

BEFORE THE MOTOR VEHICLE DEALER BOARD

STATE OF COLORADO

Case No. BD14-090

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF: **STS AUTOMOTIVE, INC.**
 d/b/a STS AUTOMOTIVE, INC.
 MOTOR VEHICLE DEALER
 LICENSE # 41151

Respondent.

IT IS HEREBY STIPULATED & AGREED by and between the Colorado Department of Revenue, Auto Industry Division (“Division”), Motor Vehicle Dealer Board (“Board”) and STS Automotive, Inc., d/b/a STS Automotive, 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 as depicted in the Notice of Duty to Answer, Notice of Hearing and Notice of Charges filed on October 28, 2014:

- A. Charge I, Seventy-Two (72) Counts – SUMMARY: The license of a motor vehicle dealer may be denied, revoked or suspended for defrauding any buyer, seller, motor vehicle salesperson, or financial institution to such person's damage; § 12-6-118(3)(e), C.R.S.
- B. Charge II, Seventy-two (72) Counts– SUMMARY: The license of a 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. § 12-6-118(3)(i), C.R.S.
- C. Charge III, Seventy two (72) Counts– SUMMARY: Any license issued pursuant to part 1 of article 6, title 12, C.R.S., may be denied revoked or suspended for willfully violating 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:. Motor vehicle sales and leases - deceptive trade practice.(1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:(a) Commits any of the following acts pertaining to the sale or lease of a motor vehicle or a used motor vehicle: (b) Fails to disclose in writing, prior to sale, to the purchaser that a motor vehicle is a salvage vehicle, as defined in section 42-6-102 (17), C.R.S., or that a vehicle was repurchased by or returned to the manufacturer from a previous owner for inability to conform the motor vehicle to the manufacturer's warranty in accordance with article 10 of title 42, C.R.S., or with any other state or federal motor vehicle warranty law or knowingly fails to disclose in writing, prior to sale, to the purchaser that a motor vehicle has sustained material damage at any one time from any one incident. § 12-6-118 (3)(0) To Wit: 6-1-708, C.R.S

- D. Charge IV, Nineteen (19) Counts– SUMMARY: Any license issued pursuant to part 1 of article 6, title 12, C.R.S., may be denied revoked or suspended for willfully violating 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:. Disclosure requirements upon transfer of ownership of a salvage vehicle.

Prior to sale of a vehicle rebuilt from salvage to a prospective purchaser for the purpose of selling or transferring ownership of such vehicle, the owner shall prepare a disclosure affidavit stating that the vehicle was rebuilt from salvage.

The disclosure affidavit shall also contain a statement of the owner stating the nature of the damage which resulted in the determination that the vehicle is a salvage vehicle.

The words "rebuilt from salvage" shall appear in bold print at the top of each such affidavit. § 12-42-206(1), C.R.S.

Any person who sells a vehicle rebuilt from salvage for the purpose of transferring ownership of such vehicle shall:

(a) Provide a copy of a disclosure affidavit prepared in accordance with the provisions of subsection (1) of this section to each prospective purchaser...; § 42-6-206(2)(a), C.R.S.

As used in this section...

(a) "Sale" means any sale or transfer of a vehicle rebuilt from salvage.

(b) "Salvage vehicle" shall have the same meaning as set forth in section 42-6-102 (17). § 42-6-206(6), C.R.S.

"Salvage vehicle" means

(A) A flood-damaged vehicle

(B) A vehicle branded as salvage by another State or

(C) a vehicle that is damaged by collision, fire, flood, accident, trespass, or other occurrence, excluding hail damage, to the extent that the cost of repairing the vehicle to a roadworthy condition and for legal operation on the highways exceeds the vehicle's retail fair market value immediately prior to such damage, as determined by the person who owns the vehicle at the time of such occurrence or by the insurer or other person acting on behalf of such owner. §42-6-102.(17)(a)(I), C.R.S.

"Salvage" means "the secondary or scrap value of a motor vehicle stemming from a state of damage or disrepair that renders the vehicle unsuitable for its originally intended use on the public highways in the absence of major alteration or repair. Salvage includes the scrapping, junking, disposal or sale of a vehicle for parts only." 1 CCR 204-10 Rule 39, 1.13

E. Charge V, Nineteen (19) Counts– SUMMARY: Any license issued pursuant to part 1 of article 6, title 12, C.R.S., may be denied revoked or suspended for willfully violating 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:. Disclosure requirements upon transfer of ownership of a salvage vehicle.

Any person who sells a vehicle rebuilt from salvage for the purpose of transferring ownership of such vehicle shall:

(b) Obtain a signed statement from each such purchaser clearly stating that the purchaser has received a copy of the disclosure affidavit and has read and understands the provisions contained therein § 42-6-206(2)(b), C.R.S.

F. Charge VI, One (1) Count SUMMARY: Any license issued pursuant to part 1 of article 6, title 12, C.R.S., may be denied revoked or suspended for willfully violating 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.

“Temporary Registration Permit” or “Temporary Permit”: means the Department of Revenue form DR2206. 1CCR 204-10 Rule 34 1.5

“Secure and Verifiable Identification” or “SVID” means identification issued by a state or federal jurisdiction or recognized by the United States Government and that is verifiable by federal or state law enforcement, intelligence, or homeland security agencies. 1 CCR 204-10 RULE 34 1.7.

Dealers shall verify SVID prior to issuance of temporary permits, unless the purchaser declares that the vehicle will be titled and registered outside the State of Colorado. A. The duration of a temporary permit issued under these circumstances shall be issued for 14 days or less. 1 CCR 204-10 Rule 34 2.4

G. Charge VII, Twenty three (23) Counts– SUMMARY: Any license issued pursuant to part 1 of article 6, title 12, C.R.S., may be denied revoked or suspended for willfully violating 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.

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. 1 CCR 204-10 Rule 34 2.7

"Roadworthy" means a condition in which a motor vehicle has sufficient power and is fit to operate on the roads and highways of this state after visual inspection by appropriate law enforcement authorities. In order to be roadworthy, such vehicle, in accord with its design and use, shall have all major parts and systems permanently attached and functioning and shall not be repaired in such a manner as to make the vehicle unsafe. For purposes of this subsection (15), "major parts and systems" shall include, but not be limited to, the body of a motor vehicle with related component parts, engine, transmission, tires, wheels, seats, exhaust, brakes, and all other equipment required by Colorado law for the particular vehicle. § 42-6-102 (15), C.R.S.

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. Six (6) 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: (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.
 - B. Six (6) 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.

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. 1 CCR 204-10 Rule 34 2.7

"Roadworthy" means a condition in which a motor vehicle has sufficient power and is fit to operate on the roads and highways of this state after visual inspection by appropriate law enforcement authorities. In order to be roadworthy, such vehicle, in accord with its design and use, shall have all major parts and systems permanently attached and functioning and shall not be repaired in such a manner as to make the vehicle unsafe. For purposes of this subsection (15), "major parts and systems" shall include, but not be limited to, the body of a motor vehicle with related component parts, engine, transmission, tires, wheels, seats, exhaust, brakes, and all other equipment required by Colorado law for the particular vehicle. § 42-6-102 (15), C.R.S.

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

- A. The Respondent's motor vehicle dealer license is suspended for twenty nine (29) days, with credit for time served under the summary suspension order served on Respondent on October 21, 2014.
- B. The Respondent shall pay a fine \$60,000.00, \$5,000.00 for each admission in paragraph 6 above. The Respondent agrees \$20,000.00 of the \$60,000.00 fine shall be due and payable in ten (10) monthly payments of \$2,000.00 each, with the first payment due within sixty (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 balance, amounting to \$40,000.00, 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.
- D. The Respondent shall, within thirty (30) days from the date this Stipulation and Final Agency Order is approved by the Board, complete one Pre-Licensing training session by a Pre-licensing Education Program Provider approved by the Board. The Respondent owner and two (2) current salespersons will be required to attend the training. Respondent will provide proof of completion to the Board within ten (10) days after the training is completed.
- E. The Respondent will contract with an independent person/agency/organization for every other month, on-site, training and monitoring audits. This will require the Respondent to contract for six (6) training and monitoring audits during the probationary period as described in paragraph 7F below. The independent person/agency/organization must be approved by the Executive Secretary for the Motor Vehicle Dealer Board prior to the first training and monitoring audit. The approved independent person/agency/organization will file reports at the conclusion of each training and monitoring audit 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 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.
 - G. 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.
 - H. 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 BD14-0890. 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:

STS Automotive, Inc.
d/b/a STS Automotive, Inc.
4301 Morrison Road
Denver, CO 80219

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

11/10/14

Date

FOR THE RESPONDENT:

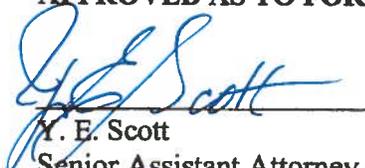


Marta Mena
STS Automotive, Inc.

11/10/14

Date

APPROVED AS TO FORM:



Y. E. Scott
Senior Assistant Attorney General
Attorney for Colorado Motor
Vehicle Dealer Board

12 Nov 2014

Date



Michael G. McKinnon
Attorney for the Respondent

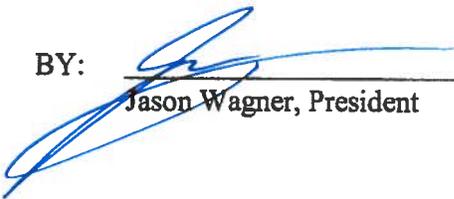
11/10/14

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 18 day of NOVEMBER, 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 19th day of November 2014, addressed as follows:

Marta Mena
STS Automotive, Inc.
4301 Morrison Road
Denver, CO 80219

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)

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

Y. E. Scott
Senior Assistant Attorney General
1300 Broadway, 8th Floor
Denver, CO. 80203



Arleen Criddell-Tapanen
Assistant to Director