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9
10 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF ELECTRONIC AND APPLIANCE REPAIR, HOME
FURNISHING AND THERMAL INSULATION
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. AN 2011-1052

13 **RAFAT FAWWAZ SWIDAN,**
14 **AKA RAFAT FAWWAZ SWEIDAN**

FIRST AMENDED

15 **Electronic Service Dealer Registration Applicant**

STATEMENT OF ISSUES

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Tonya Blood (Complainant) brings this First Amended Statement of Issues solely
21 in her official capacity as the Chief of the Bureau of Electronic and Appliance Repair,
22 Department of Consumer Affairs.

23 2. On or about October 22, 2011, the Bureau of Electronic and Appliance Repair
24 received an application for an Electronic Service Dealer Registration from Rafat Fawwaz
25 Swidan; aka Rafat Fawwaz Sweidan, seeking to do business under the fictitious business name,
26 Stereo Pros (Respondent). On or about October 10, 2011, Rafat Fawwaz Swidan certified under
27 penalty of perjury to the truthfulness of all statements, answers, and representations in the
28 application. The Bureau denied the application on March 12, 2012.

JURISDICTION

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2 3. This Statement of Issues is brought before the Director of Consumer Affairs
3 (Director) for the Bureau of Electronic and Appliance Repair, Home Furnishing and Thermal
4 Insulation (Bureau), under the authority of the following laws. All section references are to the
5 Business and Professions Code unless otherwise indicated.

6 4. Section 477 of the Code states that:

7 As used in this division:

8 (a) "Board" includes "bureau," "commission," "committee,"
9 "department," "division," "examining committee," "program," and "agency."

10 (b) "License" includes certificate, registration or other means to engage in
11 a business or profession regulated by this code.

12 5. Section 9831 of the Code states:

13 Upon receipt of the form properly filled out and receipt of the required fee,
14 the director shall, provided the applicant has not committed acts or crimes
15 constituting grounds for denial of licensure under Section 480, issue the
16 registration and send a proof of issuance to the service dealer. The director shall
17 by regulation prescribe conditions upon which a person whose registration has
18 previously been revoked or has previously been denied, may have his or her
19 registration issued.

20 6. Section 9841 of the Code states:

21 (a) The director may refuse to validate, or may invalidate temporarily or
22 permanently the registration of a service dealer for any of the following acts or
23 omissions done by himself or herself or any employee, partner, officer, or
24 member of the service dealer and related to the conduct of his or her business:

25

26 (7) Conviction of a crime which has a substantial relationship to the
27 qualifications, functions and duties of a registrant under this chapter, in which
28 event the record of the conviction shall be conclusive evidence thereof.

 (b) The director may also refuse to validate, or may invalidate temporarily
or permanently, the registration of a service dealer if the applicant or registrant, as
the case may be, has committed acts or crimes constituting grounds for denial of
licensure under Section 480.

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STATUTORY PROVISIONS

7. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

8. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

....

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license.

1 9. Section 482 of the Code states:

2 Each board under the provisions of this code shall develop criteria to
3 evaluate the rehabilitation of a person when:

4 (a) Considering the denial of a license by the board under Section 480; or

5 (b) Considering suspension or revocation of a license under Section 490.

6 Each board shall take into account all competent evidence of rehabilitation
7 furnished by the applicant or licensee.

8 10. Section 493 of the Code states:

9 Notwithstanding any other provision of law, in a proceeding conducted by
10 a board within the department pursuant to law to deny an application for a license
11 or to suspend or revoke a license or otherwise take disciplinary action against a
12 person who holds a license, upon the ground that the applicant or the licensee has
13 been convicted of a crime substantially related to the qualifications, functions, and
14 duties of the licensee in question, the record of conviction of the crime shall be
15 conclusive evidence of the fact that the conviction occurred, but only of that fact,
16 and the board may inquire into the circumstances surrounding the commission of
17 the crime in order to fix the degree of discipline or to determine if the conviction
18 is substantially related to the qualifications, functions, and duties of the licensee in
19 question.

20 As used in this section, "license" includes "certificate," "permit,"
21 "authority," and "registration."

22 REGULATORY PROVISIONS

23 11. Title 16, California Code of Regulations section 2767, provides:

24 For the purpose of denial, suspension, or revocation of the registration of a
25 repair service dealer pursuant to Division 1.5 (commencing with section 475) of
26 the Business and Professions Code, a crime or act shall be considered to be
27 substantially related to the qualifications, functions or duties of a service repair
28 dealer if to a substantial degree it evidence present or potential unfitness of a
service dealer to perform the functions authorized by his registration in a manner
consistent with the public health, safety, or welfare. Such crimes or acts shall
include but not be limited to those involving the following:

(a) Violating or attempting to violate, directly or indirectly, or assisting in
or abetting the violation of, or conspiring to violate any provision or term of
Chapter 20, Division 3 of the Business and Professions Code.

(b) Conviction of a crime involving fiscal dishonesty.

12. Title 16, California Code of Regulations section 2768, provides:

(a) The Bureau shall evaluate the rehabilitation of the applicant, registrant,
or petitioner and his present eligibility for a registration:

(1) When considering the denial of a registration under the provisions of
Section 480 of the Code.

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2 (b) In evaluating the rehabilitation of the applicant, registrant, or
petitioner, the Bureau shall consider the following criteria:

3 (1) The nature and severity of the act(s) or crime(s) under consideration.

4 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)
5 under consideration as grounds for denial under Section 480 of the Business and
6 Professions Code when considering an applicant pursuant to subsection (a) (1) of
this section.

7 (3) Total criminal record when considering a person pursuant to sections
8 (a) (2) and (a) (3) of this section.

9 (4) The time that has elapsed since commission of the act(s) or crime(s)
under consideration.

10 (5) The extent to which the applicant, registrant, or petitioner has
11 complied with any terms of parole, probation, restitution, or any other sanctions
lawfully imposed against the applicant, registrant, or petitioner.

12 (6) Evidence, if any, of rehabilitation submitted by the applicant,
13 registrant, or petitioner. Such evidence may include, but is not limited to proof of
14 additional training or education, evidence of services to the community, and, if
applicable, evidence of expungement proceedings, pursuant to Section 1203.4 of
the Penal Code.

15 **FIRST CAUSE FOR DENIAL OF APPLICATION**

16 **(October 7, 2011 Criminal Convictions for Employment Law Violations**

17 **Between January and March 2011)**

18 13. Respondent's application is subject to denial under Code sections 480,
19 subdivision (a)(1), and 9841, subdivisions (a)(7) and (b), in that Respondent was convicted of
20 crimes that are substantially related to the qualifications, duties and functions of an Electronic
21 Service Dealer. The circumstances are as follows:

22 a. On or about October 7, 2011, in a criminal proceeding entitled *The People*
23 *of the State of California vs. Rafat F. Sweidan, aka Raffat Fawwaz Sweidan*, in Riverside County
24 Superior Court, Riverside Hall Of Justice, case number RIM1105617, Respondent was convicted
25 by a jury for violating Labor Code (LC) section 3700.5, failure to secure the payment of
26 compensation; Unemployment Insurance Code (UIC) section 2118, failure to pay over any tax
27 withheld; and LC section 226, subdivision (a), failure to provide his employees an accurate
28 statement in writing, misdemeanors.

1 a crime that is substantially related to the qualifications, duties and functions of an Electronic
2 Service Dealer. The circumstances are as follows:

3 a. On or about December 5, 2005, in a criminal proceeding entitled *The*
4 *People of the State of California vs. Rafat F. Sweidan, aka Raffat Fawwaz Sweidan*, in San
5 Bernadino County Superior Court, case number FSB052579, Respondent was convicted by his
6 plea of guilty to violation of Penal Code section 550, subdivision (b) (2), insurance fraud, a
7 misdemeanor.

8 b. As a result of the convictions, Respondent was sentenced to summary
9 probation for three years, ordered committed to the custody of the Riverside County Sheriff for
10 1 day with credit for one day served, and ordered to pay fees and fines. He was also ordered to
11 post a sign that was visible to customers at his place of business stating, "Filing a false insurance
12 claim is a felony punishable by imprisonment for up to 5 years."

13 c. The facts and circumstances underlying the conviction are that on or about
14 August 22, 2005, an undercover officer of the California Highway Patrol entered Stereo City
15 located at 596 South E Street in the city of San Bernadino and spoke to Respondent who
16 identified himself as the manager of the business. The undercover officer told Respondent that
17 her truck had been stolen and she needed a receipt for some stereo items because she had told her
18 insurance company she had a more expensive stereo system in her truck than she actually had.
19 Respondent instructed an employee to give the receipt to the undercover officer. The undercover
20 officer left the store with the fraudulent receipt, back-dated, that stated she had previously bought
21 stereo equipment at the store when, in fact, she had not bought any stereo equipment at the store.
22 Approximately 10 minutes later investigators from the California Department of Insurance,
23 Fraud Division, entered the store and spoke to Respondent. Respondent admitted that he knew
24 the undercover officer had not bought the items on the receipt and that the purpose of giving her
25 the receipt was so that she could turn it in to her insurance company to get paid for those items.
26 Respondent admitted that he had given out fake receipts in the past but had not done it in a long
27 time. The employee who wrote the receipt stated that he was a sales clerk and he wrote the
28 receipt for the undercover officer because Respondent told him to write her a receipt. The sales

1 clerk back-dated the receipt and wrote a date dictated by the undercover officer and he wrote the
2 exact merchandise items on the receipt that the undercover officer told him to write on the
3 receipt.

4 **THIRD CAUSE FOR DENIAL OF LICENSURE**

5 **(Knowingly Making False Statement on Application)**

6 15. Respondent's application is subject to denial under Code sections 480,
7 subdivision (c) and 9841(b), in that Respondent knowingly failed to disclose his 2005 conviction
8 of insurance fraud, alleged in Paragraph 14 above, in his application to the Bureau. The
9 circumstances are as follows.

10 16. On or about October 10, 2011, Respondent signed his Application for Registration
11 as an Appliance Service Dealer, and submitted it to the Bureau. By his Application, Respondent
12 certified, under penalty of perjury, under the laws of the State of California, that its contents were
13 true and correct.

14 17. Item 11 of Page 2 of Respondent's application required that he answer the
15 question: "Have you ever been convicted of a felony or misdemeanor, other than minor traffic
16 violations", to which Respondent failed to provide any answer.

17 18. Item 11 of Page 2 of Respondent's application further required Respondent to
18 complete Item 13 of the Application if he answered "Yes" to the question set forth in Item 11.

19 19. Item 13 of Page 2 of Respondent's application stated, in pertinent part, that "If you
20 answered YES to having ever been convicted of a felony or misdemeanor in Items 10 or 11, give
21 the particulars of each, including penal code numbers or criminal case numbers. . . . (Attach
22 additional sheets if necessary)."

23 20. In response to Item 13, Respondent knowingly failed to disclose his 2005 conviction of
24 insurance fraud, alleged in Paragraph 14, above, and incorporated herein by reference.

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FOURTH CAUSE FOR DENIAL OF LICENSURE

(Knowingly False Statement on Application)

21. Respondent's application is subject to denial under Code sections 480, subdivision (c) and 9841(b), in that Respondent knowingly failed to disclose his 2004 conviction of driving under the influence of alcohol, alleged in Paragraph 23 below, in his application to the Bureau, as set forth below.

22. Complainant incorporates by this reference paragraphs 16 through 19, above, as though fully set forth herein.

23. In response to Item 13 on his application, Respondent knowingly failed to disclose his 2004 conviction of driving under the influence of alcohol described below.

a. On or about March 2, 2004, in a criminal proceeding entitled *The People of the State of California vs. Rafat F. Sweidan, aka Raffat Fawwaz Sweidan*, in San Bernadino County Superior Court, case number TSB112126, Respondent was convicted by his plea of guilty to violation of Vehicle Code section 23152 (a), driving under the influence of alcohol.

b. As a result of the conviction, Respondent was sentenced to summary probation for three years, ordered to pay fines and fees, ordered to complete a 1st Offender Alcohol Program, and his driver's license was restricted for a period of three months to drive to and from employment and treatment, only.

FIFTH CAUSE FOR DENIAL OF LICENSURE

(Acts Involving Dishonesty, Fraud or Deceit)

24. Respondent's application is subject to denial under Code section 480(a)(2) in that Respondent committed an act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or another, or substantially injure another, by submitting his application for issuance of an Appliance Service Dealer Registration without revealing

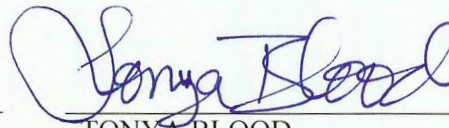
1 information regarding his criminal convictions that he was required to reveal, as alleged, above,
2 in paragraphs 15 through 23, which are incorporated herein by this reference.

3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein
5 alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

- 6 1. Denying the application of Rafat Fawwaz Swidan; aka Rafat Fawwaz Sweidan for
7 an Electronic Service Dealer Registration;
8 2. Taking such other and further action as deemed necessary and proper.

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10 DATED: 08/13/2012



11 TONYA BLOOD
12 Chief
13 Bureau of Electronic and Appliance Repair
14 Department of Consumer Affairs
15 State of California
16 *Complainant*

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