

**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 1-54-810-01-3F-24034 as a/an
Dealer in Firearms, issued to:

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

Blue Water Sales, LLC
1024 Bells Road, Suite 107
Virginia Beach, VA 23451

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 August 26, 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 90 K Street, NE, Suite 1102, Washington, DC 22026 or Andrew.Perdas@atf.gov

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 07/27/2022	Name and Title of Bureau of Alcohol, Tobacco, Firearms and Explosives Official Andrew M. Perdas Director, Industry Operations	Signature <i>Andrew M. Perdas</i> <small>Digitally signed by Andrew M. Perdas Date: 2022.07.27 11:40:18 -0400</small>
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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: 7010 1870 003 2128 5036

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
Print Name and Title of Person Served		Signature of Person Served
Address Where Notice Served		

Note: Previous Edition is Obsolete

Background

1. Blue Water Sales LLC., 1024 Bells Road, Suite 107, Virginia Beach, Virginia 23451 (licensee), holds Federal firearms license 1-54-810-01-3F-24034 as a dealer, including pawnbroker, in firearms other than destructive devices 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.
2. On March 3, 2022, ATF issued a Notice to Revoke or Suspend License and/or Impose a Civil Fine, ATF Form 4500 (5300.4) (“Notice to Revoke”), to the licensee. By email dated March 17, 2022, the licensee timely requested a hearing to review that Notice to Revoke.
3. By letter dated May 16, 2022, ATF advised the licensee that ATF would conduct a hearing to review the Notice to Revoke on June 8, 2022, at 10:00 AM before the Director, Industry Operations in accordance with the provisions of Title 18, United States Code, Section 923(f) and Title 27, Code of Federal Regulations, Part 478, Subpart E. The letter provided the licensee with three options for the venue: (1) telephonic and/or video hearing via Microsoft Teams or some other widely available program; (2) written submissions; or (3) in-person hearing. On May 19, 2022, the licensee responded by email requesting a virtual hearing.
4. The administrative hearing on this matter occurred via Microsoft Teams on June 8, 2022. ATF Director, Industry Operations (“DIO”), Washington Field Division, Andrew Perdas presided over the hearing. Present for the Government were ATF Staff Attorney (b)(6) and ATF Industry Operations Investigators (“IOI”) (b)(6) and (b)(6). The licensee’s Responsible Person, Robert Claunch, attended the hearing for the licensee. Also present on the line, but not participating, was court reporter (b)(6) (b)(6). The hearing was recorded and transcribed. Both parties were offered the opportunity to present testimony, introduce evidence, and cross examine the other party’s witnesses. Both the Government and licensee offered testimony, but only the Government introduced exhibits.

Findings of Fact

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

1. The licensee obtained the subject Federal firearms license in 2017 for the licensed premises at 1024 Bells Road, Suite 107, Virginia Beach, Virginia 23451. On April 28, 2017, prior to the issuance of the license, ATF IOI (b)(6) conducted a qualification inspection with the licensee during which IOI (b)(6) reviewed the relevant Federal firearms laws and regulations with the Responsible Person Robert Claunch, as documented by Mr. Claunch’s signature on an Acknowledgment of Federal Firearm Regulations indicating that ATF explained the laws and regulations listed on the Form

his legal responsibility for familiarizing himself with all of the laws and regulations governing his licensed firearms business. (Revocation Hearing (“Rev. Hr’g”), Ex. 5).

2. On February 08, 2019, IO (b)(6) conducted a compliance inspection at the licensed premises. The inspection resulted in ATF issuing a Report of Violations citing the licensee for, among other things, violating 27 C.F.R. § 478.124(a), failure to execute an ATF Form 4473 in (b)(6) instances; 27 C.F.R. § 478.126a, failure to report multiple sales or other dispositions of pistols and revolvers in three instances; 27 C.F.R. § 478.125(e), failure to maintain an accurate or complete acquisition and disposition record firearms in (b)(6) instances; 27 C.F.R. § 478.21(a), failure to complete forms as prescribed; and 27 C.F.R. § 478.124(c)(3)(iv) in four instances, failure to record NICS contact information on an ATF Form 4473 in six instances. (Rev. Hr’g, Ex. 6). At the conclusion of the inspection, IO (b)(6) reviewed the relevant Federal firearms laws and regulations with the licensee, as evidenced by Mr. Claunch’s signature on an Acknowledgment of Federal Firearms Regulations indicating that ATF explained the laws and regulations listed on the Form and that he understood his legal responsibility for familiarizing himself with all the laws and regulations governing his licensed firearms business. (Rev. Hr’g, Ex. 7).
3. On July 17, 2021, IO (b)(6) initiated a compliance inspection at the licensee’s premises. The violations found during the 2021 inspection form the basis for the Notice to Revoke.
4. The Notice to Revoke alleged that the licensee, by and through his agents and employees, willfully:
 - a) transferred a firearm on February 12, 2019 (b)(6) an unlicensed person, without first contacting the National Instant Criminal Background Check System (NICS)/ Virginia Firearms Transaction Program (VFTP) before allowing the transfer in violation of 18 U.S.C. § 922(t) and 27 C.F.R. § 478.102.
 - b) disposed of (b)(6) firearm to an unlicensed person without recording the transaction on a Firearm Transaction Record, ATF Form 4473 in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(a).
 - c) failed to completely, accurately, and/or timely record information into the Acquisition and Disposition record on approximately (b)(6) occasions in violation of 18 U.S.C. §§ 922(m) and 923(g)(1)(A), and 27 C.F.R. § 478.125(e).
 - d) failed to obtain/execute ATF Form 4473 as indicated by the headings on the form and the instructions on or pertaining to the form (such as questions 10.a, 18.a and 23) on approximately (b)(6) occasions on (b)(6) ATF Form 4473s in violation of 18 U.S.C. §§ 922(m) and 923(g)(1)(A) and 27 C.F.R. § 478.21(a).

- e) failed to record background check information on ATF Form 4473 prior to the transfer of a firearm in violation of 18 U.S.C. §§ 922(m), 922(t)(4), and 923(g)(1)(A), and 27 C.F.R. § 478.124(c)(3)(iv).

See Revocation Hearing, Exhibit 1.

5. During the administrative hearing, but prior to the admission of any evidence, ATF Staff Attorney (b)(6) advised the licensee that the Government would not be moving forward with regard to the second instance of Violation 3 on the Notice to Revoke, which alleged that the licensee failed to complete, accurately, and/or timely record information into the Acquisition and Disposition Record when disposing a Ruger revolver, serial number (b)(6).
6. After review of the record in this matter, I find that with exception of the second instance of Violation 3 alleged in the Notice to Revoke, the facts set forth in the Notice to Revoke occurred.

Conclusions of Law

1. 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.
2. For purposes of the regulatory provisions of the GCA, a “willful” violation is committed when a licensee knows of its legal obligations and purposefully disregarded or was plainly indifferent to those requirements. *See American Arms Interna'l, et al. v. Herbert*, 563 F.3d 78 (4th Cir. 2009); *Simpson v. AG United States*, 913 F.3d 110, 114 (3d Cir. 2019); *CEW Props v. USDOJ*, 979 F.3d 1271, 1279 (10 Cir. 2020).
3. Having established that the licensee violated the GCA, and the regulations issued thereunder, it must be determined whether it willfully committed those violations discussed above. For the reasons stated below, I conclude that the licensee’s conduct constitutes willful violations.
4. The evidence and testimony at the hearing show that the licensee, who had been in business for several years, knew and understood his legal obligations as a Federal firearms license and was plainly indifferent to the Federal firearms laws and regulations in the cited instances. In this regard, the licensee knew his obligations as a Federal firearms licensee as evidenced by the fact that the licensee signed two Federal Firearm Regulation Acknowledgment Forms indicating that on at least two occasions an ATF IOI reviewed and provided instruction on the pertinent regulations with him. Significantly, the licensee signed his name under the statement that reads, “I understand that this is only a general overview of the regulations and that I will be responsible for familiarizing myself with all of the laws and regulations government my licensed firearm business.” (Rev. Hr’g, Exs. 5 and 7). Moreover, the licensee’s knowledge and understanding of

these provisions is demonstrated by the fact that it complied with these provisions on certain occasions. The licensee's prior inspection also confirms that he had knowledge of the Federal firearm regulations. The 2019 compliance inspection resulted in 11 violations (Rev. Hr'g, Ex. 6). The violations were detailed in a Report of Violations, which was reviewed and given to the licensee by IOI (b)(6). *Id.* Furthermore, the violations were reviewed again during a Warning Conference between IOI (b)(3) - 112 Public Law 55 125 Stat 552 Area Supervisor (b)(3) - 112 Public Law 55 125 Stat 552 and Blue Water Sales Responsible Person Robert Claunch (Rev. Hr'g, Ex. 10). A subsequent follow-up letter was sent to the licensee, that once again detailed the violations, and included corrective actions that were discussed in the Warning Conference. *Id.*

Specifically, the follow-up letter detailed that Responsible Person Robert Claunch stated he understood that an ATF Form 4473 is now required for all firearm transfers to non-licensees and that he understood how to properly complete an ATF Form 4473. *Id.* Additionally, Mr. Claunch stated that he recreated the Acquisition and Disposition Record and that he would be more vigilant in the future to properly keep the records. *Id.* Despite the repeated warnings from ATF, and contrary to Mr. Claunch's reassurances, four of the violations, Violations 2-5, alleged in the Notice to Revoke were repeated violations, meaning the license committed the same violations in the 2021 inspection as the 2019 inspection.

5. As it relates to the licensee's failure to obtain/execute a completed and accurate ATF Form 4473, Violations 4 and 5, repeated violations, the record clearly shows that the licensee understood his legal obligations pertaining to the ATF Form 4473 and was plainly indifferent to or purposefully disregarded them. The licensee had (b)(3) dispositions during the inspection period and (b)(3) - 112 P firearm transfers to a non-licensee that required a completed ATF Form 4473. As discussed in the immediately preceding paragraph, Mr. Claunch did not obtain an ATF Form 4473 for (b)(3) - 112 PUBLIC LAW 55 125 STAT 552 transfers. Of the remaining (b)(3) - 112 P firearm transfers that required an ATF Form 4473, as shown Paragraph 4 and 5 of Appendix A of the Notice to Revoke (Rev. Hr'g, Ex. 1) none of the ATF Form 4473s were completed correctly. (*See* Rev. Hr'g Exs. 16-20). In other words, despite ATF's previous warnings and Mr. Claunch's statements that he understood the legal obligations pertaining to ATF Form 4473, Mr. Claunch did not obtain a correct or complete ATF Form 4473 for any firearm transfer to a non-licensee during the inspection period.
6. As to Violations 1-3, the evidence shows that licensee knew and purposefully disregarded, or should have known and was plainly indifferent to, its legal obligations. Not only were Violations 2 and 3 repeated violations, but notably, the 2019 inspection, and the review of the Federal firearms regulations, were conducted four days prior to Mr. Claunch transferring a firearm to his brother-in-law, a non-licensee, without first conducting a background check (Violation 1), or first obtaining a completed ATF Form 4473 (Violation 2), and incorrectly recording the transfer in his Acquisition and Disposition Record (Violation 3, Rev. Hr'g Ex. 15). Mr. Claunch did not refute that Violations 1-3 occurred, only that at the time he did not understand the difference between personal inventory and business inventory (Rev. Hr'g Transcript (Tr.), p. 52, lines 8-24). However, after first admitting otherwise, Mr. Claunch stated that it was

“very likely” that IOI (b)(6) reviewed ‘gifting’ with him during the 2019 inspection and that he took responsibility for not comprehending that regulation. (Rev. Hr’g Tr., p. 59, line 10 - p. 60, line 13). IOI (b)(6) also testified that she detailed the legal requirements of personal firearms and ‘gift giving’ with Mr. Claunch during the review of the Acknowledgement of Federal Firearm Regulations. (Rev. Hr’g Tr., p 19, line 9 - p. 20, line 9). Four days after the review of the regulations, Mr. Claunch transferred the firearm to (b)(6) “spur of the moment” (Rev. Hr’g Tr., p 52, line 20) and admitted that he “just didn’t think it through, I guess clearly” (Rev. Hr’g Tr., p 52, lines 22-23). The temporal proximity between the licensee’s review of the regulations and the licensee’s GCA violations strongly refute claims the violations were committed in ignorance.

7. Although not a factor in a willfulness determination, Mr. Claunch’s lack of a subsequent compliance plan is indicative of a larger pattern of disregard. Mr. Claunch mentioned several times that firearm transfers are not his “core business” (*See* Rev. Hr’g Tr., p. 50, lines 1-2; p. 56, lines 24-25; and p. 57, line 10). When asked what subsequent compliance measures Blue Water Sales would enact, Mr. Claunch stated that he would pay more attention to the forms. (Rev. Hr’g Tr. p. 55, line 18 – p. 57, line 7). However, that same assurance was provided by Mr. Claunch during the Warning Conference that was conducted after the 2019 compliance inspection. Notably, at the time of the revocation hearing on June 8, 2022, Blue Water Sales still had not submitted the missing Multiple Sale Forms it was cited for in the previous inspection, despite it being discussed in the aforementioned Warning Conference. (Exhibit 10, Rev. Hr’g Tr., p. 30, lines 6-22). Therefore, Mr. Claunch’s most recent assurances of future compliance were discredited by the fact that a detailed compliance plan was not provided, and Blue Water Sales did not uphold its previous promise of corrective actions.
8. Despite the fact that the licensee understood its responsibilities under the GCA, the evidence reveals that the licensee was plainly indifferent to, or purposefully disregarded the firearms laws and regulations.
9. 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 Blue Water Sales is hereby REVOKED.

Dated this 27th day of July 2022.