

BEFORE THE MOTOR VEHICLE DEALER BOARD

STATE OF COLORADO

Case No. BD14-0175

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF: **JOHN D. WIMMER**
 MOTOR VEHICLE SALESPERSON
 LICENSE # 155836

Respondent.

IT IS HEREBY STIPULATED & AGREED by and between the Colorado Department of Revenue, Auto Industry Division (“Division”), Motor Vehicle Dealer Board (“Board”) and John D. Wimmer (“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 and/or was licensed as a motor vehicle salesperson in the State of Colorado at all times relevant herein.

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

A. Section 12-6-118 C.R.S., Licenses - grounds for denial, suspension, or revocation. (5) The license of a motor vehicle salesperson may be denied, revoked, or suspended on the following grounds: (b) Material misstatement in an application for a license

B. Regulation 12-6-118 (5) (b) “Material misstatement” in an application for a salesperson license means any relevant false or misleading statement, omission, or misrepresentation regarding personal identification information, employment history, prior occupational licensing history, whether regarding a license issued by the board or any other state licensing/regulatory agency, criminal background and history including arrests, criminal information filings, indictments, municipal, misdemeanor, and/or felony convictions, plea of nolo contendere or a plea in a deferred judgment and sentence.

C. Section 12-6-118 C.R.S., Licenses - grounds for denial, suspension, or revocation. (5) The license of a motor vehicle salesperson may be denied, revoked, or suspended on the following grounds: (j) Having been convicted of or pled nolo contendere to any felony, or any crime pursuant to article 3, 4, or 5 of title 18, C.R.S., or any like crime pursuant to federal law or the law of any other state. A certified copy of the judgment of conviction by a court of competent jurisdiction

shall be conclusive evidence of such conviction in any hearing held pursuant to this article.

- D. Regulation 12-6-118 (5) (j) A salesperson who is convicted of or pled nolo contendere or a plea in a deferred judgment and sentenced to any felony or any crime pursuant to article 3, 4, or 5 of title 18, C.R.S., or like crime pursuant to federal law or the law of any other state, must give the board written notice of such conviction within thirty days after such conviction. The licensee shall provide complete information including copies of the conviction and pre-sentence reports within thirty days of the conviction. (1 C.C.R. 205-1)
 - E. Section 12-6-118 C.R.S., 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: (b) The criminal character or record of the licensee or licensee applicant.
 - F. Regulation 12-6-118 (6) (b) The Board, in determining whether a licensee or applicant has demonstrated unfitness of criminal character or record, will consider the nature and date of the convictions; parole or probation status; including whether the licensee or applicant has maintained satisfactory compliance; and/or restitution. A pattern of convictions which, individually may not constitute grounds for denial or disciplinary action, may, taken together constitute unfitness.
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 one (1) count of Regulation 12-6-118 (5) (b) "Material misstatement" in an application for a salesperson license means any relevant false or misleading statement, omission, or misrepresentation regarding personal identification information, employment history, prior occupational licensing history, whether regarding a license issued by the board or any other state licensing/regulatory agency, criminal background and history including arrests, criminal information filings, indictments, municipal, misdemeanor, and/or felony convictions, plea of nolo contendere or a plea in a deferred judgment and sentence. Based upon this admission, the Board is authorized to impose the sanctions set forth in this Stipulation and Final Agency Order.

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

- A. The Respondent shall pay a fine of \$500.00 for the admission in paragraph 6 above. The Respondent agrees that \$100.00 of the fine shall be due and payable within thirty (30) days from the date this Stipulation and Final Agency Order is approved by the Board.
- B. The remaining balance, amounting to \$400.00, 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 and/or salesperson, or commerce, committed by the Respondent 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 assures that he 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 acknowledges that he will be required to report the details of this Stipulation and Final Agency Order as "prior Board action" on all future licensure applications.

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 Board case number BD14-0175. 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:

John D. Wimmer



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

12/16/14

Date

RESPONDENT:

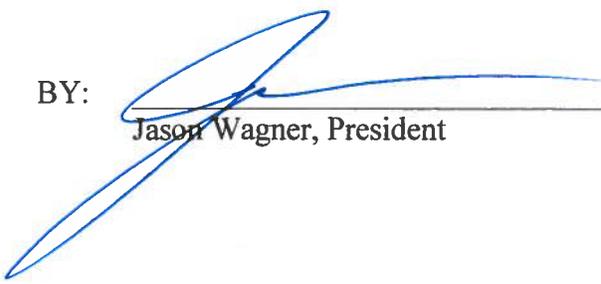
John D. Wimmer


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 December, 2014.

COLORADO MOTOR VEHICLE BOARD

BY: 

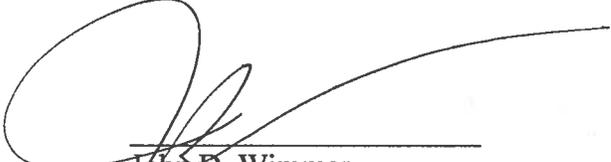
Jason Wagner, President

AGREED TO BY:

Bruce A. Zulauf
Director/Executive Secretary
Auto Industry Division

Date

RESPONDENT:



John D. Wimmer


11/15/14

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: _____
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 18th day of December 2014, addressed as follows:

John D. Wimmer


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