

**COLORADO DEPARTMENT OF REVENUE HEARINGS DIVISION
ON BEHALF OF THE COLORADO MOTOR VEHICLE DEALER BOARD**

Case No. BD 18-0742

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF: KEVIN NEAL PINKHAM
Motor Vehicle Salesperson Number: 26397

Respondent.

IT IS HEREBY STIPULATED AND AGREED UPON by and between the Colorado Department of Revenue, Motor Vehicle Dealer Board (“Board”) and Kevin Neal Pinkham (“Respondent”) (collectively the “Parties”) in lieu of further legal action:

1. At all relevant times, Kevin Neal Pinkham (“Respondent”) was licensed as a motor vehicle salesperson in the State of Colorado under license number 26397.
2. The Board has jurisdiction over Respondent and the subject matter of this Stipulation and Final Agency 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.
3. Respondent was, or was acting as, a “motor vehicle salesperson” as defined in section 44-20-102(19), C.R.S. [formerly section 12-6-102(20), C.R.S.], at all times relevant to this matter.
4. In the Notice of Charges filed in this matter, the Board has alleged that Respondent violated the following:
 - I. One (1) count of § 12-6-118(5)(q), C.R.S., To Wit: § 12-6-109(2), C.R.S. under Charge I. A motor vehicle salesperson’s license may be denied, suspended, or revoked for violations of any state or federal law respecting commerce or motor vehicles – a single count of exercising privileges that Respondent did not hold per § 12-6-109(2), C.R.S.¹
 - II. One (1) count of § 12-6-118(5)(q), C.R.S., To Wit: § 12-6-120(2), C.R.S. under Charge II. A motor vehicle salesperson’s license may be denied, suspended, or revoked for violations of any state or federal law respecting commerce or motor vehicles - a single count of unlawfully acting as a motor vehicle dealer/used motor vehicle dealer without being duly licensed per § 12-6-120(2), C.R.S.

¹ Effective October 1, 2018, the Article 6 of Title 12 was recodified under Article 20 of Title 44. There were no substantive changes made as part of the recodification, as reflected in Senate Bill 18-030. The Notice of Duty to Answer, Notice of Hearing and Notice of Charges filed in this matter referenced the Title 12 framework because the Board approved this matter for hearing on August 21, 2018 and the underlying factual events occurred prior to the recodification.

- III. One (1) count of § 12-6-118(5)(q), C.R.S., To Wit: § 42-6-110(1), C.R.S. under Charge III. A motor vehicle salesperson's license may be denied, suspended, or revoked for violations of any state or federal law respecting commerce or motor vehicles - a single count for selling a motor vehicle without executing a formal transfer of the vehicle described in the certificate per § 42-6-110(1), C.R.S.
- IV. One (1) count of § 12-6-118(5)(q), C.R.S., To Wit: § 42-6-109(1), C.R.S. under Charge IV. A motor vehicle salesperson's license may be denied, suspended, or revoked for violations of any state or federal law respecting commerce or motor vehicles - a single count for selling a motor vehicle to a purchaser without delivering a certificate of title to the vehicle duly transferred per § 42-6-109(1), C.R.S.

5. Respondent understands that:

- A. Respondent has the right to a formal hearing in accordance with article 20 of Title 44, C.R.S.;
- B. By entering into this Stipulation and Final Agency Order, 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;
- C. 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,
- D. Respondent is knowingly and voluntarily giving up the right to judicial review of this matter.

6. 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.

7. Respondent admits to violating Charge III – section 42-6-110(1), C.R.S. (selling a motor vehicle without executing a formal transfer of the vehicle described in the certificate per § 42-6-110(1), C.R.S.).

8. Respondent agrees, in lieu of subsequent administrative proceedings, to submit to the following sanction:

- A. Respondent shall pay a fine of \$1,000 due to the State of Colorado within sixty (60) days following the Effective Date of this Stipulation and Final Agency Order.

9. The Parties mutually agree to strictly adhere to and to completely fulfill all requirements established in this Stipulation and Final Agency Order.

10. 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.

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

12. 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.

13. 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.

14. 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.

15. Respondent expressly acknowledges having read and understood completely the terms of this Stipulation and Final Agency Order. 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. Respondent expressly states that 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.

16. 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 20 of Title 44, C.R.S. except that this Stipulation and Final Agency Order cannot be appealed.

17. 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.

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

19. **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.

20. This Stipulation and Final Agency Order is a full and final resolution of case number BD 18-0742. 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.

21. Respondent shall immediately provide in writing to the Board any change of 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:

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

B. Respondent:

Kevin N. Pinkham
[REDACTED]
[REDACTED]
[REDACTED]

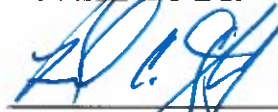
22. Should any term or provision of this Stipulation and Final Agency Order be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

23. 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.

24. Respondent warrants that he possesses the legal authority to enter into this Stipulation and Final Agency Order and that he has taken all actions required by his procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize his 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.

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AGREED TO BY:



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

4/16/2019
Date


FOR THE RESPONDENT:



Kevin Neal Pinkham

4-8-19
Date

APPROVED AS TO FORM:



Bradford Jones
Senior Assistant Attorney General I
Attorney for the Colorado
Motor Vehicle Dealer Board

4-10-19
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 April, 2019.

COLORADO MOTOR VEHICLE 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, this 17th day of April, 2019, addressed as follows:

Kevin N. Pinkham
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Bradford Jones
Senior Assistant Attorney General I
1300 Broadway 8th Floor
Denver, CO 80203
Bradford.jones@coag.gov



Arleen Criddell-Tapanen
Assistant to Director

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