BEFORE THE MOTOR VEHICLE DEALER BOARD

STATE OF COLORADO

Case No. BD10-35

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF: **RD MOTORS, INC., d/b/a/ BAR NONE**
Motor Vehicle Dealer License No. 1459,
Respondent.

IT IS HEREBY STIPULATED AND AGREED to by and between the Colorado Department of Revenue, Auto Industry Division ("Division"), Motor Vehicle Dealer Board ("Board") and R D Motors, Inc. d/b/a/ Bar None, ("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 ("Stipulation") 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 the Respondent violated:

   A. § 12-6-118(3)(e), C.R.S., 33 counts of defrauding any buyer, seller, motor vehicle salesperson or financial institution to such person's damage;

   B. § 42-6-112, C.R.S., 33 counts of failure to deliver title within 30 days of sale, providing grounds for discipline pursuant to § 12-6-118(3)(o), C.R.S.;

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, the Respondent is knowingly and voluntarily giving up the right to a hearing, admits the facts contained in this Stipulation, 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.

6. The Respondent admits to ten (10) counts of failure to deliver title in accordance with section 42-6-112, C.R.S. Based upon these admissions, the Board is authorized to impose the sanctions set forth in this Stipulation.

7. The Respondent agrees, in lieu of subsequent administrative proceedings, to submit a sanction of a fine of $5, 000.00 for each count, totaling $50,000.

8. The Respondent agrees that $10,000.00 shall be due and payable within twenty-four (24) months from the date this Stipulation is approved by the Board, in accordance with the following schedule:

A. The first payment of $1,250.00 due and payable within sixty (60) days from the date this Stipulation is approved by the Board.

B. Additional payments of $397.72 due and payable in monthly payments submitted on the first day of each month for twenty-two (22) consecutive months.

C. The remaining $40,000 shall be held in abeyance and payable upon issuance to the Respondent of any license authorized by the Motor Vehicle Dealer Board.

D. Upon satisfaction of the terms and conditions of this stipulation including the monetary payments due, all other counts shall be deemed dismissed with prejudice.

9. 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.

10. The Respondent agrees to strictly adhere to and to completely fulfill all requirements established in this Stipulation.

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

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

13. This Stipulation 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.

14. 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 which are not inconsistent with its terms.

15. The provisions of this Stipulation shall be enforceable by the Parties before the Colorado Motor Vehicle Dealer Board, by any lawful remedy.

16. The Respondent expressly acknowledges having read and understood completely the terms of this Stipulation. The Respondent enters this Stipulation knowingly and voluntarily, after the opportunity to consult with counsel, and with full understanding of the legal consequences of this Stipulation. The Respondent expressly states that the Respondent believes the terms of this Stipulation are lawful, fair, conscionable and appropriate to reach a full and final resolution of this disciplinary matter.

17. This Stipulation 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 cannot be appealed. The Respondent agrees that any violation of this Stipulation 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, this Stipulation shall be admissible as evidence. In the event an alleged violation of this Stipulation 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 shall remain operative and in full force and effect. The pendency of any disciplinary action pursuant to this Stipulation shall not affect the obligation of the Respondent to continue to comply with the terms of this Stipulation during the pendency of and after the conclusion of such disciplinary action.

18. This Stipulation is a public record in the Board's custody at all times.

19. Effective Date. This Stipulation shall become an order of the Board when accepted by the Board and signed by an authorized representative of the Board.

20. This Stipulation is a full and final resolution of Case Number BD10-035. This Stipulation does not resolve any other cases, complaints or matters, known or unknown to the Parties, as of the effective date of this Stipulation.

21. 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 or any necessary follow-up to this Stipulation to be made in a timely and

efficient manner. Any notice required under this Stipulation 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,
Motor Vehicle Dealer Board
Auto Industry Division
Attention: Bruce A. Zulauf, Division Director/Executive Secretary
1881 Pierce Street, Suite 142
Lakewood, Colorado 80214

B. Respondent:
Ronald Drake
[redacted]

cc: Charles R. Cuchiara, Esq.
6595 W. 14th Avenue, Suite 100
Lakewood, CO 80214

22. Should any term or provision of this Stipulation 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.

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

24. The Respondent warrants that it possesses the legal authority to enter into this Stipulation 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 to bind the Respondent to its terms. The person executing this Stipulation on behalf of the Respondent warrants that such person has full authorization to execute this Stipulation.

AGREED TO BY:

Bruce A. Zulauf
Director/Executive Secretary
Auto Industry Division

9/17/13
Date

Ron Drake Pres.

R D Motors, Inc., d/b/a/ Bar None.
Ronald Drake, Owner/President
Respondent

Date 8-31-2013

APPROVED AS TO FORM:

Y. E. Scott
Senior Assistant Attorney General

Date 9 Sept 2013

Charles R. Cuchiara
Attorney for Respondent

Date 8/31/13

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

ORDERED AND ENTERED this 17th day of September 2013.

COLORADO MOTOR VEHICLE DEALER BOARD

BY: _____
Beau Smith, 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, this 23 day of September, 2013 addressed as follows:

Charles R. Cuchiara, Esq.
6595 W 14th Avenue, Suite 100

Bruce A. Zulauf, Executive Secretary
Colorado Motor Vehicle Dealer Board

Lakewood, CO 80214

Director, Auto Industry Division
1881 Pierce Street, Room 142
Lakewood, CO 80214