

**COLORADO DEPARTMENT OF REVENUE  
MOTOR VEHICLE DEALER BOARD**

**Case No. BD15-1484**

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**FINAL BOARD ORDER**

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**IN THE MATTER OF:      IMPEX AUTOMOTIVE, LLC**  
Motor Vehicle Dealer License Number: 41617

Respondent.

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The Department of Revenue, Motor Vehicle Dealer Board, seeks revocation of used motor vehicle dealer license number 41617, assigned to Impex Automotive, LLC (Impex). The matter was heard before the Board on April 19, 2016, Vice President Joe Gebhardt presiding. Senior Assistant Attorney General Y. E. Scott represented the Board in its prosecutorial role. Respondent appeared *pro se* by owner, Hamid Murad. 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 Impex by the Department of Revenue's Auto Industry Division (Division) that was initiated by a complaint filed by Wyoming Auto Finance (WAF). Based on its investigation, the Division determined that Impex violated state law and Board regulations. On December 31, 2015, Division Investigator Joshua Dexter executed an Affidavit of Probable Cause alleging that Impex violated C.R.S sections 12-6-118(3)(e),(g) (h), and (o); 12-6-118(6)(d); 42-3-122(1);18-5-102(1);18-5-114(3) and 18-8-306. Based on the affidavit, the Board summarily suspended Impex's used motor vehicle dealer's license on January 19, 2016.

A "Notice of Duty to Answer, Notice of Hearing and Notice of Charges" seeking discipline of Impex's license was filed on February 12, 2016. The Notice asserts eighteen charges based on three automobile sales investigated by Investigator Dexter. The charges allege that Impex failed to disclose, or provided incorrect or falsified, information to WAF, the Colorado Department of Motor Vehicles(DMV) and consumers contrary to statute and Board regulations, when selling three automobiles and selling to WAF the Retail Installment Sales Contracts (RISC) for those automobile sales. The Board also contended that Impex defrauded buyers to their damage, engaged in fraudulent sales or transactions, willfully violated state law by committing Perjury, Offering a False Instrument for Recording, Attempt to Influence a Public Servant, and Theft. Impex was accused of failing to perform a written agreement, failing to furnish and maintain the statutorily required bond, and violating a Board Order.

Impex filed an answer to the Notice on March 4, 2016, generally denying the charges.

For the reasons explained below, the Board finds that all charges against Impex have been proven and that Used Motor Vehicle Dealer License number 41617 should be

fined and revoked.

### **EVIDENTIARY FACTS**

1. At all relevant times, Impex was owned by Hamid Murad and Veeda Murad, operating under Used Motor Vehicle Dealer License number 41617. (Exhibit 18).
2. Impex was located at 9720 N. Federal Blvd in Denver, Colorado, for the first half of 2014, and moved to 6196 N. Federal Blvd in July of 2014, remaining at the latter location until after the license was summarily suspended. (Impex's testimony).
3. On March 19, 2015, Impex purchased a 2003 Honda Odyssey EX through Dealers Auto Auction, with the mileage listed as 245,557 (Exhibits 19, 20).
4. On April 10, 2015, Impex entered a Master Dealer Agreement (Dealer Agreement) with Wyoming Auto Finance (WAF), allowing WAF to purchase Retail Installment Sales Contracts (RISC) from Impex in financing purchases of vehicles by Impex's retail consumers (Exhibits 1 and 1A).
5. On April 20, 2015, Impex sold the Odyssey to Mr. Medina, financed with a RISC through WAF (Exhibit 4).
6. Impex provided WAF with information indicating the mileage on the Odyssey was 126,431 (Exhibits 2, 3, 7, Grant testimony)
7. Impex provided the Colorado Department of Motor Vehicles (DMV) with information indicating the mileage on the Odyssey was 126,431 (Exhibit 21, Dexter testimony).
8. WAF purchased the RISC for the Odyssey for \$4,051.12 (Exhibit 5).
9. After the sale, Impex asked Mr. Medina to return the Odyssey to the dealership so that Impex could "change the mileage," which Mr. Medina refused (Exhibit 27 and Dexter testimony).
10. WAF discovered the odometer discrepancy when the Odyssey was totaled and the insurance company made a smaller payout than expected. (Exhibits 6, 27, Grant Testimony).
11. When requested to buy back the RISC for the Odyssey in accordance with the terms of the Dealer Agreement, Impex refused (Exhibits 1A, 6, Grant and Murad testimony).

12. WAF would not have purchased the RISC for the Odyssey had WAF known the actual mileage on the odometer (Grant testimony).
13. On May 14, 2015, Impex purchased a 2000 Jeep Grand Cherokee (Jeep) through Dealers Auto Auction with mileage listed as 167,186. (Exhibit, 22).
14. The Dealers Auto Action invoice for the Jeep indicated: "discrepancy per autocheck potential odometer rollback" (*Id.*).
15. On May 15, 2015, Impex sold the Jeep to Mr. Abalos, financed with a RISC through WAF, without disclosing the autocheck odometer discrepancy or the potential rollback disclosure. (Exhibit 9,10, 27, Abalos testimony)
16. Impex provided WAF with information indicating the mileage on the Jeep was the actual mileage, without disclosing the autocheck odometer discrepancy or the potential rollback disclosure (Exhibits 10, 11, 27, Grant testimony).
17. WAF purchased the RISC for the Jeep for \$3,421.06 (Exhibit 32).
18. Impex provided DMV with information indicating the 167,186 mileage listed for the Jeep was the actual mileage. (Exhibit 23, Dexter testimony)
19. When requested to buy back the deal for the Jeep in accordance with the terms of the Dealer Agreement, Impex refused (Grant and Murad testimony).
20. WAF would not have purchased the RISC for the Jeep had WAF known the mileage discrepancy and the potential rollback of the odometer (Grant testimony).
21. On June 25, 2015, Impex purchased, from a private individual, a 2000 Lexus that was rebuilt from salvage, with the mileage listed as 139,345 (Exhibits 24, 25).
22. When Impex purchased the Lexus, Impex signed a Branded Title Disclosure Statement (Exhibit 25).
23. On July 3, 2015, Impex sold the Lexus to Ms. Gallegos that was financed with a RISC through WAF. (Exhibit 24)
24. Impex provided WAF with information indicating the mileage on the Lexus was 122,065 (Exhibits, 13A, 14A, 17, Grant testimony).
25. At no time before or during the sale of the Lexus did Impex notify Ms. Gallegos of the rebuilt from salvage status of the Lexus (Exhibit 13A).

26. At no time before or after the sale of the RISC for the Lexus, did Impex notify WAF of the rebuilt from salvage status of the Lexus (Grant testimony).
27. WAF purchased the RISC for the Lexus for \$5,065.00 (Exhibit 32).
28. When requested to buy back the deal for the Lexus in accordance with the terms of the Dealer Agreement, Impex refused (Exhibits 1A, 6, Grant and Murad testimony).
29. WAF would not have purchased the RISC for the Lexus had WAF known the actual mileage on the odometer. (Grant testimony)
30. WAF would not have purchased the RISC for the Lexus had WAF known the rebuilt from salvage status of the Lexus. (Grant testimony)
31. Impex submitted to the DMV a Branded Title Disclosure Statement purportedly signed by Ms. Gallegos (Exhibit 25).
32. Impex submitted to the DMV an Odometer Disclosure Statement purportedly signed by Ms. Gallegos (Exhibit 25).
33. The Branded Title Disclosure Statement Impex submitted to DMV contained a forged signature for Ms. Gallegos (Exhibit 25, 26).
34. The Odometer Disclosure Statement Impex submitted to DMV contained a forged signature for Ms. Gallegos (Exhibits 25, 26).
35. When requested to buy back the deal for the Lexus in accordance with the terms of Dealer Agreement, Impex refused (Exhibits 33, 33A, Grant and Murad testimony).
36. Impex purchased a one-year bond, number 62070763, from Western Surety Company, effective June 18, 2014 (Exhibit 28).
37. On September 24, 2014, CNA Surety, a representative of Western Surety Company, sent a letter of notification to Impex cancelling bond number 62070763 effective November 15, 2014 (Exhibit 29).
38. On October 20, 2014, the Colorado Department of Revenue, Auto Industry Division notified Impex that bond number 62070763 must either be reinstated or replaced on or before November 15, 2014 (Exhibit 30).
39. Impex failed to provide the Colorado Department of Revenue, Auto Industry Division with a replacement bond or reinstatement letter (Dexter testimony).

40. Impex purchased a one-year bond, number 62424030, from Western Surety Company, effective June 18, 2015 (Exhibit 28).
41. On March 17, 2015, Impex entered into a Stipulation agreement with the Board to resolve violations of the Automobile Dealer Act and Board regulations (Exhibit 31).
42. In the Stipulation, Impex agreed to a one-year term of probation commencing upon the approval of the Stipulation in which Impex would comply with all state and federal laws and regulations related to the motor vehicle dealer industry (*Id.*).

## CONCLUSIONS OF LAW

### Defrauding a Buyer

43. A used motor vehicle dealer's license may be denied, suspended, or revoked for defrauding any buyer to such person's damage. C.R.S. § 12-6-118 (3)(e).
44. To establish fraud, the Board must prove that (i) Impex made a false representation or failed to disclose a material fact to the purchaser; (ii) Impex 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) Impex 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).
45. With regard to the sale of the RISC for the Odyssey, for the Jeep and for the Lexus, the Board has proven that WAF did not know that Impex representations were false or WAF was not aware of the undisclosed facts, WAF purchased the RISCs based on the information Impex provided, and that WAF was damaged as a result of Impex's representations and failure to disclose material facts:
46. The Board has proven Charges I, VI, and XI counts 1 and 2.

## **Willful Misrepresentation/ Failure to Disclose**

47. The license of a used motor vehicle dealer may be denied, revoked or suspended for 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. C.R.S. § 12-6-118(3)(i).
48. "Material particulars" means "those details concerning a vehicle 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).
49. "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).
50. The Dealer Agreement specifically indicated that for each RISC sold by Impex to WAF an accurate, true and complete description of the vehicle contained in the contract was material to the purchase (Exhibit 1, p. 1, Section 3(e)).
51. The Board finds that the potential odometer rollback on the Jeep, and the rebuilt from salvage status of the Lexus were material particulars that should have been disclosed by Impex.
52. The Board finds that the accurate representation of the mileage is a material particular that should be disclosed to a buyer.
53. The Board finds that Impex had knowledge of material particulars concerning the Odyssey, Jeep and Lexus through disclosures made when Impex purchased those vehicles, and the failure to subsequently make the same disclosures when Impex was the seller meets the test for "willful."
54. Impex's willful misrepresentation to WAF of the mileage on the Odyssey, Jeep and the Lexus, and the willful failure to disclose to WAF and Ms. Gallegos that the Lexus was rebuilt from salvage, constitute separate violations of C.R.S. § 12-6-118(3)(i).
55. Impex's willful misrepresentation to Abalos of the mileage on the Jeep also constitutes a violation of C.R.S. § 12-6-118(3)(i).
56. The Board has proven Charges II, VII counts 1 and 2, and XII counts 1 and 2.

### **Fraudulent Sale or Transaction**

57. A used motor vehicle dealer's license may be denied, suspended, or revoked for having made a fraudulent or illegal sale, transaction, or repossession. C.R.S. §12-6-118 (3)(h).
58. Impex's defrauding of WAF in order to convince WAF to purchase the RISC for the Odyssey, Jeep and Lexus were fraudulent sales transactions.
59. Impex's improperly listing of the odometer on the sale of the Odyssey to convince Mr. Medina to purchase the vehicle was a fraudulent sales transaction.
60. Impex's improperly listing of the odometer as actual miles for the sale of the Jeep to convince Mr. Abalos to purchase the vehicle was a fraudulent sales transaction.
61. The Board has proven Charges III counts 1 and 2, VIII counts 1 and 2, and XIII counts 1 and 2.

### **Violation of State Law**

62. A used motor vehicle dealer's license may be denied, suspended, or revoked for willfully violating any state law respecting commerce or motor vehicles under circumstances in which the act constituting the violation directly and necessarily involves commerce or motor vehicles C.R.S. § 12-6-118 (3)(o). To wit:

**Perjury On A Motor Vehicle Registration** - A person commits perjury on a motor vehicle registration application if such person knowingly makes a materially false statement on a motor vehicle registration application that such person does not believe to be true, under oath required or authorized by law. C.R.S. § 42-3-122 (1).

**Offering A False Instrument For Recording** - A person commits offering a false instrument for recording in the second degree if, knowing that a written instrument relating to or affecting real or personal property or directly affecting contractual relationships contains a material false statement or material false information, he presents or offers it to a public office or a public employee, with the knowledge or belief that it will be registered, filed or recorded or become part of the records of that public office or public employee. C.R.S. § 18-5-114 (3).

**Attempt to Influence a Public Servant** - Any person who attempts to influence any public servant by means of deceit . . . with the intent thereby to alter or affect the public servant's decision, vote, opinion, or action concerning any

matter which is to be considered or performed by him or the agency or body of which he is a member, commits a class 4 felony. C.R.S. § 18-8-306.

**Forgery** - A person commits forgery, if, with intent to defraud, such person falsely makes, completes, alters, or utters a written instrument which is or purports to be, or which is calculated to become or to represent if completed: (d) a public record or an instrument filed or required by law to be filed or legally fileable in or with a public office or public servant. C.R.S. § 18-5-102 (1).

**Theft** - A person commits theft when he or she knowingly obtains, retains, or exercises control over anything of value of another without authorization or by threat or deception; or receives, loans money by pawn or pledge on, or disposes of anything of value or belonging to another that he or she knows or believes to have been stolen, and Intends to deprive the other person permanently of the use or benefit of the thing of value; For the purposes of this section, a thing of value is that of "another" if anyone other than the defendant has a possessory or proprietary interest therein. C.R.S. §18-4-401.

63. Investigator Dexter's unrefuted testimony and supporting documentation proved that Impex forged Ms. Gallegos' name on the Branded Title Disclosure and one of the Odometer Disclosure Statements for the Lexus.
64. Investigator Dexter's unrefuted testimony and supporting documentation proved that Impex submitted to the DMV documentation signed under oath in order to obtain title for the Odyssey, Jeep and Lexus that contained false or forged information known to Impex to be false or forged.
65. Impex admitted being paid by WAF for the RISCs involved in the sale of the Odyssey, Jeep and Lexus and refused to buy back the deals in accordance with the Dealer Agreement between Impex and WAF.
66. It is undisputed that the sale of the RISCs to WAF was obtained by Impex's deception of WAF.
67. The Board has proven Charges IV counts 1 through 4, IX counts 1 through 4, and XIV counts 1 through 5.

#### **Failure to Perform a Written Agreement**

68. The license of a used motor vehicle dealer may be denied, revoked or suspended for intentional or negligent failure to perform any written agreement with any buyer or seller. C.R.S. § 12-6-118(3)(f).
69. Impex's intentional submission of documents to WAF containing inaccurate or incomplete information concerning the Odyssey, Jeep and Lexus violated the

provision in the Dealer Agreement that requires that the description of each vehicle be "in all respects, accurate, true and complete". (Exhibit 1A p.1 § 3 (c.)).

70. Impex testified that it was willing to buy back the deals on all three vehicles only if WAF would return the vehicles to Impex.
71. Impex's continual insistence upon WAF returning the vehicles to Impex in order for Impex to buy back the deal violated the Repurchase Contract provision of the Dealer Agreement that states "WAF has no obligation to repossess or otherwise secure the [vehicle] as a condition of requiring Dealer to repurchase a contract". (Exhibit 1A p.3 § 6(k.)).
72. The Board has proven Charges, V, X counts 1 and 2, and XV counts 1 through 3.

#### **Failure to Furnish/Maintain Bond**

73. A used motor vehicle dealer's license may be denied, suspended, or revoked for failure or refusal to furnish and keep in force any bond required under part 1 of the Automobile Dealers Act. C.R.S § 12-6-118 (3)(g).
74. Impex's failure to keep the June 2014 bond in force, and failure to furnish a new bond for nearly seven months, violated state law.
75. The Board has proven Charge XVI, counts 1 and 2.

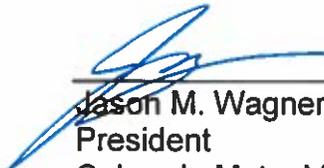
#### **Violation of a Board Order**

76. A used motor vehicle dealer's license may be denied, revoked, or suspended if such licensee is shown to have violated any lawful order of the board. C.R.S. § 12-6-118 (6)(d).
77. All of the violations announced above occurred during the one-year time period that Impex was on probation pursuant to the Stipulation and Final Agency Order in case number BD14-1151, which was effective March 17, 2015.
78. Impex's violation of state law and Board rules and regulations while on Board-ordered probation constitutes violation of a Board order.
79. The Board has proven Charge XVII counts 1 and 2.

## CONCLUSION

For the reasons stated herein, the Board finds that Impex's Used Motor Vehicle Dealer License, number 41617, shall be fined a total of \$43,000.00 - \$9,000.00 for violation of a Board Order, and the balance for the remaining violations of C.R.S. sections 12-6-118(3)(e), (f), (g), (h), (i), and (o), to wit C.R.S. 18-4-401; 18-5-102; 18-5-114(3); 18-8-306; 42-3-122(1), and C.R.S. 12-6-118(6)(d). Said fine to become due and payable should Impex apply in the future for any license authorized to be issued by the Board. The Board also finds that Used Motor Vehicle Dealer License number 41617 should be and is hereby **REVOKED**.

DONE and ORDERED this ~~19~~<sup>17</sup>th day of ~~April~~<sup>MAY</sup>, 2016.

  
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Jason M. Wagner  
President  
Colorado Motor Vehicle Dealer Board

**Right to Appeal:**

This Board Order constitutes final agency action by the Colorado Motor Vehicle Dealer Board. Pursuant to C.R.S. § 24-4-106 (11), you may appeal this Board Order to the Colorado Court of Appeals within forty-nine (49) days after the date of service. The date of service depends upon whether you received your copy of the Order by regular first-class mail or whether your copy of the Order was delivered to you personally. If you received your copy of the Order by regular first-class mail, then the date the Order was mailed to you is the date of service. If you received your copy of the Order by personal delivery, then the date your copy of the Order was received by you is the date of service.

## CERTIFICATE OF SERVICE

This is to certify that I have duly served the within FINAL ORDER upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this <sup>18<sup>th</sup></sup> day of May 2016 addressed as follows:

Impex Automotive, LLC.  
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Denver, CO. 80221

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Arleen Criddell-Tapanen  
Assistant to Director

cc: Bruce A Zulauf  
Executive Secretary  
(Placed in Board File)