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## Jury Faults Police for Arresting Pawnbroker in Search Dispute

BY MARK HAMBLETT

A NEW YORK CITY police sergeant has been found liable for violating the constitutional rights of a pawnbroker he arrested for allegedly refusing to submit to an administrative inspection of his books.

A Southern District jury of Friday found Sergeant Ronald Marti liable for state and federal constitutional violations and assault and battery. It awarded Queens pawnbroker Brian Cabrera \$21,000 in damages.

Mr. Cabrera, owner of 5 Borough Pawn on 104th Street in Ozone Park, was arrested on Jan. 23, 2008, after repeated visits to his shop by police.

But the jury, which deliberated for almost a full day, rejected a claim of malicious prosecution for the January 2008 arrest and declined to award punitive damages. And it found for the city on a second arrest of Mr. Cabrera, this one pursuant to a search warrant, that occurred on May 15, 2008.

The city, which defended Sergeant Marti, is liable for the \$21,000 as well as attorney's fees under §1983 of the U.S. Code.

**Paul Solda**, a solo practitioner in Manhattan who represented Mr. Cabrera during the five-day trial before Southern District Judge Colleen McMahon, said he is asking for fees in excess of \$200,000. The fee issue is likely to be litigated because the city says it made a settlement offer under Federal Rule of Civil Procedure 68, which, if shown, could dramatically reduce any fee award.

**Mr. Solda** said yesterday that Mr. Cabrera's case was a breakthrough for pawnbrokers who claim the police regularly exceed the scope of their limited right to conduct administrative inspection of their shops while investigating crimes.

"This verdict, no matter what the size, is a win for my client, who is elated. And for pawnbrokers, it's a vindication of their civil rights," **Mr. Solda** said in an interview. "They hope this verdict will send a message to law enforcement and the NYPD to chill their heavy-handed tactics and stop using administrative inspections to conduct warrantless searches."

Mr. Cabrera, the lawyer said, testified last week that Sergeant Marti went well beyond asking to look at his books in January 2008, demanding that he be allowed to inspect his safe and examine some jewelry.

The sergeant, who was called by **Mr. Solda** as an adverse witness, denied that claim and said he only arrested Mr. Cabrera because he was refused access to the books, a violation of §436 of the city's Administrative Code.

"He really didn't want to inspect the books. He wanted to have free reign and go through the safe, he wanted to go behind the bulletproof glass," **Mr. Solda** said in an interview. "We had argued that he used that arrest and he cited the misdemeanor as a pretext to cover his unlawful demand to make a warrantless search of the premises."

Hughes Hubbard & Reed partners George Tsougarakis and Jason Benton defended the city pro bono.

The stage was set for trial when Judge McMahon ruled in 2009 that Sergeant Marti was not shielded by qualified immunity for the January 2008 arrest and made a similar ruling last year on the May 2008 arrest (NYLJ, Oct. 27, 2010).

Administrative Code §436 gives the police powers of general supervision and inspection over all licensed and unlicensed pawnbrokers, including the right to inspect the books, business premises and articles of merchandise to help prevent trafficking in stolen goods.

In her 2009 ruling in *5 Borough Pawn, LLC v. Marti*, 08 cv 3837, Judge McMahon said both state constitutional law and police policy "expressly" barred Sergeant Marti from arresting Mr. Cabrera for refusing him access to his safe.

The police policy governing procedures for administrative searches of pawnshops, outlined in the so-called Grasso Memo, calls for pawnbrokers who do not consent to be issued a summons for criminal court and it requires the police to obtain a warrant before searching the premises for evidence of a crime.

The May 2008 arrest was part of a "reverse sting" arranged by the police, whereby a confidential informant and an undercover officer allegedly sold "stolen" jewelry to the shop. Officers entered the store 15 minutes after the sale, but arrested Mr. Cabrera before the search was conducted—a fact that led Judge McMahon to find a lack of probable cause and no immunity. Nonetheless, the jury found for Sergeant Marti.

Mr. Tsougarakis said yesterday that the city is examining its options for post-verdict relief.

"We are pleased the jury returned a verdict in favor of Sergeant Ron Marti with respect to the claims at issue while we continue to believe that the Jan. 23, 2008, arrest of plaintiff Brian Cabrera was entirely proper," Mr. Tsougarakis said. "We are pleased the jury rejected punitive damages and awarded damages in the amount far less than the plaintiff requested."