

STATE OF COLORADO MOTOR VEHICLE DEALER BOARD 1881 Pierce Street, Room 142 Lakewood, CO 80214	
COLORADO DEPARTMENT OF REVENUE, MOTOR VEHICLE DEALER BOARD, Petitioner, v. ASTRO IMPORTS, INC., LICENSE NUMBER 8065 Respondent.	
FINAL BOARD ORDER	

Case No.: BD13-1288

The Department of Revenue, Motor Vehicle Dealer Board, seeks revocation of used motor vehicle dealer license number 8065, assigned to Astro Imports, Inc. The matter was heard before the Board on May 20 and 21, 2014, Vice President Jason M. Wagner presiding. Senior Assistant Attorney General Y.E. Scott represented the Board in its prosecutorial role. Respondent was represented by Michael G. McKinnon. The Board received separate legal advice in its quasi-judicial role from independent conflicts counsel, Skippere Spear.

Case Summary

This matter arises from an investigation into Astro Imports by the Department of Revenue's Auto Industry Division. The Division seized a random sampling of 150 deal jackets from Astro Imports for a six month period in 2013. Based on its review of the sampling, the Division determined that Astro Imports had failed to disclose various information in its possession, as required by statute, when selling 70 of the 150 automobiles represented by the deal jackets. On March 6, 2014, Division Investigator Glevnille Kedic executed an Affidavit of Probable Cause alleging the Astro Imports violated C.R.S § 12-6-118(3)(e), (i), and (o). Based on the affidavit, the Board summarily suspended Astro Imports' used motor vehicle dealer's license on March 13.

A "Notice of Duty to Answer, Notice of Hearing and Notice of Charges" seeking permanent revocation of Astro Imports' license was filed on March 19.

The Notice asserts three charges based on the 70 automobile sales questioned by Investigator Kedie:

- Charge I seeks revocation pursuant to C.R.S. § 12-6-118(3)(e) for “[d]efrauding any buyer, seller, motor vehicle salesperson or financial institution to such person’s damage.”
- Charge II seeks revocation pursuant to C.R.S. § 12-6-118(3)(i) for “[w]illful misrepresentation, circumvention, or concealment of or failure to disclose, through whatsoever subterfuge or device, any of the material particulars or nature thereof required to be stated or furnished to the buyer.”
- Charge III seeks revocation pursuant to C.R.S. § 12-6-118(3)(o) which prohibits willful violation of “any state or federal law respecting commerce or motor vehicles.” Specifically, C.R.S. § 6-1-708(1)(b) makes it a deceptive trade practice for a motor vehicle dealership to knowingly fail to disclose in writing, prior to sale, that a motor vehicle has sustained “material damage.”

Astro Imports filed an answer to the Notice on April 11, generally denying the charges.

For the reasons explained below, the Board concludes that the charges against Astro Imports have been proven and that used motor vehicle dealer license number 8065 should be revoked.

EVIDENTIARY FACTS

1. At all relevant times, Astro Imports was owned by Houshang Malekzadeh and Kareem “Ken” Moosavi. Astro Imports was located at 3250 South Broadway in Englewood, Colorado, and was operating under used motor vehicle dealer license number 8065.

2. On October 19, 2009, Astro Imports purchased a 2006 Dodge Durango from Farmers Insurance Exchange for \$8,955. On January 20, 2010, Astro Imports sold the Durango to Phil Long Audi for \$11,500. As a result of this transaction, Phil Long filed a formal complaint with the Auto Industry Division alleging that Astro Imports had failed to disclose that the Durango had been declared a total loss prior to the sale.

3. The Auto Industry Division assigned Criminal Investigator Glenville Kedia to review the complaint from Phil Long. As part of his review, Investigator Kedia met with representatives of Astro Imports to discuss the matter and also seized a six month sampling of 150 deal jackets from 2013. These findings are based on those deal jackets and the testimony presented at hearing.

February 2013 Purchases

4. On February 7, Astro Imports purchased a 2007 Jeep Liberty from Regional Acceptance Corporation for \$8,690. The Sale Contract contains the following announcement: "Frame/Unibody." On July 24, Astro Imports sold the Liberty to [REDACTED] for \$12,749. The deal jacket contains a February 8 Carfax disclosing a May 25, 2012 accident "Involving front impact." There is no other written disclosure from Astro Imports to [REDACTED] in the deal jacket.

5. On February 7, Astro Imports purchased a 2010 Chevy Impala from Remarketing Services of America for \$8,290. The Sale Contract contains the following announcement: "Frame/Unibody Damage." On October 14, Astro Imports sold the Impala to [REDACTED] for \$9,950. [REDACTED] testified that he specifically asked the Astro Imports salesman if the Impala had any damage, and was told that there was no damage. [REDACTED] further testified that Astro Imports did not disclose the Sale Contract announcement and, had such disclosure occurred, he would not have purchased the Impala.

6. On February 26, Astro Imports purchased a 2008 Mitsubishi Eclipse from Westerra Credit Union for \$6,625. The Invoice contains the following announced condition: "FRAME/UNIBODY DAMAGE." On August 16, Astro Imports sold the Eclipse to [REDACTED] for \$10,799. [REDACTED], a mechanical engineer, inspected the Eclipse prior to purchase and testified that the vehicle does not have any frame damage.

7. On February 27, Astro Imports purchased a 2011 Mitsubishi Galant from Wells Fargo Dealer Services for \$10,770. The Invoice contains the following announced condition: "FRAME/UNIBODY DAMAGE." On June 25 Astro Imports sold the Galant to [REDACTED] for \$13,500. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

March 2013 Purchases

8. On March 4, Astro Imports purchased a 2012 Toyota Corolla from Hertz Corporation for \$11,725. The Purchase Invoice states "Cause Of Loss: Single Interest" and "Pri Damage: Hail." On June 19, 2013, Astro Imports sold the Corolla to Phil Long Hyundai of Motor City LLC for \$14,400. There is no written disclosure from Astro Imports to Phil Long Hyundai in the deal jacket.

9. On March 11, Astro Imports purchased a 2003 Saturn Vue from State Farm Fire and Casualty Company for \$2,455. The Purchase Invoice states "Cause Of Loss: Collision," "Pri Damage: Right Side," and "Sec Damage: Rear." On June 22, 2013, Astro Imports sold the Vue to [REDACTED] for \$2,555. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

10. On March 13, Astro Imports purchased a 2010 Mercury Mariner from JP Morgan Chase Bank for \$11,580. The Invoice has the following announced condition: "AS IS/FRAME/UNIBODY DAMAGE." On June 24, Astro Imports sold the Mariner to [REDACTED] for \$13,799. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket. [REDACTED] testified that Astro Imports did not inform him of any frame or unibody damage, which he believes to be material, prior to his purchase of the Mariner, but that Astro Imports did present him with a clean carfax.

11. On March 14, Astro Imports purchased a 2009 Ford Focus from PAR North America for \$7,080. The Sale Contract contains the following announcement: "Frame/Unibody Damage." On June 19, Astro Imports sold the Focus to [REDACTED] for \$13,299. There is no written disclosure from Astro Imports to the [REDACTED] in the deal jacket. [REDACTED] testified that he would not have purchased the Focus had Astro Imports disclosed the announcement.

12. On March 14, Astro Imports purchased a 2008 Chevrolet Uplander from Springs Rent A Car for \$6,780. The Invoice contains the following announcement: "Hail Damage." On June 28 Astro Imports sold the Uplander to [REDACTED] for \$9,999. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

13. On March 25, Astro Imports purchased a 2011 Mazda 6 from Hertz Corporation for \$8,120. The Purchase Invoice states "Cause Of Loss: Unknown," "Pri Damage: Front," and "Sec Damage: Top / Roof." On June 1, 2013, Astro Imports sold the Mazda 6 to [REDACTED] for

\$12,749. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

14. On March 7, 2013, Astro Imports purchased a 2006 Nissan Altima from Regional Acceptance Corporation for \$4,965. The Sale Contract contains the following announcement: "Frame/Unibody." On October 5, Astro Imports sold the Altima to [REDACTED] for \$7,949. [REDACTED] testified that Astro Imports did not disclose the Sale Contract announcement to her and, if it had been disclosed, she would not have purchased the Altima.

15. On March 21, 2013, Astro Imports purchased a 2009 Toyota Camry from Capital One Auto Finance for \$8,300. The Sale Contract contains the following announcements: "Hail Damage, Frame/Unibody." On September 30, Astro Imports sold the Camry to [REDACTED] for \$12,249. The deal jacket contains a March 22 Carfax identifying an accident on July 18, 2009 "Involving rear impact." [REDACTED] testified that no one from Astro Imports disclosed the Sale Contract announcement or Carfax to her, and she would not have purchased the Camry had such disclosures been made.

16. On March 27, Astro Imports purchased a 2009 Toyota Corolla from Tidewater Motor Credit for \$7,740. The Invoice contains the following announced condition: "HAIL/MAINTENANCE LT ON." On June 15, Astro Imports sold the Corolla to [REDACTED] for \$10,450. The deal jacket contains an AutoCheck Vehicle History Report identifying an accident on May 15, 2011. There is no other written disclosure from Astro Imports to [REDACTED] in the deal jacket.

April 2013 Purchases

17. On April 2, Astro Imports purchased a 2004 Ford Explorer from Geico Insurance for \$6,279. The purchase was accompanied by a "Notice of Emissions Non-Compliance," that states the Explorer was inoperable. On July 6, Astro Imports sold the Explorer to [REDACTED] for \$10,249. The deal jacket contains an April 2 Carfax indicating that the Explorer was in an accident on February 20, 2007. [REDACTED] testified that he was not given the Carfax prior to his purchase of the Explorer, but was instead shown some other document and was told that the vehicle had never been in an accident. [REDACTED] testified that he would not have purchased the Explorer if he had been shown the Carfax. The deal jacket also contains a May 22 invoice from Gheorghe's Frame Auto Body to Astro Imports indicating that \$750 worth of labor was performed on the

Explorer. [REDACTED] testified that he was not informed of any repairs to the Explorer prior to his purchase.

18. On April 11, Astro Imports purchased a 2011 Ford Fusion from PAR North America for \$12,315. The Sale Contract contains the following announcement: "Frame/Unibody Damage." On October 18, Astro Imports sold the Fusion to [REDACTED] for \$13,950. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

19. On April 22, Astro Imports purchased a 2002 Mazda Protégé from Progressive Insurance Company for \$1,580. The Invoice states "Cause Of Loss: Collision" and "Pri Damage: Left Side." On June 24, 2013, Astro Imports sold the Protégé to [REDACTED] for \$1,680. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

20. On April 23, Astro Imports purchased a 2010 Ford Escape from Lease Plan USA for \$12,580. The Invoice contains the following announced condition: "FRAME DMG." The Invoice also contains the following note: "UNIBODY DAMAGE." On August 24, Astro Imports sold the escape to [REDACTED] for \$15,799. There is no written disclosure from Astro Imports to Mr. and [REDACTED] in the deal jacket.

21. On April 25, Astro Imports purchased a 2006 Ford Explorer from Farmers Insurance for \$7,179. The Bill of Sale states "Total Loss SM." On June 8, 2013, Astro Imports sold the Explorer to [REDACTED] for \$10,500. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

May 2013 Purchases

22. On May 1, Astro Imports purchased a 2011 Toyota Camry from Hertz Corporation for \$12,380. The invoice has the following announcement: "FRAME/UNIBODY." On June 22, 2013, Astro Imports sold the Camry to [REDACTED] for \$14,300. The deal jacket contains an AutoCheck Vehicle History Report dated June 17, 2013, identifying "Frame/Unibody damage record(s)" and "AUCTION ANNOUNCED AS UNIBODY DAMAGE."

23. On May 9, Astro Imports purchased a 2009 Nissan Rogue from PAR North America for \$11,005. The Sale Contract contains the following announcement: "Frame/Unibody Damage." On July 20, Astro Imports sold the

Rogue to [REDACTED] for \$14,049. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

24. On May 14, Astro Imports purchased a 2010 Jeep Commander from Santander Consumer for \$8,540. The Invoice contains the following announced condition: "FRAME/DAMAGE/AIRBAG/DEPLYD." On September 11, Astro Imports sold the Commander to [REDACTED] for \$13,249. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

25. On May 16, Astro Imports purchased a 2012 Hyundai Elantra from Capital One Auto Finance for \$10,405. The Sale Contract contains the following announcement: "Frame/Unibody." On July 20, Astro Imports sold the Elantra to [REDACTED] for \$14,135. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

26. On May 16, Astro Imports purchased a 2011 Subaru Legacy from Wheels Exchanges LLC for \$11,415. The Sale Contract contains the following announced condition: "Hail Damage." On August 10, Astro Imports sold the Legacy to [REDACTED] for \$14,749. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

27. On May 20, Astro Imports purchased a 2008 Toyota Corolla from Santander Consumer for \$8,070. The Invoice contains the following announced condition: "FRAME/DAMAGE." On July 1, Astro Imports sold the Corolla to [REDACTED] for \$10,799. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

28. On May 20, Astro Imports purchased a 2013 Subaru Legacy from Enterprise Holdings for \$15,425. The Purchase Invoice states "Cause Of Loss: Collision," "Pri Damage: Right Side," and "Sec Damage: Top / Roof." On July 10, Astro Imports sold the Legacy to Autonation Subaru Arapahoe for \$17,667. There is no written disclosure from Astro Imports to Autonation Subaru in the deal jacket.

29. On May 23, Astro Imports purchased a 2008 Jeep Liberty from Advancial Federal Credit Union for \$8,095. The Sale Contract contains the announcement "Hail Damage." On June 13, Astro Imports sold the Liberty to [REDACTED] for \$10,760. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

30. On May 28, Astro Imports purchased a 2007 Mazda 6 from Santander Consumer for \$6,355. The Invoice contains the following announced condition: "FRAME DAMAGE." On July 2, Astro Imports sold the Mazda 6 to [REDACTED] for \$7,649. The deal jacket contains a Carfax reporting a June 10, 2010 accident that resulted in minor damage. There is no other written disclosure from Astro Imports to [REDACTED] in the deal jacket.

31. On May 29, Astro Imports purchased a 2008 Honda Ridgeline from Primeritus Financial/Warren FCU/EZ Step for \$14,785. The Invoice contains the following announcement: "FRAME/UNIBODY DAMAGE." On June 22, Astro Imports sold the Ridgeline to [REDACTED] for \$17,500. The deal jacket contains a Carfax dated May 28, 2013, reporting an accident on May 4, 2010 "Involving left rear impact." There is no other written disclosure from Astro Imports to the [REDACTED] in the deal jacket.

32. On May 29, Astro Imports purchased a 2011 Toyota Camry from Automotive Rentals for \$10,770. The Invoice contains the following announced condition: "HAIL." On October 25, Astro Imports sold the Camry to [REDACTED] for \$13,950. The deal jacket contains a May 30 Carfax identifying a damage report for April 17 stating "Damage reported Involving front impact Damage from hail reported."

33. On May 30, Astro Imports purchased a 2007 Volkswagen Jetta from Westerra Credit Union for \$7,695. The Sale Contract contains the following announcement: "Hail Damage." On August 17, Astro Imports sold the Jetta to [REDACTED] for \$12,499. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

June 2013 Purchases

34. On June 4, Astro Imports purchased a 2010 Nissan Versa from Santander Consumer for \$7,570. The Invoice contains the following announced condition: "HAIL." On September 21, Astro Imports sold the Versa to [REDACTED] for \$10,300. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

35. On June 5, Astro Imports purchased a 2011 Nissan Altima from Hertz Corporation for \$10,769.23. The Invoice has an announced condition, "FRAME/UNIBODY," and a note, "REPAIRED UNIBODY." On July 6, Astro Imports sold the Altima to [REDACTED] for \$13,000. The deal jacket

contains a June 5 Carfax identifying a March 20, 2012 accident "Involving rear impact With another motor vehicle Rear area primarily damaged" and on November 24, 2012 "Involving left side impact Vehicle struck by another motor vehicle Minor damage reported Vehicle functional." There is no other written disclosure from Astro Imports to [REDACTED] in the deal jacket.

36. On June 6, Astro Imports purchased a 2008 Mazda RX8 from Regional Acceptance Corporation for \$9,305. The Sale Contract contains the following announcement: "Hail Damage." On August 17, Astro Imports sold the RX8 to [REDACTED] for \$14,249. The deal jacket contains a June 6 Carfax noting that the RX8 was stolen on April 15. There is no other written disclosure from Astro Imports to [REDACTED] in the deal jacket.

37. On June 11, Astro Imports purchased a 2008 Nissan Sentra from Santander Consumer for \$8,370. The Invoice contains the following announced condition: "FRAME/DAMAGE." The Invoice also contains the following note: "FRAME/UNIBODY DAMAGE." On September 12, Astro Imports sold the Sentra to [REDACTED] for \$13,990. The deal jacket contains a June 11 Carfax identifying a May 18, 2011 accident "Involving left rear impact With another motor vehicle Disabling damage reported Airbags did not deploy." There is no other written disclosure from Astro Imports to [REDACTED] in the deal jacket.

38. On June 13, Astro Imports purchased a 2009 Nissan Altima from PAR North America for \$8,500. The Buyer Receipt contains the following announcement: "Frame/Unibody Damage." On August 31, Astro Imports sold the Altima to [REDACTED] for \$10,577. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

39. On June 18, Astro Imports purchased a 2011 Toyota Matrix from PHH Fleet America for \$7,240. The Invoice contains the following announced condition: "FRAME/UNIBODY DAMAGE." On August 28, Astro Imports sold the Matrix to [REDACTED] for \$13,799. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

July 2013 Purchases

40. On July 1, Asto Imports purchased a 2006 Jeep Grand Cherokee from Enterprise FM Exchanges, Inc. for \$8,410. The Purchase Invoice states "Cause Of Loss: Collision," "Pri Damage: Fleet," and "Sec Damage: Mechanical." The

Purchase Invoice was accompanied by a Damaged Vehicle Disclosure and Statement of Facts, which states: "We, the Purchaser, have purchased the above listed vehicle with FULL KNOWLEDGE that this vehicle has been, or is in its present condition on the date of purchase, a LEASE RETURN vehicle. ... Further, we, the Buyer understand and agree that we have a duty to disclose this material fact to any future purchaser in accordance with Sec. 42-6-206, C.R.S., Colorado Certificate of Title Act, and Secs. 6-1-708(B) C.R.S., Colorado Consumer Protection Act." On July 6, Astro Imports sold the Grand Cherokee to [REDACTED] for \$11,200. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

41. On July 3, Astro Imports purchased a 2013 Ford Explorer from Auction Insurance Agency for \$15,815. The Invoice contains the following announced condition: "FRAME/UNIBODY DAMAGE." On July 20, Astro Imports sold the Explorer to [REDACTED] for \$15,299. [REDACTED] testified that Astro Imports disclosed that the Explorer had been in an accident, but that it had been inspected and did not have any frame damage. [REDACTED] independently verified that the vehicle did not have any damage prior to purchasing it.

42. On July 3, Astro Imports purchased a 2009 Subaru WRX from JP Morgan Chase Bank for \$10,270. The Invoice contains the following announced condition: "FRAME DAMAGE." On November 2 Astro Imports sold the WRX to [REDACTED] for \$17,149. A post-it note in the deal jacket indicates that, at some point, \$1,100 worth of paint work was performed on the WRX. There is no other written disclosure from Astro Imports to [REDACTED] in the deal jacket.

43. On July 9, Astro Imports purchased a 2012 Nissan Altima from Remarketing by GE/Manheim Denver for \$12,401. The Invoice contains the following announced condition: "Unibody." The Invoice also contains the following note: "FRAME/UNIBODY DAMAGE." On August 31, Astro Imports sold the Altima for [REDACTED] for \$15,249. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket. Additionally, [REDACTED] testified that no one from Astro Imports disclosed the frame or unibody damage to him prior to purchase. [REDACTED] testified that he asked whether there was any history of accidents or damage with the Altima and that representatives from Astro Imports told him that there was not. [REDACTED] further testified that any structural issues with the Altima were important and that he would not have purchased the vehicle if he had known of the announced condition and note on the Invoice.

44. On July 10, Astro Imports purchased a 2005 Audi A4 from Westerra Credit Union for \$7,240. The Invoice contains the following announced condition: "FRAME/UNIBODY DAMAGE." On August 2, Astro Imports sold the A4 to [REDACTED] for \$9,799. The deal jacket contains a July 9 Carfax identifying damage to the A4 on November 6, 2004 "after accident or other incident" and an accident on December 13, 2006. There is no other written disclosure from Astro Imports to [REDACTED] in the deal jacket.

45. On July 10, Astro Imports purchased a 2007 Nissan Murano from USAA for \$7,100. The purchase was accompanied by a Water Damage Disclaimer stating "I hereby certify that I understand the vehicle described below is sold as 'WATER DAMAGED VEHICLE.'" On September 14, 2013, Astro Imports sold the Murano to [REDACTED] for \$14,249. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

46. On July 11, Astro Imports purchased a 2004 Jeep Liberty from Perkins Motor Company for \$5,365. The Sale Contract contains the following announcement: "Hail Damage." On July 13, Astro Imports sold the Liberty to [REDACTED] for \$4,000. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

47. On July 11, Astro Imports purchased a 2006 Volkswagen Touareg from PAR for \$5,000. The Sale Contract contains the following announcement: "Engine." On August 30, Astro Imports sold the Touareg to [REDACTED] for \$12,981. The deal jacket contains a July 13 Carfax identifying an accident on July 23, 2006. There is no other written disclosure from Astro Imports to [REDACTED] in the deal jacket.

48. On July 11, Astro Imports purchased a 2010 Ford Escape from PAR North America for \$11,915. The Sale Contract contains the following announcement: "Frame/Unibody Damage." On October 7, Astro Imports sold the Escape to [REDACTED] for \$16,000. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

49. On July 17, Astro Imports purchased a 2010 Toyota Rav4 from Remarketing by GE/Manheim Atlanta for \$10,065. The Invoice contains the following announced condition: "FRAME/UNIBODY." On August 12, Astro Imports sold the Rav4 to [REDACTED] for \$14,799. The deal jacket contains a July 19 Carfax identifying an August 8, 2010 accident "Involving right rear impact

With another motor vehicle.” There is no other written disclosure from Astro Imports to [REDACTED] in the deal jacket.

50. On July 25, Astro Imports purchased a 2009 Nissan Altima from Westlake Financial Services for \$9,405. The Sale Contract contains the following announcement: “Frame/Unibody Damage.” On August 3, Astro Imports sold the Altima to [REDACTED] for \$13,249. The deal jacket contains a July 26 Carfax identifying an accident on January 18, 2011, “Involving left rear impact.” There is no other written disclosure from Astro Imports to [REDACTED] in the deal jacket.

51. On July 25, Astro Imports purchased a 2006 Saab 9-3 from Westlake Financial Services for \$4,475. The Sale Contract contained the following announcement: “Frame/Unibody Damage.” On August 24, Astro Imports sold the 9-3 to [REDACTED] for \$9,249. The deal jacket contains a July 26 Carfax indicating accidents on November 25, 2010, and November 27, 2011; the latter “Involving left side impact.” There is no other written disclosure from Astro Imports to [REDACTED] in the deal jacket.

August 2013 Purchases

52. On August 6, Astro Imports purchased a 2008 Jeep Liberty from GM Financial for \$10,405. The Invoice contains the following announced condition: “FRAME/UNIBODY DAMAGE.” On August 12, Astro Imports sold the Liberty to [REDACTED] for \$13,049. The deal jacket contains an August 6 Carfax identifying a January 9, 2009 accident “Involving left front impact With another motor vehicle Moderate damage reported.” [REDACTED] testified that he reviewed the Carfax prior to purchasing the Liberty and that Astro Imports informed him that the damage had been minor. There is no other written disclosure from Astro Imports to [REDACTED] in the deal jacket and [REDACTED] testified that no one at Astro Imports told him the Liberty had suffered frame or unibody damage. [REDACTED] further testified that he would not have purchased the Liberty if he knew it had been in a major accident and that he likely paid too much for the vehicle.

53. On August 13, Astro Imports purchased a 2011 Toyota Corolla from ARI for \$9,865. The Invoice contains the following announced condition: “FRM DMG.” On October 5, Astro Imports sold the Corolla to [REDACTED] for \$13,249. The deal jacket contains an August 13 Carfax reporting an accident on June 9, 2011. [REDACTED] testified that Astro Imports told her there were no documents concerning the Corolla’s history available, but did assure her that the car was reliable and had not been in any accidents. [REDACTED] further testified

that Astro Imports did not disclose the announcement on the Invoice prior to her purchasing the Corolla.

54. On August 14, Astro Imports purchased a 2010 Volkswagen Jetta from Bellco FCU for \$8,740. The Invoice contains the following announced condition: "FRAME DAMAGE." On October 12, Astro Imports sold the Jetta to [REDACTED] for \$10,859. The deal jacket contains an August 13 Carfax identifying an accident on September 15, 2012. [REDACTED] testified that he was shown the Carfax, but that Astro Imports did not disclose the Invoice's announcement prior to the [REDACTED] purchase of the Jetta and that he would not have paid the same amount or even purchased the Jetta if he had known about the announcement.

55. On August 15, Astro Imports purchased a 2007 Jeep Grand Cherokee from Exeter Finance for \$6,690. The Sale Contract contains the following announcements: "Hail Damage" and "Frame/Unibody." On October 26 Astro Imports sold the Grand Cherokee to [REDACTED] for \$12,249. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

56. On August 28, Astro Imports purchased a 2006 Mazda RX8 from Bank of Denver for \$6,225. The Invoice contains the following announced condition: "TOTAL LOSS NON COLLISION." On September 9, Astro Imports sold the RX8 to [REDACTED] for \$9,249. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

57. On August 29, Astro Imports purchased a 2012 Nissan Altima from Enterprise Vehicle Exchange for \$10,205. The Invoice contains the following announced condition: "Light Hail." The deal jacket contains a September 13 invoice for \$650 from KY Automotive Dent Repair Service regarding the Altima. On October 5, Astro Imports sold the Altima to [REDACTED] for \$13,799. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

September 2013 Purchases

58. On September 4, Astro Imports purchased a 2010 Ford Escape from Nationwide Fleet Auto Sales for \$10,770. The Invoice contains the following announced condition: "HAIL." On September 23, Astro Imports sold the Escape to JFR & Associates for \$13,000. There is no written disclosure from Astro Imports to JFR & Associates in the deal jacket.

59. On September 4, Astro Imports purchased a 2012 Honda Civic from Advantage Rent a Car/Hertz for \$11,480. The Invoice contains the following announced condition: "FRAME/UNIBODY DAMAGE." On October 9, Astro Imports sold the Civic to [REDACTED] for \$14,249. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

60. On September 4, Astro Imports purchased a 2007 Jeep Commander from Bellco FCU for \$8,440. On November 22, Astro Imports sold the Commander to [REDACTED] for \$12,499. The deal jacket contains a September 3 Carfax identifying a July 22, 2010 accident "involving front impact."

61. On September 9, Astro Imports purchased a 2010 Jeep Patriot from Lease Plan USA for \$6,610. The Purchase Invoice states "Cause Of Loss: Unknown," "Pri Damage: Left And Right," and "Sec Damage: Rear." On September 14, Astro Imports sold the Patriot to [REDACTED] for \$3,799. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

62. On September 9, Astro Imports purchased a 1998 Honda Civic from State Farm Insurance for \$1,380. The Purchase Invoice states "Cause Of Loss: Collision," "Pri Damage: Left and Right," and "Sec Damage: Front." On November 9, Astro Imports sold the Civic to [REDACTED] for \$1,480. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

63. On September 18, Astro Imports purchased a 2008 Nissan Titan for \$11,480. The Invoice contains the following announced condition: "FRAME/DAMAGE." On November 5 Astro Imports sold the Titan to [REDACTED] for \$17,249. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

64. On September 19, Astro Imports purchased a 2006 Ford Explorer from Capital One Auto Finance for \$7,595. The Sale Contract contains the following announcement: "Frame/Unibody Damage." On September 26, Astro Imports sold the Explorer to [REDACTED] for \$11,000. There is no written disclosure from Auto Imports to [REDACTED] in the deal jacket.

65. On September 23, Astro Imports purchased a 2003 Dodge Ram from Catastrophe Services for \$5,105. The Purchase Invoice states "Cause Of Loss: Hail," "Pri Damage: Hail Damage," and "Sec Damage: Rear." On October 9, Astro

Imports sold the Ram to ADI Steel for \$9,616. There is no written disclosure from Astro Imports to ADI Steel in the deal jacket.

66. On September 23, Astro Imports purchased a 2004 Toyota Camry from Catastrophe Services for \$5,105. The Purchase Invoice states "Cause Of Loss: Hail" and "Pri Damage: Hail Damage." On November 1, Astro Imports sold the Camry to [REDACTED] for \$5,205. [REDACTED] testified that he was with Astro Imports when the Camry was purchased from Catastrophe Service and had full knowledge of the hail damage.

67. On September 24, Astro Imports sold a 2007 Mercury Mariner to JFR & Associates for \$9,000. The deal jacket contains an August 16 Carfax identifying an October 12, 2011 accident "Involving left front impact."

68. On September 25, Astro Imports purchased a 2010 Toyota Corolla from GE Fleet Services for \$8,670. The Invoice contains the following announced condition: "HAIL." On November 9, Astro Imports sold the Corolla to [REDACTED] for \$11,250. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

69. On September 30, Astro Imports purchased a 2003 Volkswagen Jetta from State Farm Insurance for \$2,130. The Purchase Invoice states "Cause Of Loss: Collision," "Pri Damage: Front," and "Sec Damage: Rear." On November 8, Astro Imports sold the Jetta to [REDACTED] for \$2,230. There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

October 2013 Purchases

70. On October 2, Astro Imports purchased a 2010 Jeep Liberty from Primeritus Remarketing/Warren FCU/EZ Step for \$11,070. The Invoice contains the following announced condition: "FRAME/UNIBODY DAMAGE." On November 9, Astro Imports sold the Liberty to [REDACTED] for \$15,749. The deal jacket contains an October 2 Carfax identifying an October 27, 2010 accident stating: "Vehicle damaged in multiple places Vehicle towed." There is no other written disclosure from Astro Imports to [REDACTED] in the deal jacket.

71. On October 7, Astro Imports purchased a 2009 Mitsubishi Lancer from Catastrophe Services for \$7,710. The Purchase Invoice states "Cause Of Loss: Hail," "Pri Damage: Hail Damage," and "Sec Damage: Right Front." On November 23, Astro Imports sold the Lancer to [REDACTED] for \$12,172.65.

There is no written disclosure from Astro Imports to [REDACTED] in the deal jacket.

72. On October 29, Astro Imports sold a 2004 Honda Accord to [REDACTED] for \$7,499. The deal jacket contains a September 7 Carfax identifying a July 26, 2006 accident “Involving left side impact With another motor vehicle Vehicle Functional.”

73. On October 31, Astro Imports purchased a 2010 Volkswagen Jetta from Exeter Finance for \$9,200. The Sale Contract contains the following announcement: “Structural Damage.” On November 18 Astro Imports sold the Jetta to H.M. Brown & Associates for \$11,950. There is no written disclosure from Astro Imports to H.M. Brown in the deal jacket.

74. Each sale by Astro Imports is memorialized by a form “Buyer’s Order and Invoice” in the deal jacket. Each Buyer’s Order and Invoice contains the following statements:

- a. “ALL USED CARS SOLD ‘AS IS’ WITH NO WARRANTY EXPRESSED OR IMPLIED.”
- b. “CAR IS SOLD AS IS - NO WARRANTY.”
- c. “The purchaser will bear the entire expense of repairing or correcting any defects that presently exist including mechanical, frame and uni-body or that may occur in this vehicle.”

ULTIMATE CONCLUSIONS

Count I - C.R.S. § 12-6-118(3)(e)

1. A motor vehicle dealer’s license may be revoked for damaging a buyer through fraud. C.R.S. § 12-6-118(3)(e). To establish Count I, the Board must prove that (i) Astro Imports made a false representation or failed to disclose a material fact to the purchaser of a motor vehicle; (ii) Astro Imports knew the representation was false or that a disclosure should be made; (iii) the purchaser did not know that the representation was false or was unaware of the undisclosed fact; (iv) Astro Imports conduct was undertaken with the intent that the purchaser act upon it, and (v) the purchaser was damaged as a result. *Colorado Motor Vehicle Dealer Board v. Butterfield*, 9 P.3d 1148, 1152 (Colo. App. 2000).

2. Whether a motor vehicle is alleged in a prior transaction to have been in an accident, suffered structural (frame/unibody) damage, or suffered hail damage is a material fact that should be disclosed. Clearly, Astro Imports failed to disclose such facts, or in some instances affirmatively stated that a vehicle had not been in an accident when it had, with the intent that a customer purchase a vehicle.

3. With regard to the following 2013 sales, the Board has proven that the buyers did not know that Astro imports representations were false or they were not aware of the undisclosed facts, and that such buyers were damaged:

- a. June 24 sale of 2010 Mercury Mariner to [REDACTED].
- b. June 19 sale of 2009 Ford Focus to [REDACTED].
- c. July 6 sale of 2004 Ford Explorer to [REDACTED].
- d. August 12 sale of 2008 Jeep Liberty to [REDACTED].
- e. August 31 sale of 2012 Nissan Altima to [REDACTED].
- f. September 30 sale of 2009 Toyota Camry to [REDACTED].
- g. October 5 sale of 2006 Nissan Altima to [REDACTED] and 2011 Toyota Corolla to [REDACTED].
- h. October 12 sale of 2010 Volkswagen Jetta to [REDACTED]
[REDACTED]
- i. October 14 sale of 2010 Chevy Impala to [REDACTED]
[REDACTED].

The Board has proven Count I with regard to these transactions.

Count II - C.R.S. § 12-6-118(3)(i)

4. A motor vehicle dealer's license may be revoked for the "willful" misrepresentation or failure to disclose any "material particulars" in the sale of a motor vehicle. C.R.S. § 12-6-118(3)(i).

5. "Conduct is 'willful' when the actor is aware of what he or she is doing, i.e., that his or her actions are deliberate and not inadvertent or

accidental.” *Colorado Motor Vehicle Dealer Licensing Bd. v. Northglenn Dodge, Inc.*, 972 P.2d 707, 715 (Colo. App. 1998). Where Astro Imports had knowledge of damage to vehicles through disclosures made when Astro Imports was the purchaser, the failure to subsequently make the same disclosures when Astro Imports was the seller meets the test for “willful.”

6. “Material particulars” means “those details concerning a vehicle for sale that are essential or necessary for a reasonable prospective buyer to know.” *Spedding v. Motor Vehicle Dealer Bd.*, 931 P.2d 480, 486 (Colo. App. 1996). The Board finds that previous accidents, structural (frame/unibody) damage, and hail damage are material particulars that should be disclosed to the potential buyer of a motor vehicle. Such disclosures should be made even if the dealer has purportedly corrected the damage.

7. With regard to the following sales, the Board has proven Count II:

- a. June 24 sale of 2010 Mercury Mariner to [REDACTED].
- b. June 19 sale of 2009 Ford Focus to [REDACTED].
- c. July 6 sale of 2004 Ford Explorer to [REDACTED].
- d. August 12 sale of 2008 Jeep Liberty to [REDACTED].
- e. August 31 sale of 2012 Nissan Altima to [REDACTED].
- f. September 30 sale of 2009 Toyota Camry to [REDACTED].
- g. October 5 sale of 2006 Nissan Altima to [REDACTED] and 2011 Toyota Corolla to [REDACTED].
- h. October 12 sale of 2010 Volkswagen Jetta to [REDACTED].
- i. October 14 sale of 2010 Chevy Impala to [REDACTED].

Count III - C.R.S. § 12-6-118(3)(o)

8. A motor vehicle dealer’s license may also be revoked for the willful violation of “any state or federal law respecting commerce or motor vehicles.” C.R.S. § 12-6-118(3)(o). It is a deceptive trade practice, and violation of state

law, for a motor vehicle dealer to knowingly fail to disclose in writing, prior to sale, that a motor vehicle has sustained “material damage.” C.R.S. § 6-1-708(1)(b).

9. The Board rejects Astro Imports argument that the term “material damage” is unconstitutionally vague. The Colorado Court of Appeals has previously ruled that the similar term “material particulars” in C.R.S. § 12-6-118(3)(i) “is readily understandable and is not unconstitutionally vague” based on definitions provided in Random House Webster’s College Dictionary. *Spedding*, 931 P.2d at 48-86. Using the same resource, the Board finds that “material” is defined as pertinent or essential and “damage” is defined as injury or harm that reduces value. Random House Webster’s College Dictionary 342-43, 836 (1992). The Board finds that damage resulting from an accident, structural (frame/unibody) damage, and/or hail damage reduces the value of a motor vehicle and is pertinent or essential to deciding whether to purchase a vehicle and what to pay for it. Such information must be disclosed in writing, prior to sale.

10. The Board also rejects Astro Imports’ argument that there is no evidence that any of the vehicles actually suffered the damages that were disclosed when Astro Imports purchased the vehicles. No seller of a motor vehicle would disclose nonexistent damages that lower the price they can receive for the vehicle. The disclosures made by the sellers of the vehicles to Astro Imports support a finding that these vehicles had, in fact, previously suffered damage.

11. Finally, the Board rejects Astro Imports’ argument that the various disclaimers on its form “Buyer’s Order and Invoice” constitute the required written disclosures. The disclaimers used by Astro Imports do not identify, and therefore disclose, any damage to the individual vehicles. All these disclaimers due is purport to waive Astro Imports’ civil liability for failing to comply with its disclosure obligations. Because these administrative proceedings involve license discipline, and not civil liability, the disclaimers are of no effect.

12. With regard to the following 2013 sales, the Board has proven Count III:

- a. June 13 sale of 2008 Jeep Liberty to [REDACTED]

- b. June 15 sale of 2009 Toyota Corolla to [REDACTED].
- c. June 19 sale of 2012 Toyota Corolla to Phil Long Hyundai and 2009 Ford Focus to [REDACTED].
- d. June 22 sale of 2003 Saturn Vue to [REDACTED] and 2008 Honda Ridgeline to [REDACTED].
- e. June 24 sale of 2010 Mercury Mariner to [REDACTED] and 2002 Mazda Protégé to [REDACTED].
- f. June 25 sale of 2011 Mitsubishi Galant to [REDACTED].
- g. June 28 sale of 2008 Chevrolet Uplander to [REDACTED].
- h. July 1 sale of 2008 Toyota Corolla to [REDACTED].
- i. July 2 sale of 2007 Mazda 6 to [REDACTED].
- j. July 6 sale of 2004 Ford Explorer to [REDACTED], 2006 Jeep Grand Cherokee to [REDACTED], and 2011 Nissan Altima to [REDACTED].
- k. July 10 sale of 2013 Subaru Legacy to Autonation Subaru Arapahoe.
- l. July 13 sale of 2004 Jeep Liberty to [REDACTED].
- m. July 20 sale of 2012 Hyundai Elantra to [REDACTED] and 2009 Nissan Rogue to [REDACTED].
- n. July 24 sale of 2007 Jeep Liberty to [REDACTED].
- o. August 2 sale of 2005 Audi A4 to [REDACTED].
- p. August 3 sale of 2009 Altima to [REDACTED].
- q. August 10 sale of 2011 Subaru Legacy to [REDACTED].

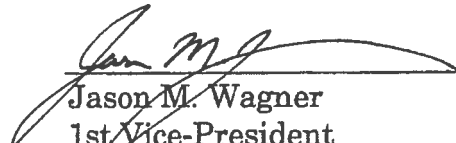
- r. August 12 sale of 2010 Toyota Rav4 to [REDACTED] and 2008 Jeep Liberty to [REDACTED].
- s. August 17 sale of 2007 Volkswagen Jetta to [REDACTED] and 2008 Mazda RX8 to [REDACTED].
- t. August 24 sale of 2010 Ford Escape to [REDACTED] and Saab 9-3 to [REDACTED].
- u. August 28 sale of 2011 Toyota Matrix to [REDACTED].
- v. August 31 sale of 2009 Nissan Altima to [REDACTED] and 2012 Nissan Altima to [REDACTED].
- w. September 9 sale of 2006 Mazda RX8 to [REDACTED].
- x. September 11 sale of 2010 Jeep Commander to [REDACTED].
- y. September 12 sale of 2008 Nissan Sentra to [REDACTED] and [REDACTED].
- z. September 21 sale of 2010 Nissan Versa to [REDACTED].
- aa. September 23 sale of 2010 Ford Escape to JFR & Associates.
- bb. September 26 sale of 2006 Ford Explorer to [REDACTED].
- cc. September 30 sale of 2009 Toyota Camry to [REDACTED].
- dd. October 5 sale of 2006 Nissan Altima to [REDACTED] and 2011 Toyota Corolla to [REDACTED].
- ee. October 7 sale of 2010 Ford Escape to [REDACTED].
- ff. October 9 sale of 2012 Honda Civic to [REDACTED] and 2003 Dodge Ram to ADI Steel.
- gg. October 12 sale of 2010 Volkswagen Jetta to [REDACTED].

- hh. October 14 sale of 2010 Chevy Impala to [REDACTED].
- ii. October 18 sale of 2011 Ford Fusion to [REDACTED].
- jj. October 26 sale of 2007 Jeep Grand Cherokee to [REDACTED].
- kk. November 2 sale of 2009 Subaru WRX to [REDACTED].
- ll. November 5 sale of 2008 Nissan Titan to [REDACTED].
- mm. November 9 sale of 1998 Honda Civic to [REDACTED], 2003 Volkswagen Jetta to [REDACTED], and 2010 Jeep Liberty to [REDACTED].
- nn. November 12 sale of 2009 Mitsubishi Lancer to [REDACTED].
- oo. November 18 sale of 2010 Volkswagen Jetta to H.M. Brown & Associates.

CONCLUSION

For the reasons stated herein, the Board finds that Astro Imports used motor vehicle dealer license, number 8065, should be and is hereby **REVOKED** for violations of C.R.S. § 12-6-118(3)(e), (i), and (o) to wit C.R.S. § 6-1-708(1)(b).

DONE and ORDERED this 17th day of June, 2014.



Jason M. Wagner
1st Vice-President
Colorado Motor Vehicle Dealer
Board

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within 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 19th day of June 2014, addressed as follows:

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Arleen Criddell-Tapanen
Assistant to Director