



**LICENSE REVOCATION ORDER**

**NAME AND ADDRESS OF RESPONDENT**

Alvin M. Homner  
[REDACTED]  
[REDACTED]  
[REDACTED]

Revocation Period Begins: 3/19/2014  
Revocation Period Ends: 3/19/2019

Licenses Revoked: Hunting

**HEARING DATA**

**Name of Hearing Officer:**  
Molly T. McBride  
Environmental Impact Examiner  
(Administrative Law Judge)

**Date and Time of Hearing:**  
Wednesday, January 22, 2014 at 10:00 AM

**INCIDENT DATA**

**Victim:** [REDACTED]

**Call For Service #:** 12-020961

**Date of Incident:** November 17, 2012

In the matter of the revocation of the **hunting** licenses, and all of the rights and privileges associated therewith of the individual identified above and hereinafter known as the Respondent;

On the date, time and location indicated, the entitled matter was decided by the above-named Hearing Officer, duly designated by the Commissioner of the Department of Environmental Conservation pursuant to Section 11-0719 of the New York State Environmental Conservation Law.

Further, having been established that a Notice of Hearing and Complaint was served upon the Respondent, with the Respondent having **appeared** at the hearing, all other persons having had the opportunity to testify and present evidence and upon submission of the Hearing Record, Report and Recommendation establishing that the Respondent did on the date of incident stated above while engaged in **hunting discharged a firearm so as to cause injury to another in violation of ECL § 11-0719(2)(a)(1)(i)**. Specifically, on November 17, 2012, while deer hunting in a brush lot located at [REDACTED], respondent discharged his semiautomatic rifle and struck [REDACTED] causing serious physical injury. Accordingly, it is, upon the record of these proceedings:

**ORDERED AND DIRECTED**, that any **hunting** licenses, carcass tags, stamps and permits currently held by the Respondent are hereby revoked and now void, and the Respondent is ordered and declared to be ineligible to hold such licenses, carcass tags, stamps and permits and is ineligible to **hunt** without a license until the revocation period in this Order ends and Respondent has fully satisfied all of the provisions of this Order and all other licensing requirements, and it is further,

**ORDERED AND DIRECTED**, that the revocation and ineligibility herein above set forth, shall be entered in the minutes of the New York State Department of Environmental Conservation, and that a written notice thereof be forthwith served upon the Respondent by certified mail, return receipt requested, or by personal service by a representative of the New York State Department of Environmental Conservation, and it is further,

**ORDERED AND DIRECTED**, as provided in said Section that within five days after the service of the order and notice upon the Respondent, that the Respondent deliver to the Department of Environmental Conservation, Albany, New York, any and all **hunting** licenses, carcass tags and permits issued to the Respondent for the current license year, together with any button or stamp associated with **hunting**, and it is further,

**ORDERED AND DIRECTED**, that in addition to completing the entire revocation time period the Respondent must provide documentation that he successfully completed a Department-sponsored course and obtained a certificate of qualification in responsible **hunting** practices **before** being issued another **hunting** license. Therefore, the Respondent should submit a certificate of qualification in responsible **hunting** practices to the Department **during** the revocation period. The certificate of qualification should be sent to the following address within 10 days from the date the certificate was issued or within 10 days of receipt of this Order, whichever is later: **New York State Department of Environmental Conservation, Division of Law Enforcement, License Revocation Section, 625 Broadway, 3rd Floor, Albany, N.Y. 12233**. It is further,

**ORDERED AND DIRECTED**, that if the Respondent fails to comply with any provision of this Revocation Order, the Respondent will become subject to the penalties prescribed by law in such cases.

March 19, 2014

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Date

/s/

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Major Scott Florence  
Commissioner's Designee for  
Sportsman License Revocation Hearings

## **Revocation or Suspension of Licenses pursuant to Interstate Wildlife Violator Compact**

Effective March 1, 2006, New York State joined the Interstate Wildlife Violator Compact (IWVC). The IWVC is a compact under which member states reciprocate regarding the suspension or revocation of licenses and permits resulting from violations concerning the pursuit, possession or taking of mammals, birds, fish, reptiles, amphibians, mollusks, shellfish and crustaceans.

If a person's license or permit privileges which come under the scope of the IWVC are suspended or revoked in one member state, they are subject to suspension or revocation in all member states. In addition to license and permit suspensions and revocations which result from a conviction for the illegal pursuit, possession or taking of mammals, birds, fish, reptiles, amphibians, mollusks, shellfish and crustaceans, failing to appear in court or to otherwise answer a ticket or summons issued for such violations will also result in license or permit suspension. IWVC member states also agree to recognize convictions and/or civil and administrative settlements for violations within the scope of the IWVC which occur in all other member states and to apply them toward license and permit suspension and revocations in the state in which the person resides. For a complete list of IWVC member states, please call DEC's Division of Law Enforcement at **518-402-8816**.

**New York State Department of Environmental Conservation  
Hunting Related Shooting Incident (HRSI) License Revocation Hearing  
Hearing Report, Findings & Recommendations, and Final Decision**

**In the Matter of the Alleged Violation of Article 11  
of the New York State Environmental Law (ECL) by:**

<b>Name</b>	Alvin Homner	<b>Address</b>	[REDACTED]
<b>D.O.B.</b>	[REDACTED]	<b>Sporting License #</b>	[REDACTED]

**HRSI General Information**

<b>Case Name:</b>	Alvin M. Homner	<b>Call for Service #</b>	12-020961
<b>Case No.:</b>	R-8-12-020961		
<b>On (Date):</b>	11/17/2012	<b>Victim (Name):</b>	[REDACTED]
<b>Was (check one):</b>	<b>Injured</b> <input checked="" type="checkbox"/> ;	<b>Killed</b> <input type="checkbox"/> ;	<b>or had Property Damaged</b> <input type="checkbox"/>
<b>Description of Nature of Injury or Property Damaged:</b>	While deer hunting at a property located at [REDACTED], Alvin M. Homner discharged a firearm causing serious physical injury to [REDACTED]		

**By (Name of Responsible Party):** Alvin M. Homner

<b>Location:</b>	<b>Town of</b>	Italy	<b>County of</b>	Yates
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This incident occurred while the Respondent and/or Victim were engaged in the following hunting activity (specify):  
**Deer Hunting**

**This hearing was held at the Office of the New York State Department of Environmental Conservation located at (address):**

6274 East Avon-Lima Road, Avon, New York 14414

<b>at (time):</b>	10:00	<b>on (date):</b>	January 22, 2014
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<b>Designated Hearing Officer Name and Title:</b>	Molly T. McBride Environmental Impact Examiner (Administrative Law Judge)
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<b>Petitioning Officer Rank, Name, &amp; Shield</b>	Lt. Richard Thomas
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**Respondent did not waive his right to this hearing.**

**APPEARANCES:**

**Respondent did appear for this hearing.**

**Victim(s)**

**Victim did appear for this hearing. List name(s) and address(es) of victim:**

[REDACTED]

**Witness(es)**

**List name(s) and address(es) of witness(es) present at this hearing:**  
Jeffrey M. Lamphier, 6274 East Avon-Lima Road, Avon, NY; Alvin M. Homner; [REDACTED]

Patrick Dormer, 6274 East Avon-Lima Road, Avon, NY: Brett Armstrong, 6274 East Avon-Lima Road, Avon, NY: [REDACTED]

### Others Present At Hearing

List name(s) and address(es) of others present at this hearing:

Lt. Joshua VerHague, 6274 East Avon-Lima Road, Avon, NY

### Firearm/Weapon Pertaining To The Hunting Related Shooting Incident

<b>Make</b>	Remington Woodmaster Semi-automatic rifle	<b>Gauge/Caliber</b>	.308
<b>Model</b>	742	<b>Owned by:</b>	Alvin Homner
<b>Serial #</b>	350812	<b>Possessed by</b>	Alvin Homner

### Exhibit List

1. Narrative Report of NYS Environmental Conservation Investigator Jeffrey Lamphier dated November 17, 2012
2. Photo of Property at [REDACTED]
3. Hunting Related Shooting Investigative Report
4. Evidence and Chain of Custody Record, Remington Rifle
5. Evidence and Chain of Custody Record, empty casing
6. 5 Color Photos regarding incident
7. Evidence Bag with magazine, casing, bullets
8. Remington Rifle
9. Report of Hunting Incident completed by Alvin Homner
10. [REDACTED] Hospital authorization for release of medical information health of [REDACTED]
11. [REDACTED] Hospital medical records of [REDACTED] (Confidential)
12. Voluntary Statement, Alvin Homner dated November 17, 2012
13. Voluntary Statement, Alvin Homner dated December 19, 2012
14. NYS DEC Supporting Deposition of [REDACTED]
15. NYS DEC Supporting Deposition of Alvin Homner
16. NYS DEC Supporting Deposition of Forest Ranger Patrick Dormer
17. Safe Gun Handling Book, Chapter 7, page 39
18. NYS DEC Case File 12-020961
19. NYS Certificate of Relief from Disabilities issued by Italy Town Court (Hicks, J.) dated July 18, 2013

OFFICE OF HEARINGS EXHIBITS:

Hunting-Related Shooting Incident Notice of Hearing and Complaint, undated, Lt. Richard D. Thomas

Delegation of Authority 13-05, Chief Administrative Law Judge, Hearings Counsel and ALJs, dated November 6, 2013

Delegation of Authority 12-15, Division of Law Enforcement Employees to Revoke Licenses, Conduct Hearings, and Execute Orders., dated August 20, 2012

## Transcript

The hearing was stenographically recorded.

### Synopsis of Incident from Testimony, Documents, and Evidence

The synopsis rendered by me in this matter is based upon my review of the documents and evidence referenced above and the testimony of those present during the hearing held on the above date and time:

Alvin M. Homner, [REDACTED] and [REDACTED] were hunting white tailed deer in a group on November 17, 2012 in a brush lot located at [REDACTED]. Alvin Homner fired his semiautomatic rifle at what he believed was a deer, striking [REDACTED] causing physical serious injury.

### Findings, Conclusions of Law, and Recommendations of the Hearing Officer

**FINDINGS:** The findings, including any findings of negligence or negligence and wantonness or lack thereof (as the case may be), on the part of the Respondent, by this Hearing Officer, are based upon the preponderance of the testimony, documents, and evidence presented during the hearing and held on the above date and time (see 6 NYCRR 622.11[c]), unless this report notes a Default Judgment without hearing in which case the findings are based solely on the documents and evidence listed in this Report.

1. Respondent Alvin Homner was hunting whitetail deer on November 17, 2012 in a brush lot located at [REDACTED] with a valid NYS Hunting license.
2. [REDACTED] was hunting with Alvin Homner on November 17, 2012 in a brush lot located at [REDACTED]
3. Alvin Homner discharged a firearm while hunting whitetail deer on November 17, 2012 and caused serious physical injury to [REDACTED]
4. Alvin Homner did not have full view of his target, a deer, when he discharged his weapon and caused serious injury to [REDACTED]

**DISCUSSION:** Including a discussion of the standards of negligence, or negligence and wantonness (as the case may be).

Department staff must prove by a preponderance of the evidence that respondent Alvin Homner (i) while hunting or trapping (ii) caused injury to another (iii) by discharging a firearm (ECL 11-0719[2][a][1]). Department staff does not need to prove that respondent was negligent. If Department staff meets its burden, the respondent must prove that there was no negligence on his part to avoid revocation of the hunting license (ECL 11-0719[2][c]; see also Iossa v. Marcone, 281 AD2d 235 [1st Dept 2001]; Matter of Ratowski v. Van Benschoten 57 AD2d 1025 [3rd Dept 1977]).

Alvin Homner (Alvin) and [REDACTED] were hunting companions for approximately 40 years. The men are [REDACTED] On the day of this incident, they had been hunting together for a period of time in a brush lot that was dense in some areas, with brush over the heads of both men. (Department Exhibit 12, Transcript at 62.) [REDACTED] was wearing camouflage colored clothing and hat, with a brownish and orange colored vest (Department Exhibit 6, Transcript 103). After a period of time hunting in the same brush lot, [REDACTED] informed Alvin that he was leaving the field to take a break, exiting the field in a southerly direction (Transcript 62). Alvin continued to head north to hunt for deer. [REDACTED] then made a decision to change direction and head north into the brush lot, towards Alvin, without telling Alvin of his change in direction (Transcript 83, 84). [REDACTED] realized that he was near Alvin and attempted to make his presence known by whistling. According to both men, a whistle is a signal they have used for years to alert each other to the presence of a deer (Transcript 85). Alvin heard the whistle and assumed that a deer has been "kicked up." Alvin testified that at that time, he spotted a deer's head, one eye and antlers, aimed for what should be right behind the deer's shoulder, and fired his

semi-automatic rifle (Transcript 94). The bullet fired from Alvin's rifle struck ██████ in his shoulder (Transcript 15). ██████ was transported to ██████ Hospital for medical treatment and he remained for several days (Transcript 8). He sustained a humerus fracture, a scapular fracture and pulmonary contusions (Transcript 24).

Department staff has established by a preponderance of the evidence that Alvin Homner did cause injury to ██████ by discharging a firearm while hunting whitetail deer. Respondent did acknowledge that he fired his rifle while hunting and the bullet struck ██████ (Transcript 71). Accordingly, respondent has the burden of showing that he was not negligent when he shot ██████ (ECL 11-0719[2]).

The applicable standard of care is established, among other things, by the rules of hunter safety. Alvin Homner testified that he was 100% sure that he saw a buck's head in the scope of his rifle when he discharged his weapon (Transcript. 72). However, after seeing the buck's head, he proceeded to aim where he thought the buck's shoulder would be, without seeing his target, and fired his weapon (Transcript.72). He made an estimate as to how far back the animal's shoulder should be and he fired (Transcript 72). ██████ was in the path of the shot and the bullet struck him in his right shoulder, causing serious injury. Department Staff introduced into evidence Exhibit 17, a page from the 1973 Hunter Safety Manual. The exhibit is page 39 of the Manual and is entitled "Safe Gun Handling." The exhibit lists the 3 primary rules of safe gun handling; number three being "Be Sure of your Target... and Beyond." "Before the hunter aims and fires his gun, he must absolutely identify his target. To do this, full view of the target is necessary." (Emphasis added.) Alvin Homner, through his testimony, has established that he did not follow this rule; he did not have full view of his target and beyond when he fired his weapon. Therefore, respondent has not established a lack of negligence.

██████ actions are worthy of consideration. ██████ had notified Alvin that he was leaving the brush lot shortly before the incident occurred. Alvin correctly asked ██████ what route he was going to use to leave the lot. ██████ then changed his route completely, instead of heading in a southerly direction, away from Alvin, he began walking in a northerly direction, towards Alvin. ██████ did not inform Alvin that he has changed direction. ██████ did not alert Alvin that he had traveled back to his area and was nearby, although he did see Alvin in his immediate area. ██████ was wearing camouflage clothing, including a hat. ██████ actions did play a role in the incident. While these actions do not negate the negligence of Alvin Homner, they are worthy of consideration when determining the appropriate period of revocation.

**CONCLUSIONS OF LAW:** The following are the Hearing Officer's conclusions of law concerning the violations established on the record of the hearing.

1. Department Staff has the burden to demonstrate by a preponderance of the evidence that respondent Alvin Homner (i) while hunting or trapping (ii) caused injury to another (iii) by discharging a firearm (ECL 11-0719[2][a][1]). Department staff does not need to prove that respondent was negligent.
2. Alvin Homner has the burden of proof to demonstrate that he was not negligent when he discharged his firearm while hunting, causing injury to another. ECL 11-0719[2][c].
3. Department staff has met its burden of proof and has demonstrated that Alvin Homner violated ECL 11-0719[2][a][1] by discharging a firearm while hunting and causing physical injury to another person.
4. Alvin Homner has not demonstrated that he was not negligent when he discharged his firearm while hunting, causing physical injury to ██████ ECL 11-0719[2][c].

**RECOMMENDATIONS:** The following are this Hearing Officer's recommendations concerning the revocation of the respondent's sporting license and are subject to review by the Commissioner or the Commissioner's Designee for Sporting License Revocations.

1. I recommend that respondent Alvin Homner's hunting license be revoked for his violation of ECL 11-0719(2)(a)(1).
2. Based upon the actions of ██████, I recommend that respondent's hunting license be revoked for a period of two years, rather than the five years requested by Department staff.
3. Department staff noted in the notice of hearing and complaint served upon respondent, a hunter safety course completion may be required of respondent. Respondent has completed a hunter safety course as a condition of his sentencing in the related criminal proceeding.

<b>Hearing Officer's Name:</b>	Molly T. McBride	<b>Title:</b>	Environmental Impact Examiner (Administrative Law Judge)
<b>Signature:</b>	/s/	<b>Date:</b>	March 18, 2014

**Central Office Review and Decision Regarding Sporting License Revocation**

I have reviewed the hearing record regarding this matter and adopt the hearing report of the Administrative Law Judge (ALJ) in part. Specifically, I adopt the ALJ's findings of fact and conclusions of law in their entirety. I agree with the ALJ that Department staff carried its burden of proof by a preponderance of the record evidence that respondent Alvin Homner caused injury to ██████████ by discharging a firearm while hunting deer, in violation of ECL 11-0719(2)(a)(1)(i). I also agree that by failing to identify his entire target before firing, among other things, respondent failed to follow a basic tenet of hunter safety, that is, the requirement of having full view of the target before aiming and firing. Accordingly, respondent did not carry his burden of establishing no negligence on his part (see ECL 11-0719[2][c]; see also Matter of Chapman, License Revocation Decision, Dec. 18, 2013; Matter of Iossa v Marcone, 281 AD2d 235, 236 [1st Dept 2001]; Matter of Ratowski v Van Benschoten, 57 AD2d 1025 [3d Dept 1977]).

I also agree with the ALJ that as a result of his violation of ECL 11-0719, respondent's hunting licenses and privileges should be revoked. However, I disagree with the revocation period of two (2) years as recommended by the ALJ. The ALJ recommended a reduction in the revocation period based upon Mr. Leach's actions during the incident. Under the circumstances presented on this record, however, I do not conclude that the victim's actions warrant a reduction in the five (5) year revocation period requested by Department staff. ██████████ actions in reversing direction after informing respondent of his plan to leave the field in which they were hunting, and whistling to signal his return do not mitigate respondent's failure to follow basic hunter safety principles, namely knowing what is in front of and behind your target, and seeing the entire target from nose to tail before aiming or firing a firearm. Moreover, the whistle should have informed a reasonably prudent hunter that a person was in the vicinity and, thus, extra caution should be exercised before firing at movement in the tall weeds. Accordingly, I conclude that respondent's license should be revoked for the full five (5) year period requested by staff.

Finally, I note that respondent testified that he completed a hunter safety course as a condition of his sentencing in the related criminal proceeding. Respondent shall provide to the Department a copy of his certificate of qualification from that course, or any other Department sponsored course, before being issued another license.

The sporting license privileges of the responsible party should be revoked:    Yes     No

Sporting licenses subject to revocation:        Hunting

**Length and Terms of Revocation:**

Five (5) years. Respondent Alvin Homner to provide documentation that he has successfully completed a Department-sponsored sportsman education course and obtained the associated certificate of qualification before being issued another license.

Commissioner or Commissioner's Designee:	Major Scott Florence Acting Director Division of Law Enforcement
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Signature: /s/	Shield # 274	Date: 3/18/14
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