

Final Notice of Denial of Application, Revocation Suspension and/or Fine of Firearms License

In the matter of:

- The application for license as a/an _____, filed by:
or
- License Number 1-56-12504 as a/an
Dealer of Firearms Other Than Destructive Devices, issued to:

Name and Address of Applicant or Licensee (*Show number, street, city, state and ZIP Code*)

Randy Lewis Spence
317 Pine Drive
Littleton, North Carolina 27850

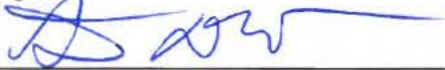
Notice is Hereby Given That:

- A request for hearing pursuant to 18 U.S.C. § 923(f)(2) and/or 922(t)(5) was not timely filed. Based on the findings set forth in the attached document, your
- license described above is revoked pursuant to 18 U.S.C. 923(e), 922(t)(5) or 924(p), effective:
- 15 calendar days after receipt of this notice, or _____,
- license is suspended for _____ calendar days, effective _____, pursuant to 18 U.S.C. § 922(t)(5) or 924(p).
- licensee is fined \$ _____, payment due: _____, pursuant to 18 U.S.C. § 922(t)(5) or 924(p).
- After due consideration following a hearing held pursuant to 18 U.S.C. § 923(f)(2) and/or 922(t)(5), and on the basis of findings set out in the attached copy of the findings and conclusions, the Director or his/her designee concludes that your
- application for license described above is denied, pursuant to 18 U.S.C. 923(d).
- application for renewal of license described above is denied pursuant to 18 U.S.C. 923(d), effective:
- 15 calendar days after receipt of this notice, or _____,
- license described above is revoked pursuant to 18 U.S.C. 923(e), 922(t)(5) or 924(p), effective:
- 15 calendar days after receipt of this notice, or April 15, 2022
- license is suspended for _____ calendar days, effective _____, pursuant to 18 U.S.C. § 922(t)(5) or 924(p).
- licensee is fined \$ _____, payment due: _____, pursuant to 18 U.S.C. § 922(t)(5) or 924(p).

If, after the hearing and receipt of these findings, you are dissatisfied with this action you may, within 60 days after receipt of this notice, file a petition pursuant 18 U.S.C. § 923(f)(3), for judicial review with the U.S. District Court for the district in which you reside or have your principal place of business. If you intend to continue operations after the effective date of this action while you pursue filing for judicial review or otherwise, you must request a stay of the action from the Director of Industry Operations (DIO), Bureau of Alcohol, Tobacco, Firearms and Explosives, at 3600 Arco Corp. Dr. Suite 500, Charlotte, NC, prior to the effective date of the action set forth above. You may not continue licensed operations unless and until a stay is granted by the DIO.


Records prescribed under 27 CFR Part 478 for the license described above shall either be delivered to ATF within 30 days of the date the business is required to be discontinued or shall be documented to reflect delivery to a successor. See 18 U.S.C. 923(g)(4) and 27 CFR § 478.127.

After the effective date of a license denial of renewal, revocation, or suspension, you may not lawfully engage in the business of dealing in firearms. Any disposition of your firearms business inventory must comply with all applicable laws and regulations. Your local ATF office is able to assist you in understanding and implementing the options available to lawfully dispose of your firearms business inventory.

Date	Name and Title of Bureau of Alcohol, Tobacco, Firearms and Explosives Official	Signature
03/17/2021	Director of Industry Operations	

I certify that, on the date below, I served the above notice on the person identified below by:

- Certified mail to the address shown below.
 Tracking Number: 7019 0160 0000 1955 1959
- Or**
- Delivering a copy of the notice to the address shown below.

Date Notice Served	Title of Person Serving Notice	Signature of Person Serving Notice
03/18/2021	IA	

Print Name and Title of Person Served	Signature of Person Served
Randy Lewis Spence	

Address Where Notice Served
 317 Pine Drive
 Littleton, North Carolina 27850

Note: Previous Edition is Obsolete

Randy Lewis Spence, 317 Pine Drive, Littleton, North Carolina, a Dealer in Other Than Destructive Devices, ("Licensee"), holds Federal firearms license #1-56-12504 issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) pursuant to the Gun Control Act of 1968 (GCA), as amended, 18 U.S.C. Chapter 44, and the regulations issued thereunder, 27 C.F.R. Part 478.

On December 14, 2021, ATF issued a Notice of Revocation and/or Fines of License, ATF Form 4500, to the Licensee via certified mail. The Licensee timely requested a hearing to review that Notice.

Due to the Covid-19 Pandemic, ATF offered licensee the opportunity to have either a (1) telephonic hearing; (2) a virtual/video hearing; or (3) a hearing using written submission. Licensee requested a telephonic hearing that was held on February 16, 2021. The hearing was conducted by ATF Director of Industry Operations (DIO) Stephen B. Albro. ATF was represented by Charlotte Division Counsel (b)(6) ATF Industry Operations Investigator (b)(6) appeared as witnesses on behalf of the Government and ATF Area Supervisor (b)(6) observed remotely. The Licensee, Randy Lewis Spence, participated in the hearing. The hearing was recorded and transcribed by the Government through a court reporter service. The Government offered testimony and exhibits and the licensee offered testimony and exhibits. All sides had the opportunity to make legal and factual arguments and to examine and cross examine witnesses.

Findings of Fact

Having reviewed the record in this proceeding, I make the following findings:

1. At the hearing, ATF introduced evidence of a qualification inspection conducted at the licensed premises of Randy Lewis Spence in 2017. The document was a signed Acknowledgement of Federal Firearms Regulations dated November 30, 2017 demonstrating that ATF reviewed the legal requirements applicable to Licensee. *See* Government Exhibit 8.
2. At the hearing, ATF introduced a slide from a PowerPoint presentation used at a Federal Firearms Seminar on May 3, 2018 and an attendance log indicating that Randy Spence attended the seminar. *See* Government Exhibits 9 and 10.
2. Following a July 15, 2021 compliance inspection, Investigator (b)(6) identified three (3) regulatory violations all of which were included in the Notice of Revocation of License issued to Randy Lewis Spence. *See* Government Exhibit 1.
3. As set forth in paragraph 1 of the Notice of Revocation, Licensee willfully failed on one (1) occasion to conduct a NICS background check or obtain a valid NICS alternative permit in willful violation of 18 U.S.C. § 922(t) and 27 CFR § 478.102(a). The Government produced testimony and a Firearms Transaction Record, ATF Form 4473 showing that the licensee transferred a FED-ARM, AM-15, .223 caliber rifle to an individual who presented a concealed carry permit issued by the Commonwealth of

Virginia. The Licensee did not conduct a NICS background check. During the hearing, Licensee stated that he believed that the Virginia permit authorized him to transfer the firearm without conducting a NICS background check. See Government Exhibit 6.

4. As set forth in paragraph 2 of the Notice of Revocation, Licensee willfully failed in (b)(3) - 112 instance to ensure that the transferee correctly recorded the required information on the ATF Form 4473 in willful violation of 18 U.S.C. § 923(g)(1)(A) and 27 CFR § 478.124(c). During the hearing, the Government introduced testimony and an ATF Form 4473 demonstrating that the transferee failed to indicate her county of residence on the form. The Licensee stated that it was an oversight and not willful.
5. As set forth in paragraph 3 of the Notice of Revocation, Licensee failed on (b)(3) - 112 Public Law occasions to ensure that the ATF Form 4473 was complete and accurate as required prior to transferring a firearm in willful violation of 18 U.S.C. § 923(g)(1)(A) and 27 CFR § 478.21a. The Government produced testimony and (b)(3) - 112 Public Law ATF Forms 4473 indicating that Licensee failed to list his trade name, address, and federal firearms license number in item #33 of the form. See Government Exhibits 7A and 7B. The Licensee stated that it was an oversight, and he purchased a stamp with the correct information following the inspection.

Conclusions of Law

Pursuant to the GCA, ATF may, after notice and opportunity for hearing, revoke a Federal firearms license if the licensee has willfully violated any provision of the GCA or the regulations issued thereunder. 18 U.S.C. § 923(e); 27 C.F.R. § 478.73. For purposes of 18 U.S.C. § 923, a “willful” violation occurs when the Licensee had knowledge of the GCA and either purposefully disregards the requirements or is plainly indifferent to them. See *Borchardt Rifle Corp. v. Cook*, 684 F.3d 1037, 1043 (10th Cir. 2012); *American Arms, Int’l v. Herbert*, 563 F.3d 78, 85 (4th Cir. 2009); *The General Store v. Van Loan*, 560 F.3d 920, 924 (9th Cir. 2009); *Armalite, Inc. v. Lambert*, 544 F.3d 644, 648 (6th Cir. 2008); *On Target Sporting Goods, Inc. v. Attorney General*, 472 F.3d 572 (8th Cir. 2007); *Article II Gun Shop, Inc. v. Gonzales*, 441 F.3d 492 (7th Cir. 2006); *Willingham Sports, Inc. v. BATF*, 415 F.3d 1274 (11th Cir. 2005). See also, *Bryan v. United States*, 524 U.S. 184, 197-198 (1998). In several instances, the courts have held that adverse action based on a single action is valid. See, *DiMartino v. Buckles, Dir. ATF*, 129 F. Supp. 2d 824, 827 (D. Md. 2001); *Benjamin v. Bureau of Alcohol, Tobacco and Firearms*, 771 F. Supp. 307, 311 (D. Or. 1991). It is not necessary that a licensee act with “bad purpose or evil motive.” *Article II Gun Shop, Inc. v. Gonzales*, 441 F.3d 492, 497-98 (7th Cir. 2006); *Prino v. Simon*, 606 F.2d 449, 451 (4th Cir. 1979) (“no showing of malicious intent is necessary” to show willfulness).

For the reasons stated below, I conclude that the Licensee willfully violated law and regulations set forth in the Notice of Revocation of License.

The Licensee, Randy Lewis Spence, testified that he generally had a misunderstanding of the law but that he has a desire to follow the law. In his written request for a hearing, Mr. Spence stated, that Investigator (b)(6) “was extremely thorough and gave me instruction on how to properly

conduct my affairs more through [sic] than the original issuing agent or the information I received at a seminar that held in Winterville a couple of year ago.” *See* Government Exhibit 3.

The Government verified that Mr. Spence attended a Federal Firearms Seminar on May 3, 2018 in Winterville, NC during which ATF discussed NICS requirements. Specifically, ATF addressed permits issued outside the State of North Carolina and advised licensees that only permits issued in North Carolina are valid NICS alternatives. *See* Government Exhibits 9 and 10.

A federal firearms licensee has a duty to be cognizant of the rules and regulations issued by ATF and to follow those mandates. Licensee participated in a qualification inspection 2017 and acknowledged that he was aware of his responsibilities as a Licensee. Additionally, Licensee attended a Federal Firearms Seminar in 2018 where firearms laws and regulations were again addressed. It was apparent that the Licensee understood the responsibilities was plainly indifferent and purposefully disregarded the firearms laws and regulations.

I find that Licensee willfully violated 18 U.S.C. § 922(t) and 27 CFR § 478.102(a) when he failed to conduct a NICS background check or obtain a valid NICS alternative permit.

I do not find that Licensee willfully violated 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(c)(1) when he failed to ensure that the transferee correctly recorded the required information on the ATF Form 4473.

I find that Licensee willfully violated 18 U.S.C. § 922(g)(1)(A) and 27 C.F.R. §§ 478.21a when he failed to ensure that the ATF Form 4473 was complete and accurate as required prior to transferring a firearm.

As such, I conclude that the Licensee willfully violated the provisions of the GCA and the regulations issued thereunder. Accordingly, as provided by 18 U.S.C. § 923(e) and 27 C.F.R. § 478.73, the Federal firearms license held by Randy Lewis Spence is hereby REVOKED.