TGS violated Washington State law, R.C.W. § 9.41.090(5), in that TGS
22 was directing applications to purchase handguns to the Spokane
23 Police Department, rather than the chief of police or sheriff where the
24 handgun purchaser resided.
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1 16) TGS is a corporation and is a separate legal entity from the
2 person Bruce R. Barany and it was unlawful, arbitrary, and capricious
3 for Van Haelst to deny the application of one person based upon the
4 alleged acts or alleged failures of another legally distinct person.
5

6 17) In the Findings of Fact, Van Haelst erroneously and
7 unlawfully declared Barany as one of only two corporate officers and
8 responsible persons on TGS's federal firearms license and
9 erroneously and wrongfully and unlawfully declared that Barany
10 engaged in willful violations of 18 U.S.C. § 922 and § 923. All of said
11 acts referred to by Van Haelst were those of a separate and distinct
12 legal person. TGS is not the applicant seeking a federal firearms
13 license in this case.
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20 COUNT 2
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22 18) Paragraphs 1-17 are incorporated herein by reference.
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24 19) The acts which were the basis of the two (2) grounds on
25 which this court, and the Ninth Circuit, affirmed the revocation of
26 TGS's license occurred more than five (5) years prior to Barany's
27 application on June 10, 2008.
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30 20) 28 U.S.C. § 2462 provides in part:
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[A]n action, suit or proceeding for the enforcement of any
civil fine, penalty, or forfeiture, pecuniary or otherwise,

1 shall not be entertained unless commenced within five
2 years from the date when the claim first accrued if, within
3 the same period, the offender or the property is found
4 within the United States in order that proper service may
5 be made thereon.

6 21) An "action, suit or proceeding" includes an administrative
7 action or proceeding.

8 22) The denial of a license based upon violations of the Gun
9 Control Act is a "penalty" within the meaning of § 2462.
10

11 23) Van Haelst is barred by § 2462 from considering the acts
12 which were the basis of the two (2) grounds on which this court, and
13 the Ninth Circuit, affirmed the revocation of TGS's license.
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17 COUNT 3

18 24) Paragraphs 1-23 are incorporated herein by reference.

19 25) In the Final Notice, Van Haelst found that Barany was a
20 corporate officer of TGS, a Washington corporation, and failed to
21 accept and consider Barany as a separate legal person from the
22 business entity known as TGS, a Washington corporation, which was
23 the then license holder allegedly engaged in violations of 18 U.S.C. §
24 922(b)(3) concerning the transfer of three firearms to a California
25 resident.
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26) Van Haelst did not present any credible evidence that

1 Barany personally conducted or participated in the alleged unlawful
2 sale to a California resident. It is improper, unlawful, and an exercise
3 of capricious, arbitrary, and abusive conduct by Van Haelst to claim
4 acts were committed by Barany, an individual, when in fact, no such
5 evidence exists.
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8 27) Van Haelst has no basis in law or fact to deny Barany's
9 application for a federal firearms license based upon the conduct of
10 other persons in the employ of a separate legal entity, namely, TGS, a
11 Washington corporation. It is unlawful and a violation of the
12 constitutional rights and liberty interests of Barany for Van Haelst to
13 base her denial of Barany's personal application for a federal firearms
14 license based upon the actions and conduct of others.
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21 28) There are no "legal conditions of sale" in California law with
22 respect to sales of shotguns to California residents outside of
23 California.
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26 29) It is not a violation of 18 U.S.C. § 922(b)(3) for a federally
27 licensed firearms dealer in Washington State to transfer a shotgun to a
28 resident of California without complying with the laws of California as
29 the laws of California apply only in California and do not apply in
30 Washington State.
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1 30) Barany did not willfully engage in any conduct in violation of
2 18 U.S.C. § 922(b)(3) in that he did not act deliberately or recklessly.

3 COUNT 4

4 31) Paragraphs 1-30 are incorporated herein by reference.

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6 32) Van Haelst in part denied Barany's application on the ground
7 that, during an inspection of TGS, a Washington corporation,
8 investigators found two open dispositions in the Acquisition &
9 Disposition Record ("A&D Record") for which no corresponding
10 firearms could be found in the physical inventory of TGS. Further
11 investigation of an employee of TGS determined there were
12 inadvertent mistakes made in the record keeping and that the firearms
13 were not missing or improperly disposed of.
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20 33) No evidence was presented at the hearing that Barany
21 individually had anything to do with the inadvertent errors in the record
22 keeping of TGS. Notwithstanding that fact, Van Haelst erroneously
23 and unlawfully included said evidence as a basis of the denial of
24 Barany's application.
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29 34) Barany did not willfully violate 18 U.S.C. § 923(g)(1) or
30 C.F.R. § 478.125(e) as he did not do any act deliberately or recklessly.
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COUNT 5

1 35) Paragraphs 1-34 are incorporated herein by reference.

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3 36) Van Haelst wrongfully and erroneously concluded that
4 Barany was directly involved in committing an alleged violation of law
5 and regulations when he allegedly failed to obtain accurate residence
6 and regulations when he allegedly failed to obtain accurate residence
7 address information concerning a purchase of a firearm by a person
8 who was a dual resident of both Washington State and Hawaii. The
9 conclusion and declaration is not supported by credible evidence.
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13 37) Barany did confirm that the person was a dual resident of
14 two states, and Barany lawfully sold a firearm to a Washington
15 resident.
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19 38) Barany did not violate 18 U.S.C. § 922(m) and 27 C.F.R. §
20 478.124(c)(1) in that the applicant was a lawful resident of the State of
21 Washington and the applicant provided a correct residence address
22 and an identification document which verified that residence address.
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26 39) Barany did not willfully violate 18 U.S.C. § 922(m) and 27
27 C.F.R. § 478.124(c)(1) in that he did not act deliberately or recklessly.
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COUNT 6

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31 40) Paragraphs 1-39 are incorporated herein by reference.

32 41) In the Final Notice, Van Haelst claimed that TGS did not

1 make its records available to BATFE during an inspection on
2 November 21, 2006.

3 42) No evidence was presented at the hearing that Barany
4 individually had anything to do with this conduct.

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6 43) Barany did not willfully violate 18 U.S.C. § 923(g) and 27
7 C.F.R. § 478.121(b) in that he did not act deliberately or recklessly.
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10 COUNT 7

11 44) Paragraphs 1-43 are incorporated herein by reference.
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13 45) In the Final Notice, Van Haelst wrongfully and unlawfully
14 claimed that Barany willfully violated 18 U.S.C. § 923 because he paid
15 the application fee with a check drawn on The General Store's account
16 and that Barany provided no evidence of a separate account for the
17 firearms business.
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22 46) The position taken by Van Haelst using said evidence as a
23 claim for a basis of denial of a federal firearms license is contrary to
24 law, is not relevant to any factual consideration of Barany's
25 qualifications and lawful right to be a holder of a license as a firearms
26 dealer.
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31 47) It is a matter of common knowledge that corporate officers
32 may have a shareholder advance or equivalent account in which the

1 employee is allowed draws against their equity holdings and the same
2 are included in the officer's income.

3 48) Further, Van Haelst correctly found that Barany evidenced
4 an intent to conduct a firearms business at the location of TGS
5 pursuant to a sub-lease as an individual with TGS, and further, Barany
6 provided evidence that said business operation would be totally
7 separate and distinct from any business operation of TGS.
8 Notwithstanding this correct finding, Van Haelst wrongfully and
9 unlawfully declared the lack or probable failure of the ability of Barany
10 to maintain a separate and independent place of business by claiming
11 that Barany would not provide adequate or proper record keeping for a
12 firearms business and would be otherwise dependent upon TGS for
13 utilities, security, ingress and egress, and therefore, used said
14 evidence as a basis for denial of the application by Barany. All of the
15 foregoing meritless, wrongful, arbitrary and capricious conclusions and
16 prejudgments of Van Haelst are contrary to law and a denial of
17 Barany's equal protection of law as a separate and distinct citizen and
18 have no credible evidence to support any basis in law or in fact for said
19 conclusions. Said conclusions constitute arbitrary and capricious
20 conduct on the part of Van Haelst. That the acts or prejudgments
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1 alleged by Van Haelst do not support any claim that Barany willfully
2 violated any provision of 18 U.S.C. § 923.

3 COUNT 8

4 49) Paragraphs 1-48 are incorporated herein by reference.

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6 50) Van Haelst erroneously concluded, by mere speculation and
7 conjecture, that Barany “appeared to be involved in approximately 23
8 percent of actual firearm sales.” Such unsubstantiated and rank
9 speculation is not a basis of denial of Barany’s application for a federal
10 firearms license and constitutes unlawful, capricious, and arbitrary
11 conduct on the part of Van Haelst.
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17 51) The claim that Barany participated in the sales of, or
18 transactions in, firearms at TGS prior to the revocation of TGS’s
19 license is not a basis to deny Barany’s application for a federal
20 firearms license because the same does not provide any evidence that
21 Barany violated 18 U.S.C. § 923 or that Barany engaged in any
22 conduct that was purposeful, intentional, or reckless. Thus, any
23 decision based on this evidence constitutes an unlawful and
24 unconstitutional act contrary to the right of Barany as an individual to
25 be a federally licensed firearms dealer and to lawfully pursue his
26 rightful liberty interests protected by the Constitution of the United
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States of America.

COUNT 9

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3 52) Paragraphs 1-51 are incorporated herein by reference.

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5 53) Van Haelst concluded that Barany "intends to operate his
6 firearms business in much the same manner as The General Store."
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8 Said conclusion is unlawful, unjust, arbitrary and capricious and
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10 contrary to law. Use of such a conclusion to deny Barany's application
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12 for a firearms license denies Barany equal protection of the law, his
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14 liberty interests and his right to own and possess a federal firearms
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16 license and be a federal firearms licensed dealer.

17 54) Said conclusion is not supported by any credible evidence
18
19 that Barany individually intended to violate 18 U.S.C. § 923 but is an
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21 attempt by Van Haelst to predict violations of law which in fact have
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23 not yet occurred. The evidence offered at the hearing was that Barany
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25 intended to maintain a new and independent process, including the
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27 purchase of a computer to control the A&D records and all
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29 transactions and repairs of firearms so as to observe and maintain
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31 correct records at all times consistent with the law. Van Haelst ignored
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this evidence, and has no evidence nor ability to prove Barany's future
inability to comply with the law.

COUNT 10

1 55) Paragraphs 1-54 are incorporated herein by this reference.

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3 56) In the Final Notice, Van Haelst concluded that the proposed
4 operation of Barany's sole proprietorship "are substantially the same
5 as those of its predecessor," and that Barany and TGS and/or its
6 employees will be operating the proposed firearms dealer operations
7 and that TGS will have a direct involvement in the managements and
8 policies of the new firearms business.
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13 57) Further, Van Haelst concluded that Barany's application for a
14 federal firearms license "is simply an attempt to circumvent the
15 revocation of The General Store's license and continue operations as
16 a licensed firearms dealer." Such conclusion is contrary to law,
17 erroneous, unjust, and fails to recognize the applicant for the firearms
18 license is a separate and distinct individual from that of TGS, a
19 Washington Corporation, and Van Haelst acted in an unlawful,
20 arbitrary, capricious manner in violation of the laws and Constitution of
21 the United States of America without any evidence to substantiate any
22 conclusion that Barany does not meet the requirements of 18 U.S.C. §
23 923(d)(1) as an individual applicant for a Federal Firearms License.
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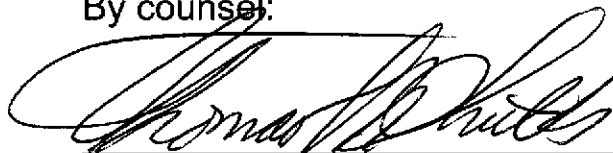
WHEREFORE, Barany prays that this court: 1) Decide that Van

1 Haelst was not authorized to deny Barany a federal firearms license;
2 2) Order Van Haelst to withdraw the denial of the application by
3 Barany; and 3) Award such other relief, including costs and attorney's
4 fees (pursuant to 18 U.S.C. § 924(d)(2)(B) and 28 U.S.C. §2412), as
5 appropriate.
6

7
8 Respectfully submitted this 12th day of August 2009.
9

10 Bruce R. Barany

11 By counsel:

12 
13

14 Thomas M. Smith, WSBA #0687

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