

BEFORE THE MOTOR VEHICLE DEALER BOARD

STATE OF COLORADO

Case No. 13-0212

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF: **COYOTE MOTORSPORTS LLC**
 d/b/a COYOTE MOTORSPORTS LLC
 MOTOR VEHICLE DEALER
 LICENSE # 36965

Respondent.

IT IS HEREBY STIPULATED & AGREED by and between the Colorado Department of Revenue, Auto Industry Division (“Division”), Motor Vehicle Dealer Board (“Board”) and Coyote Motorsports, LLC., d/b/a Coyote Motorsports, LLC, (“Respondent”) (collectively the “Parties”) in lieu of further legal action:

1. The Respondent agrees, in lieu of the filing of criminal charges by the Auto Industry Division, to restore jurisdiction to the Board during the period of time the Respondent conducted business in an unlicensed capacity. The Respondent further agrees that all paragraphs contained in this Stipulation and Final Agency Order will be subject to full authority and jurisdiction of the Board.

2. Therefore, based upon paragraph 1 above, 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.

3. The Respondent was un-licensed as a motor vehicle dealer in the State of Colorado at all times relevant herein.

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

- A. One hundred sixty eight (168) counts of § 12-6-120 C.R.S., Unlawful Acts (2) It is unlawful for any person to act as a motor vehicle dealer, manufacturer, distributor, wholesaler, manufacturer representative, used motor vehicle dealer, buyer agent, wholesale motor vehicle auction dealer, or motor vehicle salesperson unless such person has been duly licensed under the provisions of this part 1, except for persons exempt from licensure as a manufacturer pursuant to section 12-6-102 (11); however, such persons shall comply with all other applicable requirements for manufacturers, including, but not limited to, those pertaining to vehicle identification numbers and manufacturers' statements of origin, and;

B. One hundred sixty eight (168) counts of § 12-6-109 C.R.S., 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.

5. 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.

6. 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.

7. The Respondent admits to six (6) counts of § 12-6-120 C.R.S., Unlawful Acts (2) It is unlawful for any person to act as a motor vehicle dealer, manufacturer, distributor, wholesaler, manufacturer representative, used motor vehicle dealer, buyer agent, wholesale motor vehicle auction dealer, or motor vehicle salesperson unless such person has been duly licensed under the provisions of this part 1, except for persons exempt from licensure as a manufacturer pursuant to section 12-6-102 (11); however, such persons shall comply with all

other applicable requirements for manufacturers, including, but not limited to, those pertaining to vehicle identification numbers and manufacturers' statements of origin. Based upon this admission, the Board is authorized to impose the sanctions set forth in this Stipulation and Final Agency Order.

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

- A. The Respondent shall pay a fine \$30,000.00, \$5,000.00 for each of the six (6) counts admitted to in paragraph 7 above. The Respondent agrees \$7,500.00 of the \$30,000.00 fine shall be due in twelve (12) monthly payments of \$625.00, with the first payment due 30 days from the date this Stipulation and Final Agency Order is approved by the Board. All remaining payments will be due by the 15th day of each month thereafter, until paid in full.
- B. The remaining balance, amounting to \$22,500.00, will be held in abeyance and will attach to any future dealer application submitted by the Respondent and approved by the Board. This balance will remain for a period of one (1) year provided there are no additional violations of the statutes and regulations, of the same or equally serious offenses, pertaining to motor vehicle dealers or commerce, committed by the approved dealership.
- C. The Respondent agrees to a probation period that will commence with the Board approval of any future license as a motor vehicle dealer, in conjunction with paragraph 8B above. Such term of probation will expire one (1) year from the date of the approval of said license.
- D. 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.
- E. 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.
- F. The Board agrees that the allegations and admission contained within this Stipulation and Final Agency Order, taken singularly, will not adversely impact future licensure as a dealer.
- G. The Respondent acknowledges and agrees that the Board may consider the admission in paragraph 7, as cumulative, should any future violation of law or regulation occur and be adjudicated after due process.

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 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.

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 13-0212. 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:

Coyote Motorsports, LLC
d/b/a Coyote Motorsports, LLC
301 East 27th Ave., #E
Denver, CO 80216

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.

***AGREED TO BY:**



Bruce A. Zulauf
Director/Executive Secretary
Auto Industry Division

JUNE 12, 2013

Date

FOR THE RESPONDENT:

Phillip Root, Managing Member
Coyote Motorsports, LLC
d/b/a Coyote Motorsports. LLC

Date

APPROVED AS TO FORM:

Michael G. McKinnon
Attorney for Respondent
5984 South Prince, Suite 100
Littleton, Co. 80120

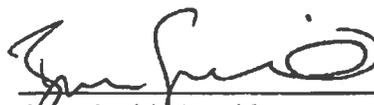
Date

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

ORDERED AND ENTERED this 18 day of JUNE, 2013.

COLORADO MOTOR VEHICLE BOARD

BY:



Beau Smith, President

***AGREED TO BY:**

Bruce A. Zulauf
Director/Executive Secretary
Auto Industry Division

Date

FOR THE RESPONDENT:


Phillip Root, Managing Member
Coyote Motorsports, LLC
d/b/a Coyote Motorsports. LLC

060513

Date

APPROVED AS TO FORM:



Michael G. McKinnon
Attorney for Respondent
5984 South Prince, Suite 100
Littleton, Co. 80120

6/5/13

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 _____, 2013.

COLORADO MOTOR VEHICLE 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, and personal service (as noted), this 5TH day of JULY 2013, addressed as follows:

Phillip Root
Coyote Motorsports, LLC
d/b/a Coyote Motorsports, LLC
301 East 57th Ave., #E
Denver, CO. 80216

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

Michael G. McKinnon
Attorney for Respondent
5984 South Prince, Suite 100
Littleton, Co. 80120

