

BEFORE THE MOTOR VEHICLE DEALER BOARD

STATE OF COLORADO

Case No. BD17-0559, 18-0139, 18-0327 and 18-0456

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF: **SMART CHOICE AUTO**
 d/b/a SMART CHOICE AUTO
 USED MOTOR VEHICLE DEALER
 LICENSE #40340

Respondent.

IT IS HEREBY STIPULATED & AGREED by and between the Colorado Department of Revenue, Auto Industry Division (“Division”), Motor Vehicle Dealer Board (“Board”) and Smart Choice Auto, d/b/a Smart Choice Auto, (“Respondent”) (collectively the “Parties”) in lieu of further legal action:

1. The Board has jurisdiction over Respondent and the subject matter of this Stipulation and Final Agency Order (“Order”) as set forth in article 20 of Title 44, C.R.S. and the Administrative Procedure Act, article 4 of Title 24, C.R.S.

2. 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. Defrauding any buyer, seller, motor vehicle salesperson, or financial institution to such person’s damage in violation of section 12-6-118(3)(e), C.R.S.;

B. Equity skimming of a vehicle in violation of section 18-5-803, C.R.S.,

(1) A person commits equity skimming of a vehicle if, knowing that the vehicle is subject to a security interest, lien, or lease, he accepts possession of or exercises any control over the vehicle in exchange for consideration given which may be verbal assurance or otherwise, and;

(b) Arranges the sale or lease of the vehicle of another to a third party a without first obtaining written authorization from the secured creditor, lessor, or lienholder for the transaction of the sale or lease to the third party and exercises control over any part of the funds received, unless the entire balance of the security interest, lien, or lease is paid or satisfied within thirty days of said transaction.

(c) Knowingly fails to ascertain on a monthly basis whether payments are due to the secured creditor, lienholder, or lessor and to apply all funds he receives for any lease or sales of the vehicle toward the satisfaction of any outstanding payment due to the secured creditor, lienholder, or lessor in a timely manner.

4. The Respondent understands that:

- A. Respondent has the right to be represented by an attorney of the Respondent's choice, at the Respondent's expense;
- B. Respondent has the right to a formal hearing in accordance with article 20 of Title 44, C.R.S.;
- C. By entering into this Order, Respondent knowingly and voluntarily waives the right to a hearing, and relieves the Board of its burden of proving the violations alleged herein;
- D. Respondent knowingly and voluntarily waives 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. Respondent knowingly and voluntarily waives the right to judicial review of this matter.

5. 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 allegations alleged in paragraph 3 of this Stipulation and Final Agency Order.

7. 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. Respondent shall pay a fine \$10,000.00, for the admission in paragraph 6 above;
- C. The \$10,000.00 fine 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. Respondent agrees to strictly adhere to and to completely fulfill all requirements established in this Order.

10. This Order will not become an order of the Board unless and until the Board approves it. If this Order is not approved by the Board, it is void, and the Parties 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 Order is the complete integration of all understandings between the parties. No addition, deletion, or amendment, shall have any force or effect whatsoever, except as mutually agreed to in a writing signed by both Parties.

13. The Parties agree to cooperate fully and to execute any and all supplementary documents and to take all additional actions necessary or appropriate to give full force and effect to the terms and intent of this Order.

14. The provisions of this Order shall be enforceable by the Parties before the Colorado Motor Vehicle Dealer Board, by any lawful remedy.

15. Respondent expressly acknowledges having read and understood completely the terms of this Order. Respondent enters this Order knowingly and voluntarily, after the opportunity to consult with counsel, and with full understanding of the legal consequences of this Order. Respondent expressly states the terms of this Order are fair, conscionable, and appropriate to reach a full and final resolution of this disciplinary matter.

16. This Order and all its terms shall have the same force and effect as an order entered by the Board after hearing pursuant to article 20 of Title 44, C.R.S. except that this Order cannot be appealed.

17. Respondent agrees that any violation of this Order may constitute grounds for disciplinary action and, if proven, may constitute a basis for further sanctions or for any other remedy authorized by law.

18. If this matter is referred to hearing for violation of this Order, this Order shall be admissible as evidence.

19. If an alleged violation of this Order is taken to hearing and the facts that constitute the violation are not proven, the Board shall not impose any additional sanction and this Order shall remain operative and in full force and effect. Respondent must comply with the terms of this Order during the pendency of, and after the conclusion of, such disciplinary action.

20. Once effective, this Order becomes a public record in the Board's custody at all times.

21. Effective Date. This Order becomes an order of the Board when accepted by the Board and signed by an authorized representative of the Board.

22. This Order is a full and final resolution of case number BD17-0559, 18-0139, 18-0327 and 18-0456. This 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.

23. Respondent shall immediately provide written notice to the Board of any change of Respondent's address. Any notice required under this Order shall be valid if provided, in writing, to the last known written address provided to the Board by Respondent, which currently is:

Smart Choice Auto
d/b/a Smart Choice Auto
4575 Hilton Parkway, Suite 200
Colorado Springs, CO 80904

24. All correspondence and notices to the Board must be provided to the Board at the following address:

Colorado Department of Revenue, Auto Industry Division
Bruce A. Zulauf, Division Director/Executive Secretary
1697 Cole Boulevard, Suite 200A
Lakewood, Colorado 80401

25. Should any term or provision of this Order be declared invalid or become inoperative for any reason, such invalidity or failure does not affect the validity of any other term or provision hereof.

26. This Order may be signed in counterparts, each of which has full force and effect upon execution by all Parties.

27. Respondent warrants that it possesses the legal authority to enter into this 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 Order and to bind Respondent to its terms.

28. The person executing this Order on behalf of 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
Motor Vehicle Dealer Board

4/1
Date

FOR THE RESPONDENT:



Ancel R. James
Smart Choice Auto

4/3/2019
Date

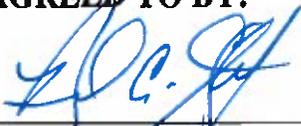
The Order is approved and its terms are hereby adopted as an Order of this Board.

ORDERED AND ENTERED this _____ day of _____, 2019.

COLORADO MOTOR VEHICLE DEALER BOARD

BY: _____
Steven C. Perkins, President

AGREED TO BY:



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

4/16/2019

Date

FOR THE RESPONDENT:

Ancel R. James
Smart Choice Auto

Date

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

ORDERED AND ENTERED this 16TH day of APRIL, 2019.

COLORADO MOTOR VEHICLE DEALER BOARD

BY: 

Steven C. Perkins, 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 April 2019, addressed as follows:

Ancel James
Smart Choice Auto
22326 E. Plymouth Circle
Aurora, CO 80016

Bruce A. Zulauf, Executive Secretary
Colorado Motor Vehicle Dealer Board
Director, Auto Industry Division
1697 Cole Boulevard, Suite 200A
Lakewood, CO 80401
(Placed in Board File)



Beth A. Spellerberg
Deputy Executive Secretary