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9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues
12 Against:

Case No. 77/15-378

13 **RAFAT FAWWAZ SWIDAN**
14 **LUCKY MAR'S, INC.**
DBA STEREO PROS AND WHEELS

STATEMENT OF ISSUES

15 **Automotive Repair Dealer Registration**
16 **Applicant**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Patrick Dorais (Complainant) brings this Statement of Issues solely in his official
21 capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

22 2. On or about September 10, 2014, the Bureau of Automotive Repair received an
23 application for an Automotive Repair Dealer Registration from Rafat Fawwaz Swidan, under the
24 corporate name Lucky Mar's, Inc., doing business as Stereo Pros and Wheels (Respondent). On
25 or about August 28, 2014, Rafat Fawwaz Swidan certified under penalty of perjury to the
26 truthfulness of all statements, answers, and representations in the application. The Bureau denied
27 the application on November 13, 2014.

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1 **JURISDICTION**

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

5 4. Section 9889.2 of the Code states:

6 The director may deny a license if the applicant or any partner, officer, or
7 director thereof:

8

9 (d) Has committed any act involving dishonesty, fraud, or deceit whereby
another is injured or whereby the applicant has benefited.

10

11 (f) Has entered a plea of guilty or nolo contendere to, or been found guilty of,
12 or been convicted of a crime substantially related to the qualifications, functions and
13 duties of the license holder in question, and the time for appeal has elapsed or the
14 judgment of conviction has been affirmed on appeal, irrespective of an order granting
15 probation following such conviction, suspending the imposition of sentence, or of a
subsequent order under the provisions of Section 1203.4 of the Penal Code allowing
such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting
aside the plea or verdict of guilty, or dismissing the accusation or information.

16 **STATUTORY PROVISIONS**

17 5. Section 475 of the Code states:

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

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

21 (2) Conviction of a crime.

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

24 (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.

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

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

1 6. Section 480¹ of the Code states:

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

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

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

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

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

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

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

28 7. Section 9889.4 of the Code states:

 A plea or verdict of guilty or a conviction following a plea of nolo contendere is
 deemed to be a conviction within the meaning of this article. The director may order
 the license suspended or revoked, or may decline to issue a license, 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 allowing such person to withdraw his plea of guilty and to enter a plea of not
 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information
 or indictment.

¹ This Statement of Issues is based on Code section 480 as it was in effect at the time of the denial. Section 480 was amended effective January 1, 2015, with the addition of the following language: "(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal."

1 **REGULATORY PROVISIONS**

2 8. California Code of Regulations, title 16, section 3395 states:

3 (a) When considering the denial of a license or a registration under Section 480
4 of the Business and Professions Code, the bureau, in evaluating the rehabilitation of
the applicant, will consider the following criteria:

5 (1) The nature and severity of the act(s) or crime(s) under consideration as
6 grounds for denial.

7 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under
8 consideration as grounds for denial which also could be considered as grounds for
denial under Section 480 of the Business and Professions Code.

9 (3) The time that has elapsed since commission of the act(s) or crime(s) referred
to in subdivision (1) or (2).

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

12 (5) Evidence, if any, of rehabilitation submitted by the applicant.

13

14 9. California Code of Regulations, title 16, section 3395 states:

15 A crime or act shall be considered to be substantially related to the
16 qualifications, functions, or duties of a registrant if to a substantial degree it shows
17 that the registrant is presently or potentially unfit to perform the functions authorized
18 by the registration in a manner consistent with the public health, safety, or welfare.
Such crimes or acts shall include, but not be limited to, any violation of the provisions
of Article 3 of Chapter 20.3 of Division 3 of the Business and Professions Code.

19 **FIRST CAUSE FOR DENIAL OF APPLICATION**

20 **(December 1, 2005 Criminal Conviction for Conspiracy to Commit Insurance Fraud)**

21 10. Respondent's application is subject to denial under sections 480(a)(1) and
22 9889.2(f) of the Code in that he was convicted of a crime that is substantially related to the
23 qualifications, duties, and functions of an automotive repair dealer. The circumstances are as
24 follows:

25 a. On December 1, 2005, in a criminal proceeding entitled *People of the State of*
26 *California v. Rafat F. Sweidan*, in San Bernardino County Superior Court, case number
27 FSB052579, Respondent was convicted on his plea of guilty to violating Penal Code section
28 550(b)(2), conspiracy to commit insurance fraud, a misdemeanor, a count added to the complaint

1 by interlineation. Pursuant to a plea agreement, the court dismissed the original count of violating
2 Penal Code section 550(a)(5), insurance fraud, a felony.

3 b. As a result of the conviction, Respondent was granted conditional probation for
4 36 months on the terms that he serve one day in jail, with credit for one day, pay fees and fines,
5 post a sign at his business regarding the punishment for insurance fraud, and violate no laws.

6 c. The facts that led to the conviction are that on or about August 22, 2005, an
7 undercover California Highway Patrol (CHP) officer entered a San Bernardino stereo store where
8 Respondent was employed as the manager. The CHP officer told Respondent that her car had
9 been stolen and she needed a receipt for stereo items because she had reported to her insurance
10 company she had more expensive stereo equipment than was actually installed in her car.
11 Respondent directed a sales clerk to write a receipt. The CHP officer provided a list of stereo
12 items to put on the receipt. The sales clerk produced a sales receipt with the listed items and a
13 date provided by the CHP officer, and wrote "Paid Cash" on the receipt. After the CHP officer
14 left the stereo store, investigators with the California Department of Insurance Fraud entered the
15 store. Respondent admitted to the investigators that the receipt was fraudulent, that he was aware
16 the receipt was going to be used for insurance purposes, and that he hoped that by assisting the
17 officer, she would return to the store and purchase additional merchandise.

18 **SECOND CAUSE FOR DENIAL OF APPLICATION**

19 **(Act Involving Dishonesty, Fraud, or Deceit on August 22, 2005)**

20 11. Respondent's application is subject to denial under sections 480(a)(2) and
21 9889.2(d) of the Code in that he committed an act involving dishonesty, fraud, or deceit on
22 August 22, 2005, when he knowingly caused a fraudulent receipt to be produced in an effort to
23 substantially benefit himself or another, as described in paragraph 10, above.

24 **THIRD CAUSE FOR DENIAL OF APPLICATION**

25 **(September 19, 2011 Criminal Convictions for Failure to Secure Worker's Compensation,
26 Failure to Withhold Unemployment Insurance Tax & Failure to Provide a Wage Statement)**

27 12. Respondent's application is subject to denial under sections 480(a)(1) and
28 9889.2(f) of the Code in that he was convicted of crimes that are substantially related to the

1 qualifications, duties, and functions of an automotive repair dealer. The circumstances are as
2 follows:

3 a. On September 19, 2011, in a criminal proceeding entitled *People of the State of*
4 *California v. Rafat F. Sweidan*, in Riverside County Superior Court, case number RIM1105617,
5 Respondent was convicted by a jury of violating Labor Code section 3700, failure to secure
6 payment of worker's compensation; Unemployment Insurance Code section 2118, failure to
7 withhold or pay over unemployment insurance tax to the California State Board of Equalization;
8 and Labor Code section 226(a), failure to provide employees with an accurate itemized statement
9 of earnings, misdemeanors.

10 b. As a result of the convictions, on October 7, 2011, Respondent was sentenced
11 to serve 365 days in the county jail, suspended pending successful completion of 36 months of
12 summary probation on the following terms: Maintain and provide evidence of maintaining full
13 and proper worker's compensation insurance coverage for all employees; Pay all employees only
14 by check and provide employees with a pay stub showing all wages, net pay, and itemized
15 deductions; Submit to a Fourth Amendment waiver, Pay fines and fees, including those ordered
16 paid to the State of California, and obey all laws.

17 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

18 **(False Statement of Fact Required to be Revealed in the Application for Licensure)**

19 13. Respondent's application is subject to denial under sections 480(c) of the Code in
20 that he made a false statement of fact required to be reveal in his application for licensure. The
21 circumstances are as follows:

22 14. On August 28, 2014, Respondent signed the *Application for Automotive Repair*
23 *Dealer Registration* declaring under penalty of perjury under the laws of the State of California
24 that the statements made in his application, and all of the supporting documentation, were true
25 and correct. Respondent stated his full name was "Rafat Fawwaz Swidan," and that the name of
26 his corporation was "Lucky Mar's, Inc." doing business as "Stereo Pros and Wheels." "Rafat
27 Swidan" was listed as the corporation's Director, President, Secretary, and Treasurer.

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