

BEFORE THE MOTOR VEHICLE DEALER BOARD

STATE OF COLORADO

Case No. BD13-0039

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF: **DAVEY COACH SALES, INC.**
 d/b/a DAVEY COACH SALES, INC.
 MOTOR VEHICLE DEALER
 LICENSE #7651

Respondent.

IT IS HEREBY STIPULATED & AGREED by and between the Colorado Department of Revenue, Auto Industry Division (“Division”), Motor Vehicle Dealer Board (“Board”) and Davey Coach Sales, Inc., d/b/a Davey Coach Sales, 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. § 12-6-109, 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.
 - B. § 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. § 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: (i) Willful misrepresentation, circumvention, or concealment of or failure to disclose, through whatsoever subterfuge or device, any of the material particulars or the nature thereof required to be stated or furnished to the buyer;
- D. § 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: (k) To intentionally publish or circulate any advertising which is misleading or inaccurate in any material particular or which misrepresents any of the products sold or furnished by a licensed dealer.
- E. Regulation 12-6-118 (3) (k) Advertising shall be construed to be misleading or inaccurate in the following particulars: Rule 6. Advertising used motor vehicles to create the impression that they are new or using the word 'new' when advertising used vehicles, such as 'new, used cars'. Any vehicle of the current model or the previous model year which is a used vehicle shall be so identified in any advertisement for said vehicle. (1 C.C.R. 205-1)
- F. Regulation 12-6-102 (12). A "new" motor vehicle is defined as "any motor vehicle being transferred for the first time from a manufacturer or importer, or dealer or agent of a manufacturer or importer, and which motor vehicle has heretofore not been used, and is what is commonly known as a 'new motor vehicle'". For the purpose of administration of the Motor Vehicle Dealers and Salesperson Licensing Law, a "new" motor vehicle shall be deemed to be a motor vehicle sold by a Colorado licensed motor vehicle dealer, as defined in the Act, who is franchised by the manufacturer of that make of motor vehicle to sell such motor vehicles. Said motor vehicle shall not have been used as a demonstrator or for private use, or for any other purpose which would indicate "use" in the strict definition of the word "used". A motor vehicle which has been used by a dealer solely for the purpose of demonstration to prospective customers shall be considered a "new vehicle", unless such demonstration use has been for more than fifteen hundred (1,500) miles.

New motor vehicles may be exchanged between dealers enfranchised to sell the same make of vehicle by a proper assignment of the Manufacturer's Certificate of Origin.

Only wholesalers or "new" motor vehicle dealers franchised by manufacturers to sell their motor vehicles will be allowed to sell "new" motor vehicles, and only

then if they have not previously been sold except by the manufacturer to such dealer.

A "used motor vehicle" is defined as any motor vehicle which has been sold, bargained, exchanged, given away, or the title thereto transferred from the person who first took title thereto from the manufacturer or importer, dealer or agent of the manufacturer or importer, or so used as to have become what is commonly known as a "secondhand motor vehicle". In the event of transfer on the Certificate of Origin, from the original franchised dealer to any other dealer or individual other than a franchised dealer of the same make of vehicle, the vehicle shall be considered a "used" motor vehicle, and must be titled in the new owner's name. Vehicles with more than one fifteen hundred (1500) miles of demonstration use shall be considered "used" vehicles. Such "demonstrators" and other motor vehicles which have been used by a dealer prior to their sale shall be titled in the dealer's name and sold as "used" motor vehicles.

All vehicles which do not qualify as "new" motor vehicles shall be deemed to be "used" motor vehicles for the purpose of administration of this Act. (1 C.C.R. 205-1)

G. § 12-6-104 C.R.S., Board-oath-meetings-powers and duties (3) The board is authorized and empowered: (k) (I) To prescribe a form or forms to be used as part of a contract for the sale of a motor vehicle by any motor vehicle dealer or motor vehicle salesperson, other than a retail installment sales contract subject to the provisions of the "Uniform Consumer Credit Code", articles 1 to 9 of title 5, C.R.S., which shall include the following information in addition to any other disclosures or information required by state or federal law:

A. In twelve-point bold-faced type or a size at least three points larger than the smallest type appearing in the contract, an instruction that the form is a legal instrument and that, if the purchaser of the motor vehicle does not understand the form, such purchaser should seek legal assistance;

B. In bold-faced type, of the size specified in sub-paragraph (A) of this subparagraph (I), an instruction that only those terms in written form embody the contract for sale of a motor vehicle and that any conflicting oral representations made to the purchaser are void;

C. In bold-faced type, of the size specified in sub-subparagraph (A) of this subparagraph (I), a notice that fraud or misrepresentation in the sale of a motor vehicle is punishable under the laws of this state;

D. In bold-faced type, of the size specified in sub-subparagraph (A) of this subparagraph (I), if the contract for the sale of a motor vehicle requires a single lump sum payment of the purchase price, a clear disclosure to the purchaser of that fact or, if the contract is contingent upon the approval of credit financing for the purchaser arranged by or through the motor vehicle dealer, in bold-faced type, a statement that the purchaser shall agree to purchase the motor vehicle which is the subject of the sale from

the motor vehicle dealer at not greater than a certain annual percentage rate of financing, which annual percentage rate of financing shall be agreed upon by the parties and entered in writing on the contract;

E. Except as otherwise provided under part 1 of article 1 of title 6, C.R.S., where the purchase price of the motor vehicle is not paid to the motor vehicle dealer in full at the time of consummation of the sale and the purchaser and motor vehicle dealer elect that the motor vehicle dealer shall deliver and the purchaser shall take possession of such motor vehicle at such time, in bold-faced type, a statement that in the event financing cannot be arranged in accordance with the provisions stated in the contract, and the sale is not consummated, the purchaser shall agree to pay a daily rate and a mileage rate for use of the motor vehicle until such time as financing of the purchase price of such motor vehicle is arranged for the obligor by or through the authorized motor vehicle dealer or until the purchase price is paid to the authorized motor vehicle dealer in full by or through the obligor, which daily rate and mileage rate shall be specified and agreed upon by the parties and entered in writing on the contract;

H. Regulation 12-6-104 (3) (k) Required Disclosures

1. Disclosures in the following language in order and sequence, must be used in all contracts for the sale of any motor vehicle unless excluded by these regulations:

4. A copy of all disclosures must be given to the purchaser at the time of the consummation of the sale. (1 C.C.R. 205-1)

I. § 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: § 18-5-301 Fraud in effecting sales. (1) A person commits a Class 2 misdemeanor if, in the course of business, he knowingly: (e) Makes a false or misleading statement in any advertisement addressed to the public or to a substantial segment thereof for the purpose of promoting the purchase or sale of property or services.

J. § 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: 49 USC 32705 - Disclosure requirements on transfer of motor vehicle. (1) Under regulation prescribed by the Secretary of Transportation that include the way in which information is disclosed and retained under this section, a person transferring ownership of a motor vehicle shall give the transferee the following written disclosure:

A. Disclosure of the cumulative mileage registered on the odometer

(2) A person transferring ownership of a motor vehicle may not violate a regulation prescribed under this section or give a false statement to the transferee in making the disclosure required by such regulation.

- K. § 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: 1 CCR 204-10 Rule 34. Temporary Registration Permits – 2.0 Requirements

2.3. Temporary permits and dealer stubs shall be issued by Dealers upon consummation of a sale. Dealers shall not loan, give, borrow, sell, exchange or issue permits for or with another dealer, individual, business, company, or corporation.

2.7. Temporary permits shall not be issued to vehicles which are sold as "Tow Away" or to vehicles which are not roadworthy. Temporary permits shall not be used to demonstrate, transport or deliver vehicles.

2.9. For every temporary permit issued by the dealer a dealer stub shall be completed with the three part copies being distributed as: A. White copy shall be submitted to the Department within calendar 5 days of the issued date as detailed in 2.13.

- L. § 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: (r) Representing or selling as a new and unused motor vehicle any motor vehicle which the dealer or salesperson knows has been used and operated for demonstration purposes or which the dealer or salesperson knows is otherwise a used motor vehicle.

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. Three (3) counts of § 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: (r) Representing or selling as a new and unused motor vehicle any motor vehicle which the dealer or salesperson knows has been used and operated for demonstration purposes or which the dealer or salesperson knows is otherwise a used motor vehicle; and
 - B. Three (3) counts of § 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: 1 CCR 204-10 Rule 34. Temporary Registration Permits – 2.0 Requirements

2.3. Temporary permits and dealer stubs shall be issued by Dealers upon consummation of a sale. Dealers shall not loan, give, borrow, sell, exchange or issue permits for or with another dealer, individual, business, company, or corporation.

2.7. Temporary permits shall not be issued to vehicles which are sold as "Tow Away" or to vehicles which are not roadworthy. Temporary permits shall not be used to demonstrate, transport or deliver vehicles.

2.9. For every temporary permit issued by the dealer a dealer stub shall be completed with the three part copies being distributed as: A. White copy-shall be submitted to the Department within calendar 5 days of the issued date as detailed in 2.13.

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

- A. The Respondent shall pay a fine of \$30,000.00. The Respondent agrees \$10,000.00 of the \$30,000.00 fine shall be due and payable within 30 days from the date this Stipulation and Final Agency Order is approved by the Board.
- B. The remaining balance, amounting to \$20,000.00, will be held in abeyance for a period of one (1) year provided there are no additional violations of the statutes and regulations pertaining to motor vehicle dealers or commerce, committed by the Respondent dealership during the one (1) year following the date this Stipulation and Final Agency Order is approved by the Board.
- C. The Respondent agrees to a probation period that will commence with the approval of this Stipulation. Such term of probation will expire one (1) year from the date of the approval of this Stipulation by the Board.
- D. The Respondent shall, within sixty (60) days from the date this Stipulation and Final Agency Order is approved by the Board, complete one training session by a Pre-licensing Education Program Provider approved by the Board. Respondent will provide proof of completion to the Board within ten (10) days after the training is completed.
- E. The Pre-licensing Program Provider shall provide on-site quarterly updates and education and shall file quarterly reports with the Auto Industry Division regarding Respondent's progress. The Respondent shall be responsible for all costs associated with the training and monitoring.
- F. 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.

G. 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.

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

9. 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.

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

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

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

17. **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.

18. This Stipulation and Final Agency Order is a full and final resolution of case number BD13-0039. 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.

19. 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:

Davey Coach Sales, Inc.
d/b/a Davey Coach Sales, Inc.
7182 Reynolds Drive
Sedalia, CO 80135

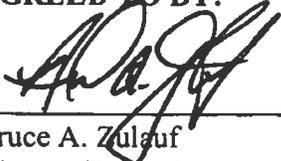
20. Should any term or provision of this Stipulation and Final Agency Order be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

21. 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.

22. 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
Motor Vehicle Dealer Board

5/14/2014

Date

FOR THE RESPONDENT:

Thomas A. Davey
Davey Coach Sales, Inc.

Date

APPROVED AS TO FORM:

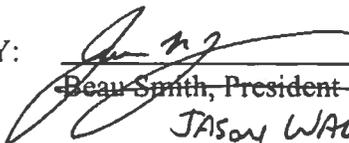
Michael G. McKinnon
Attorney for Respondent

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 20 day of MAY, 2014.

COLORADO MOTOR VEHICLE BOARD

BY: 

~~Beau Smith, President~~
JASON WAGNER

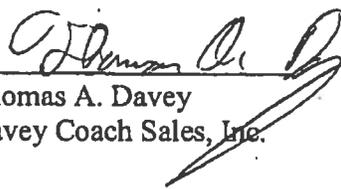
Respondent to its terms. The person executing this Stipulation and Final Agency Order on behalf of the Respondent warrants that such person has full authorization to execute this Stipulation and Final Agency Order.

AGREED TO BY:

Bruce A. Zulauf
Director/Executive Secretary
Auto Industry Division
Motor Vehicle Dealer Board

Date

FOR THE RESPONDENT:



Thomas A. Davey
Davey Coach Sales, Inc.

5-7-14

Date

APPROVED AS TO FORM:



Michael G. McKinnon
Attorney for Respondent

5/7/14

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 _____, 2014.

COLORADO MOTOR VEHICLE BOARD

BY: _____
Beau Smith, President

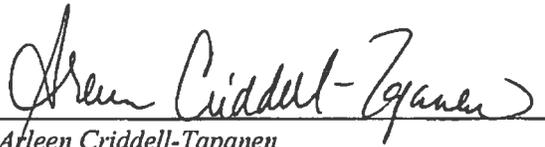
CERTIFICATE OF SERVICE

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 21st day of May 2014, addressed as follows:

Mr. Thomas A. Davey
Davey Coach Sales, Inc.
7182 Reynolds Drive
Sedalia, CO 80135

Michael G. McKinnon
5984 South Prince, Suite 103
Littleton, Co. 80120

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