

BEFORE THE MOTOR VEHICLE DEALER BOARD

STATE OF COLORADO

Case No. BD15-1181

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF: **DAVID SUNDERLAND AUTO SALES, INC.**
 d/b/a D S A S, INC.
 MOTOR VEHICLE DEALER
 LICENSE # 3089

Respondent.

IT IS HEREBY STIPULATED & AGREED by and between the Colorado Department of Revenue, Auto Industry Division (“Division”), Motor Vehicle Dealer Board (“Board”) and David Sunderland Auto Sales, Inc., d/b/a D S A S, Inc., (“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. Section 12-6-121.6 C.R.S., Drafts not honored for payment – Penalties. (1) If any motor vehicle dealer, wholesaler, or used motor vehicle dealer, issues a draft or check to a motor vehicle dealer, wholesaler, used motor vehicle dealer, motor vehicle auction house, or consignor and fails to honor such draft or check, then the license of such licensee shall be subject to suspension pursuant to section 12-6-104(3)(e)(1). The license suspension shall be effective upon the date of any final decision against such licensee based upon the unpaid draft or check. A licensee whose license has been suspended pursuant to the provisions of this subsection (1) shall not be eligible for reinstatement of such license and shall not be eligible to apply for any other license issued under this part 1 unless it is demonstrated to the board that the unpaid draft or check has been paid in full and that any fine imposed on the licensee pursuant to subsection (2) of this section has been paid in full.

B. 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: (e) Defrauding any buyer, seller, motor vehicle salesperson, or financial institution to such person's damage.

- C. 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: (f) Intentional or negligent failure to perform any written agreement with any buyer or seller.
 - D. 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: (h) Having made a fraudulent or illegal sale, transaction, or repossession.
 - E. 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: (o) To willfully violate any state or federal law respecting commerce or 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; To Wit: Section 18-5-205 C.R.S., Fraud by Check (2) Any person, knowing he has insufficient funds with the drawee, who, with intent to defraud, issues a check for payment of service, wages, salary, commission, labor rent, money, property, or thing of value, commits fraud by check.
 - F. Section 12-6-118. Licenses - grounds for denial, suspension, or revocation. (6) Any license issued pursuant to this part 1 may be denied, revoked, or suspended if unfitness of such licensee or licensee applicant is shown in the following: (c) The financial character or record of the licensee or licensee applicant.
 - G. Regulation 12-6-118 (6) (c) The Board, in determining whether a licensee or applicant has demonstrated unfitness of financial character or record, will consider net worth, liquid assets including cash, lines of credit, marketable securities, credit reports, unpaid judgments and/or tax liens, delinquent debts, and bankruptcy status. Applications for a motor vehicle dealer or used motor vehicle license will be closely evaluated base on the factors herein and the applicant's concept of operation for the business to assess the potential for harm to retail customers.
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. Two (2) counts of Section 12-6-121.6 C.R.S., Drafts not honored for payment – Penalties. (1) If any motor vehicle dealer, wholesaler, or used motor vehicle dealer, issues a draft or check to a motor vehicle dealer, wholesaler, used motor vehicle dealer, motor vehicle auction house, or consignor and fails to honor such draft or check, then the license of such licensee shall be subject to suspension pursuant to section 12-6-104(3)(e)(1). The license suspension shall be effective upon the date of any final decision against such licensee based upon the unpaid draft or check. A licensee whose license has been suspended pursuant to the provisions of this subsection (1) shall not be eligible for reinstatement of such license and shall not be eligible to apply for any other license issued under this part 1 unless it is demonstrated to the board that the unpaid draft or check has been paid in full and that any fine imposed on the licensee pursuant to subsection (2) of this section has been paid in full.
- B. One (1) count 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: (e) Defrauding any buyer, seller, motor vehicle salesperson, or financial institution to such person's damage.

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

- A. Respondent relinquishes its license. The relinquishment shall have the force and effect of a revocation order after hearing.
- B. The Respondent shall pay a fine \$15,000.00, the admissions in paragraph 6 above. The respondent agrees \$5,000.00 of the \$15,000.00 fine shall be due and payable in ten (10) monthly payments of \$500.00 each with the first payment due within 60 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.
- C. The remaining \$10,000.00 shall be deferred and payable only if Respondent applies for, and is granted by the Board, any type of motor vehicle or powersports dealer license in the future.
- D. If Respondent applies for a motor vehicle or powersports dealer license, at any time in the future, the Respondent must comply with all requirements for Board licensure then in effect in addition to complying with paragraph 7C above.
- E. Respondent shall not engage in any act that would require licensure by the State of Colorado unless Respondent obtains the appropriate licensure.

8. This Stipulation and Final Agency Order constitutes a finding by the Board that the Respondent has engaged in fraudulent conduct that supports the opening of Respondent's surety bond for the purpose of reimbursement of any loss or damage suffered by any retail consumer. Respondent agrees not to oppose the opening of the surety bond.

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.

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 BD15-1181 and Investigative case number 15-1266. 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:
David Sunderland Auto Sales, Inc.
d/b/a D S A S, Inc.
1533 S. Oswego Ct.
Aurora, CO 80012

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

Date

FOR THE RESPONDENT:



David Sunderland
D S A S, Inc.

1-26-16

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

Date 2/16/16

FOR THE RESPONDENT:

David Sunderland
D S A S, Inc.

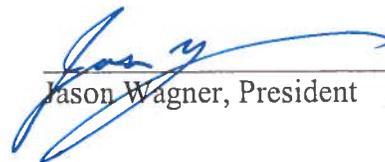
Date

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

ORDERED AND ENTERED this 16th day of FEBRUARY, 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 (as noted), this 17th day of February 2016, addressed as follows:

David Sunderland
1533 S. Oswego St.
Aurora, CO 80012

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