

BEFORE THE MOTOR VEHICLE DEALER BOARD

STATE OF COLORADO

Case No. BD15-1624

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF: **AUTO CYCLE EXCHANGE SERVICES, INC.**
 d/b/a A.C.E.S.
 MOTOR VEHICLE DEALER
 LICENSE #36375

Respondent.

IT IS HEREBY STIPULATED & AGREED by and between the Colorado Department of Revenue, Auto Industry Division (“Division”), Motor Vehicle Dealer Board (“Board”) and Auto Cycle Exchange Services, Inc., d/b/a A.C.E.S., (“Respondent”) (collectively the “Parties”) in lieu of further legal action:

1. The Board has jurisdiction over the Respondent and the subject matter of this Stipulation and Final Agency Order as set forth in article 6 of Title 12, C.R.S. and the Administrative Procedure Act, article 4 of Title 24, C.R.S.

2. The Respondent has been licensed as a motor vehicle dealer in the State of Colorado at all times relevant herein.

3. The Board has alleged that Respondent violated the following:

A. One (1) count Section 12-6-118 C.R.S., Licenses - grounds for denial, suspension, or revocation. (3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds: (k) To intentionally publish or circulate any advertising which is misleading or inaccurate in any material particular or which misrepresents any of the products sold or furnished by a licensed dealer.

B. One (1) count of Regulation 12-6-118(3)(k) Advertising shall be construed to be misleading or inaccurate in the following particulars:

- Rule 3. Advertising a specific motor vehicle for sale or lease with price or terms quoted, without fully identifying the vehicle as to year, make, model and dealer stock number. Such vehicle shall be willfully shown and sold at the advertised price and/or terms while such vehicle remains unsold or unleased, for a period of five days following the last date the ad was published, unless the ad states that the advertised price and terms are good only for a specific time and such time has elapsed. If a specific number of motor vehicles is advertised, such vehicles must have been invoiced to the dealer.

- Rule 13. Advertising the price of a vehicle without including all costs to the purchaser at the time of delivery, except sales tax, finance charges, cost of emissions test, other governmental fees or taxes, and transportation costs, incurred after sale, to deliver the vehicle to the purchaser at the purchaser's request.
- C. Thirty nine (39) counts of Section 12-6-109, C.R.S., Display, form, custody, and use of licenses. The board and the executive director shall prescribe the form of the license to be issued by the executive director, and each license shall have imprinted thereon the seal of their offices. The license of each motor vehicle salesperson shall be mailed to the business address where the salesperson is licensed under this article and shall be kept by the salesperson at such salesperson's place of employment for inspection by employers, consumers, the executive director, or the board. It is the duty of each motor vehicle dealer, manufacturer, distributor, wholesaler, manufacturer representative, wholesale motor vehicle auction dealer, or used motor vehicle dealer to display conspicuously such person's own license in such person's place of business. Each license issued pursuant to this part 1 is separate and distinct. It shall be a violation of this part 1 for a person to exercise any of the privileges granted under a license that such person does not hold, or for a licensee to knowingly allow such an exercise of privileges.
 - D. Thirty nine (39) counts of Section 12-6-118 C.R.S., Licenses - grounds for denial, suspension, or revocation. (3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds: (n) Engaging in such business through employment of an unlicensed motor vehicle salesperson.
4. The Respondent understands that:
- A. The Respondent has the right to be represented by an attorney of the Respondent's choice, at the Respondent's expense;
 - B. The Respondent has the right to a formal hearing in accordance with article 6 of Title 12, C.R.S.;
 - C. By entering into this Stipulation and Final Agency Order, the Respondent is knowingly and voluntarily giving up the right to a hearing, admits the facts contained in this Stipulation and Final Agency Order, and relieves the Board of its burden of proving such facts;
 - D. The Respondent is knowingly and voluntarily giving up the right to present a defense by oral and documentary evidence, and to cross-examine witnesses who would testify on behalf of the Board; and,
 - E. The Respondent is knowingly and voluntarily giving up the right to judicial review of this matter.

5. The Respondent acknowledges receipt of sufficient notice, sufficient advisement of rights, and sufficient process in the proceedings of this case, and desires to resolve all issues, which were the subject of the investigation, by entering into this Stipulation and Final Agency Order.

6. The Respondent admits to the following:

- A. One (1) count of Regulation 12-6-118(3)(k) Advertising shall be construed to be misleading or inaccurate in the following particulars:
 - Rule 13. Advertising the price of a vehicle without including all costs to the purchaser at the time of delivery, except sales tax, finance charges, cost of emissions test, other governmental fees or taxes, and transportation costs, incurred after sale, to deliver the vehicle to the purchaser at the purchaser's request.
- B. Three (3) counts of Section 12-6-118 C.R.S., Licenses - grounds for denial, suspension, or revocation. (3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds: (n) Engaging in such business through employment of an unlicensed motor vehicle salesperson.

7. The Respondent and the Board agree, in lieu of subsequent administrative proceedings, to submit to the following:

- A. The Respondent shall pay a fine of \$20,000.00, \$5,000.00 for each admission in paragraph 6 above. The Respondent agrees \$5,000.00 of the \$20,000.00 fine shall be due and payable within 60 days from the date this Stipulation and Final Agency Order is approved by the Board.
- B. The remaining balance, amounting to \$15,000.00, will be held in abeyance for a period of one (1) year provided there are no additional violations of the statutes and regulations pertaining to motor vehicle dealers or commerce, committed by the Respondent dealership during the one (1) year following the date this Stipulation and Final Agency Order is approved by the Board.
- C. The Respondent agrees to immediately implement salesperson licensing policies and/or procedures within the dealership that will ensure absolute salesperson licensing compliance with Colorado law and Board regulation. The respondent will forward copies of the policy/procedure to the Board for insertion in the Board file.
- D. The Respondent agrees to a probation period that will commence with the approval of this Stipulation. Such term of probation will expire one (1) year from the date of the approval of this Stipulation by the Board.
- E. The Respondent assures that it will comply with all state and federal laws and regulations related to the motor vehicle dealer industry and commerce during the probation period.

F. The Respondent agrees to cooperate with any and all compliance inspections and/or investigations conducted by the Auto Industry Division to ensure compliance with all state and federal laws and regulations related to the motor vehicle dealer industry and commerce.

8. The Respondent agrees to strictly adhere to and to completely fulfill all requirements established in this Stipulation and Final Agency Order.

9. The Respondent is aware that this Stipulation and Final Agency Order will not become an order of the Board unless and until the Board approves it. If this Stipulation and Final Agency Order is not approved by the Board, it is void, and the Respondent shall not be bound by any provisions hereof or admissions herein.

10. Each Party shall bear its own costs and fees incurred in this action.

11. This Stipulation and Final Agency Order is the complete integration of all understandings between the parties. No addition, deletion, or amendment, except as mutually agreed to in a writing signed by both Parties, shall have any force or effect whatsoever.

12. The Parties agree to cooperate fully and to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Stipulation and Final Agency Order and which are not inconsistent with its terms.

13. The provisions of this Stipulation and Final Agency Order shall be enforceable by the Parties before the Colorado Motor Vehicle Dealer Board, by any lawful remedy.

14. The Respondent expressly acknowledges having read and understood completely the terms of this Stipulation and Final Agency Order. The Respondent enters this Stipulation and Final Agency Order knowingly and voluntarily, after the opportunity to consult with counsel, and with full understanding of the legal consequences of this Stipulation and Final Agency Order.

15. This Stipulation and Final Agency Order and all its terms shall have the same force and effect as an order entered by the Board after hearing pursuant to article 6 of Title 12, C.R.S. except that this Stipulation and Final Agency Order cannot be appealed. The Respondent agrees that any violation of this Stipulation and Final Agency Order may constitute grounds for disciplinary proceedings pursuant to the Motor Vehicle Dealer Licensing Law and if proven may constitute a basis for further disciplinary action or for any other remedy authorized by law. In the event this matter is referred to hearing for violation of this Stipulation and Final Agency Order, this Stipulation and Final Agency Order shall be admissible as evidence. In the event an alleged violation of this Stipulation and Final Agency Order is taken to hearing and the facts that constitute the violation are determined not to be proven, the Board shall not take any disciplinary action, and this Stipulation and Final Agency Order shall remain operative and in full force and effect. The pendency of any disciplinary action pursuant to this Stipulation and Final Agency Order shall not affect the obligation of the Respondent to continue to comply with the terms of this Stipulation and Final Agency Order during the pendency of and after the conclusion of such disciplinary action.

16. This Stipulation and Final Agency Order is a public record in the Board's custody at all times.

17. Effective Date. This Stipulation and Final Agency Order shall become an order of the Board when accepted by the Board and signed by an authorized representative of the Board.

18. This Stipulation and Final Agency Order is a full and final resolution of case number BD15-1624 and investigative case number 15-1596. This Stipulation and Final Agency Order does not resolve any other cases, complaints or matters, known or unknown to the Parties, as of the effective date of this Stipulation and Final Agency Order.

19. The Respondent shall immediately provide in writing to the Board any change of the Respondent's legal address, in order for any notice required under this Stipulation and Final Agency Order or any necessary follow-up to this Stipulation and Final Agency Order to be made in a timely and efficient manner. Any notice required under this Stipulation and Final Agency Order shall be valid only if provided, in writing, to the Parties at their respective legal addresses, which the Parties acknowledge are currently as follows:

A. Board/Division:

Colorado Department of Revenue, Auto Industry Division
Attention: Bruce A. Zulauf, Division Director/Executive Secretary
1881 Pierce Street, Suite 112
Lakewood, Colorado 80214

B. Respondent:

Auto Cycle Exchange Services, Inc.
d/b/a A.C.E.S.
5900 South College Avenue
Ft. Collins, CO 80525

20. Should any term or provision of this Stipulation and Final Agency Order be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

21. This Stipulation and Final Agency Order may be signed in counterparts, each of which will have full force and effect upon execution by all Parties.


22. The Respondent warrants that it possesses the legal authority to enter into this Stipulation and Final Agency Order and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Stipulation and Final Agency Order and to bind the Respondent to its terms. The person executing this Stipulation and Final Agency Order on behalf of the Respondent warrants that such person has full authorization to execute this Stipulation and Final Agency Order.

AGREED TO BY:

Bruce A. Zulauf
Director/Executive Secretary
Auto Industry Division
Motor Vehicle Dealer Board

Date

FOR THE RESPONDENT:




Kurt G. Dimick
A.C.E.S.

4-4-16

Date

APPROVED AS TO FORM:



Stewart Olive
Attorney for Respondent

4-5-16

Date

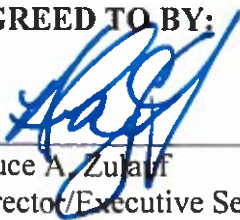
The Stipulation and Final Agency Order is approved and its terms are hereby adopted as an Order of this Board.

ORDERED AND ENTERED this _____ day of _____, 2016.

COLORADO MOTOR VEHICLE BOARD

BY: _____
Jason Wagner, President

AGREED TO BY:



Bruce A. Zulauf
Director/Executive Secretary
Auto Industry Division
Motor Vehicle Dealer Board

4/19/16
Date

FOR THE RESPONDENT:

Kurt G. Dimick
A.C.E.S.

Date

APPROVED AS TO FORM:


Stewart Olive
Attorney for Respondent

Date

The Stipulation and Final Agency Order is approved and its terms are hereby adopted as an Order of this Board.

ORDERED AND ENTERED this 19th day of APRIL, 2016.

COLORADO MOTOR VEHICLE BOARD

BY: 

Jason Wagner, President
JOE BOSHARDT, VICE PRESIDENT

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within STIPULATION AND FINAL AGENCY ORDER upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, and personal service (as noted), this 21st day of April 2016, addressed as follows:

Kurt Dimick
A.C.E.S.
5900 South College Avenue
Ft. Collins, CO 80525

Bruce A. Zulauf, Executive Secretary
Colorado Motor Vehicle Dealer Board
Director, Auto Industry Division
1881 Pierce Street, Room 112
Lakewood, CO 80214
(Placed in Board File)

Stewart Olive, Esq.
March, Olive & Pharris, LLC
1312 S. College Avenue
Fort Collins, CO 80524



Arleen Criddell-Tapanen
Assistant to Director