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Subject: RE: [EXTERNAL] RE: Fact Finding Investigation OSC File No. DI-23-000271
Date: Tuesday, October 8, 2024 12:05:07 PM
Attachments: [ATF DI-000271 OSC Response Supplemental Report.pdf](#)

[REDACTED]

Attached is the supplemental report.

Thanks, Brad.

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**OFFICE OF SPECIAL COUNSEL REFERRAL
OSC FILE NUMBER DI-23-000271
SUPPLEMENTAL REPORT OF INVESTIGATION**

Supplemental Report of Investigation / Fact Finding

Employee (s) Involved: Boston Field Division, Industry Operations; **Allegation(s):** General Misconduct (Gross Mismanagement, Failure to Provide Adequate Oversight).

On July 12, 2024, the U.S. Department of Justice (DOJ) received a request from the U.S. Office of Special Counsel (OSC) seeking additional information regarding OSC investigation File No. DI-23-000271, which was submitted to OSC on February 2, 2024. OSC's July 12, 2024, request was forwarded to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for follow-up.

Pursuant to OSC's request, ATF Internal Affairs Division (IAD) conducted a supplemental inquiry providing follow-up questions to certain key witnesses of the investigation. Below is a summary of IAD's findings.

Synopsis of Internal Affairs Division Supplemental Fact-Finding Investigation

1. *On page 4 of the report, it states "ATF was not able to expedite the application because questions arose about whether the purchaser was too close to the owner of FFL #1 and satisfied the terms of the non-prosecution agreement requiring sale to an "independent third party." It took time for ATF to resolve the facts surrounding this relationship to the agency's satisfaction." We understand that the purchaser was an employee and Responsible Person (RP) on the existing FFL of FFL#1.*
 - a. *Please explain ATF's determination that the purchaser constituted an "independent third party."*
 - b. *Were there any findings that the purchaser withheld or misrepresented material information regarding the relationship with FFL#1 in the application for a license?*
 - c. *As the new FFL was issued to the applicant on March 21, 2023, why was FFL#1 not revoked until November 2, 2023?*

Findings as to Question 1

a. Please explain ATF's determination that the purchaser constituted an "independent third party."

- The ATF Boston Field Division Director of Industry Operations and Division Counsel had a meeting with Federal Firearms Licensee #2 (FFL #2), the purchaser of Federal Firearms Licensee #1 (FFL #1), on March 3, 2023, after questions arose concerning potential hidden ownership of FFL #2 by the owner of FFL #1.

- As a result of the meeting, ATF determined that the lease agreement originally submitted by the purchaser (FFL #2) was incorrect and should have included the 1st floor of FFL #1 as well. The lease agreement indicated the amount of rent being paid by FFL #2 was the same amount as FFL #1 paid for the entire property, corroborating FFL #2's statement that the originally submitted lease agreement was incorrect. This was corrected on the Federal firearms license application by the purchaser (FFL #2) after he received an updated lease agreement showing he was renting the entire property and not just one floor.
- The lease agreement and the purchase and sales agreement for FFL #1 was reviewed by ATF and there was no evidence indicating that the owner of FFL #1 would have any financial interest in FFL #2 and the purchaser was not being offered any deals on inventory or lease amounts.
- The purchaser (FFL #2) indicated that he was not coerced into applying for a Federal firearms license to purchase FFL #1 and was adamant that the owner of FFL #1 would not have anything to do with FFL #2.
- As a result of the meeting with the purchaser (FFL #2), ATF did not uncover any actionable evidence that the purchaser was not an "independent third party" or that there would be hidden ownership in the Federal firearms license by the owner of FFL #1 justifying denial of the license application. ATF could later revoke the license if it developed evidence that FFL #2 had lied about FFL #1's involvement.

b. Were there any findings that the purchaser withheld or misrepresented material information regarding the relationship with FFL#1 in the application for a license?

- No. There was no evidence that the purchaser (FFL #2) misrepresented material information regarding his relationship with FFL #1 in his Federal firearms license application and any of the concerns or errors on the initial application were addressed during the meeting ATF had with him and which resulted in the application being amended.

c. As the new FFL was issued to the applicant on March 21, 2023, why was FFL#1 not revoked until November 2, 2023?

- FFL #2 was issued a Federal firearms license on March 21, 2023, and FFL #1's revocation was not effective until November 2, 2023 to allow for the winding up of affairs, including the sale or transfer of FFL #1's assets, which included a number of firearms registered under the National Firearms Act (NFA), which have special transfer rules (discussed in more detail below).
- FFL #1 was issued "stays of revocation" after the issuance of a Federal firearms license to FFL #2 to finalize the sale of the business and conduct lawful transfer of NFA firearms in their inventory.

- FFL #1 had approximately 325 NFA firearms in its inventory, some of which were in ATF custody or involved in legal proceedings, which further delayed the official revocation date.
 - FFL #1 was in possession of restricted “machineguns” requiring that specific paperwork be sent to ATF’s National Firearms Act Division (NFAD) for approval.
 - Once FFL #2 received its Federal firearms license, they had to pay a Special Occupational Tax to ATF to purchase and acquire some of FFL #1’s inventory.
 - ATF typically works with FFLs who have been revoked prior to the effective date of revocation if there are NFA firearms involved to lawfully liquidate their inventory and this was the primary reason for the delay in the effective date of FFL #1’s Federal firearms license.
2. ***On page [6] “a lack of documentation in Nspect and Spartan (the two ATF Systems used by IOIs to track their cases) regarding an “Inventory inspection” done by the BFD of FFL#1...would not constitute wrongdoing by ATF personnel or employees.”***
- a. ***Did ATF employees fail to document a February 2021 inventory inspection of FFL #1 and issue a report of violations?***
 - b. ***It appears the failure to document inspections would violate the IOI Manual and Federal Firearms Administrative Action Policy and Procedures and ATF Order 5370.1E, please explain the finding that it would not constitute wrongdoing.***

Findings as to Question 2

a. Did ATF employees fail to document a February 2021 inventory inspection of FFL #1 and issue a report of violations?

- No. Industry personnel did not fail to document their findings, and a Report of Violations was not issued to FFL #1 because the review was not a compliance inspection as outlined in the Industry Operations (IO) manual.
- When ATF personnel went to FFL #1 in February of 2021 it was at the request of FFL #1 through their attorney and it was not an ATF initiated compliance inspection, but rather a limited scope review to determine if assertions made by FFL #1 during a pre-hearing meeting could be confirmed about the FFL’s current level of compliance.
- ATF personnel documented the review they conducted in February of 2021 and provided the findings from the review to FFL #1 and their attorney as they were the ones that offered to have ATF review their records.

c. It appears the failure to document inspections would violate the IOI Manual and Federal Firearms Administrative Action Policy and Procedures and ATF Order 5370.1E, please explain the finding that it would not constitute wrongdoing.

- ATF did document the review conducted at FFL #1 in February of 2021. There was no violation of ATF policy as the review was not a compliance inspection as outlined in the IO manual. FFL #1 had already been issued a Report of Violations that resulted in the original Notice of Revocation which was still pending.
- 3. It is stated on page 5 of the report, “it appears FFL #1 did file Multiple Sales Reports, it simply erred in where it sent them.”***
- a. Did FFL #1 fail to submit any Multiple Sales Reports to ATF after entering the June 28, 2022, non-prosecution agreement?***
 - b. Please explain why FFL#1’s failure to submit multiple sales reports, as required by the GCA, would not be considered a willful violation that rises to the level of criminal conduct and constitute a breach of the agreement.***

Findings as to Question 3

a. Did FFL #1 fail to submit any Multiple Sales Reports to ATF after entering the June 28, 2022, non-prosecution agreement?

- Yes. FFL #1 failed to report approximately 203 multiple sales of handguns between September of 2020 and December of 2022, some of which occurred after entering the June 28, 2022, non-prosecution agreement with the United States Attorney’s Office.

b. Please explain why FFL#1’s failure to submit multiple sales reports, as required by the GCA, would not be considered a willful violation that rises to the level of criminal conduct and constitute a breach of the agreement.

- ATF investigated the failure to report multiple sales by FFL #1 and determined that due to a clerical error (wrong e-mail address) stored in FFL #1’s fax machine, ATF never received the reports. FFL #1, however, provided evidence that the reports were sent but were never received by ATF due to the error.
- ATF does not provide a receipt to FFLs when they submit multiple sales reports, so ATF has no evidence that FFL #1 was aware that the multiple sales reports it sent never reached ATF. FFL #1 ultimately provided ATF with copies of the reports. Based on these facts, there was no evidence of willful intent on the part of FFL #1 to violate the law or the non-prosecution agreement.
- The Gun Control Act (GCA) does not define the term “willful.” Federal courts, however, have held that a willful violation of the GCA’s regulations occurs when the FFL commits the violation with an intentional disregard of a known legal duty or with plain indifference to

their legal obligations. Consistent with federal courts, ATF policy defines “willfulness” to mean the intentional disregard of a known legal duty or plain indifference to the licensee’s or permittee’s legal obligations. *See* IO Manual, ¶ 164 (2019).