

BEFORE THE MOTOR VEHICLE DEALER BOARD

STATE OF COLORADO

Case No. BD15-1244

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF: ARTURO M. BERNUY
Motor Vehicle Salesperson Number: 177854,
Respondent.

IT IS HEREBY STIPULATED & AGREED by and between the Colorado Department of Revenue, Auto Industry Division ("Division"), Motor Vehicle Dealer Board ("Board") and Arturo M. Bernuy ("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 salesman in the State of Colorado at all times relevant herein.
3. The Board has alleged that the Respondent violated the following:
 - A. Section 12-6-118(5)(e), C.R.S. for the intentional publication or circulation of any advertising which is misleading or inaccurate in any material particular. (1 count)
 - B. Section 12-6-118(5)(f), C.R.S. for a having engaged in any fraudulent business practice (1 count); and
 - C. Section 12-6-118(5)(m), C.R.S., for violation of any state or federal statute or regulation dealing with odometers (1 count);
 - D. Section 12-6-118(5)(n), C.R.S., for defrauding a retail buyer to such person's damage (1 count);
 - E. Section 12-6-118(5)(q), C.R.S., for willfully violating any state or federal law respecting commerce of motor vehicles, or any lawful rule or regulation respecting commerce or motor vehicles promulgated by any licensing or regulating authority pertaining to motor vehicles, under circumstances in which the act

constituting the violation directly and necessarily involves commerce or motor vehicles (2 counts); and

F. Section 12-6-118(6)(a), C.R.S., for unfitness of licensing character or record of the licensee (1 count).

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; and is so represented

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 following violations:

A. Section 12-6-118(5)(m), C.R.S., for violation of any state or federal statute or regulation dealing with odometers (1 count);

B. Section 12-6-118(5)(q), C.R.S., for willfully violating any state or federal law respecting commerce of motor vehicles, or any lawful rule or regulation respecting commerce or motor vehicles promulgated by any licensing or regulating authority pertaining to motor vehicles, under circumstances in which the act

constituting the violation directly and necessarily involves commerce or motor vehicles (1 count); and

- C. Section 12-6-118(5)(n), C.R.S., for defrauding a retail buyer to such person's damage, as alleged in paragraph 3, above (1 count).

Based upon this admission, the Board is authorized to impose the sanctions set forth in this Stipulation and Final Agency Order.

7. The Respondent agrees, in lieu of subsequent administrative proceedings, to submit to the following sanctions:

- A. Respondent voluntarily surrenders his motor vehicle salesperson license number 177854 which shall have the same force and effect of a license revocation.
- B. The Respondent accepts a fine of \$15,000 for the three counts admitted in paragraph 6. The Respondent agrees that \$10,000 shall be due and payable within thirty days from the date this Stipulation is approved by the Board. The remaining \$5,000 shall be deferred and payable only if the Respondent applies for a new license as a salesperson or a dealer issued by the Board in the future.
- C. If the Respondent applies for a new license issued by the Board at any time in the future, the Respondent shall comply with all requirements for licensure.
- D. The Respondent shall not engage in any act that would require licensure by the State of Colorado unless the Respondent first obtains the appropriate licensure.

8. This Stipulation and Final Agency Order constitutes an admission of fraud by Respondent and therefore the Board finds that the Respondent has engaged in fraudulent conduct. Respondent agrees not to oppose the opening of the surety bond based upon the finding of fraud.

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

10. 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.

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

12. 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.

13. 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.

14. 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.

15. 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. The Respondent expressly states that the Respondent believes the terms of this Stipulation and Final Agency Order are lawful, fair, conscionable and appropriate to reach a full and final resolution of this disciplinary matter.

16. 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 article 6, Title 12, C.R.S. 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.

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

18. 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.

19. This Stipulation and Final Agency Order is a full and final resolution of case number BD15-1244. 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.

20. 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:

Arturo M Bernuy
10640 E. Bethany Dr., Unit A
Aurora, CO 80014

Michael G. McKinnon
5984 S. Prince Street, #100
Littleton, CO 80120

21. 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.

22. 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.

23. 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.

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SIGNATURE PAGE TO FOLLOW

AGREED TO BY:



Bruce A. Zulauf
Director/Executive Secretary
Auto Industry Division

11/19/2016
Date



Arturo M. Bernuy
10640 E. Bethany Dr., Unit A
Aurora, CO 80014

12-02-2015
Date

APPROVED AS TO FORM:



Michael J. Axelrad
Attorney for Colorado Motor
Vehicle Dealer Board

12/7/15
Date



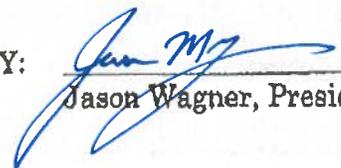
Michael G. McKinnon
Attorney for Respondent

12/5/15
Date

THIS 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 January, 2016/2016

COLORADO MOTOR VEHICLE BOARD

BY: 

Jason Wagner, 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, this 20th day of January, ~~2015~~ 2016 addressed as follows:

Michael G. McKinnon
5984 S. Prince Street, #100
Littleton, CO 80120

Michael J. Axelrad
Assistant Attorney General
1300 Broadway, 8th Floor
Denver, Colorado 80203

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)



Arleen Criddell-Tapanen
Assistant to Director