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BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF ELECTRONIC AND APPLIANCE REPAIR, HOME FURNISHINGS AND THERMAL INSULATION
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against: **ROBERT W. BIVINS** **Electronic Service Dealer Registration Applicant** Respondent.	Case No. AN 2013-611 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

1. Tonya Blood (Complainant) brings this Statement of Issues solely in her official capacity as the Bureau Chief of the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation, Department of Consumer Affairs.

2. On or about April 29, 2013, the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation received an application for an Electronic Service Dealer Registration from Robert W. Bivins (Respondent) to do business as "Nerds for Less." On or about April 15, 2013, Robert W. Bivins certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Bureau denied the application on July 24, 2013.

JURISDICTION

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

4. Section 22, subdivision (a) of the Code states "'Board'" as used in any provision of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and 'agency.'"

5. Section 9831 of the Code states, in pertinent part, that the Director shall refuse to validate the registration of an electronic appliance repair dealer if the applicant has committed acts or crimes constituting grounds for denial of licensure under section 480 of that code.

STATUTORY PROVISIONS

6. 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.

7. 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.

(3)(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.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(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.

8. Section 482 of the Code states:

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

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

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

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

9. Section 493 of the Code states:

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

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

10. Section 9841 of the Code states:

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

. . . .

(3) Any other conduct that constitutes fraud or dishonest dealing.

. . . .

(7) Conviction of a crime which has a substantial relationship to the qualifications, functions and duties of a registrant under this chapter, in which 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.

(c) 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, will be or is holding the registration for the benefit of a former registrant whose registration has been suspended or revoked and who will continue to have some involvement in the applicant's or new registrant's business.

REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 2767 states:

For the purposes of denial, suspension, or revocation of the registration of a repair service dealer pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a service dealer if to a substantial degree it evidences 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.

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12. California Code of Regulations, title 16, section 2768 states:

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

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

(2) When considering the suspension or revocation of a registration on the grounds that a service dealer has been convicted of a crime;

(3) When considering a petition for reinstatement of a registration under the provisions of Section 11522 of the Government Code.

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

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

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

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

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

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

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

FIRST CAUSE FOR DENIAL OF APPLICATION

(September 11, 2012 Criminal Convictions for Misappropriation of Lost Property & Grand Theft on March 6, 2012)

13. Respondent's application is subject to denial under sections 480, subdivision (a)(1) and 9841, subdivision (a)(3) of the Code in Respondent was convicted of crimes that are substantially related to the qualifications, duties, and functions of an Electronic Service Dealer. The circumstances are as follows:

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a. On or about September 11, 2012, in a criminal proceeding entitled *People of the State of California v. Robert Walter Bivins, aka R.W. Bivins*, in Riverside County Superior Court, case number RIF1201653, Respondent was convicted on his plea of guilty to violating Penal Code section 485, appropriation of lost property to his own use; and Penal Code section 487, subdivision (a), grand theft, felonies reduced to misdemeanors by the court under Penal Code section 17b.

b. As a result of the convictions, on or about September 11, 2012, Respondent was sentenced to 120 days in the custody of the Riverside County Sheriff, with credit for one day, to be served in the Work Release Program. Three years summary probation was granted. Respondent was ordered to pay restitution to the victim, plus fees and fines, submit to a Fourth Amendment waiver, and to stay away from the victim. Respondent's probation was revoked and reinstated three times for failure to report for work release. At a hearing on January 25, 2013, the court reinstated Respondent's probation and converted the term requiring 119 days in the Work Release Program to 952 hours of community service

c. The facts that lead to the convictions are that on or about the afternoon of March 14, 2012, the victim contacted the Moreno Valley Police Department. The victim stated that he had ordered three laptop computers from Dell for $2,500 to be shipped via FedEx. When the victim contacted FedEx to find out when the computers were going to be delivered, he was told they had been delivered to Respondent's business, "Nerds for Less," across the street from the victim's business. The victim stated that when he contacted Respondent, Respondent told him that he had received the laptops, but an unknown black male had stolen them. The victim filed a claim with FedEx. The Moreno Valley Police Department conducted an investigation and learned from Respondent's employee that he witnessed Respondent sign for the laptops. After interviewing Respondent at his residence, Respondent admitted he had possession of one of the laptops, and had given the other two to friends. Investigators contacted the friends and learned that one laptop had been sold for $520, and the other was taken in trade for another computer. All three laptops were retrieved as evidence, and then turned over to investigators for FedEx. Respondent was subsequently charged with grand theft and misappropriation of lost property.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Acts Involving Fraud, Deceit and/or Dishonest Dealing)

14. Respondent's application is subject to denial under sections 480, subdivision (a)(2) and 9841, subdivision (a)(3) of the Code in that Respondent's conduct, as described in paragraph 13, above, constitutes fraud, deceit, and/or dishonest dealing. Respondent knowingly accepted receipt of three laptop computers valued at $2,500, and when contacted by the rightful owner, he made no attempt to return the computers.

PRAYER

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

1. Denying the application of Robert W. Bivins for a Electronic Service Dealer Registration;

2. Taking such other and further action as deemed necessary and proper.

DATED: OCT 30 2013

TONYA BLOOD
Bureau Chief
Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation
Department of Consumer Affairs
State of California
Complainant

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