

**MOTOR VEHICLE DEALER BOARD
STATE OF COLORADO**

CASE NUMBER: BD 23-1390

IN THE MATTER OF:

**JOSE LUIS TIZCARENO,
Motor Vehicle Salesperson License # 174351,**

Respondent.

FINAL BOARD ORDER

This license discipline matter came before the Colorado Motor Vehicle Dealer Board to review the Initial Decision issued by the Department of Revenue's Hearing Officer and duly served upon the parties. The Initial Decision is attached as Exhibit 1 and is incorporated as set forth herein.

Respondent timely filed a designation of record and exceptions to the Initial Decision. The Auto Industry Division filed a response. The Board considered oral arguments presented by the parties and the record as a whole, including the Initial Decision and exceptions briefing. Pursuant to §§ 24-4-105 and 44-20-104, C.R.S., the Board adopts and incorporates the Initial Decision into this Final Board Order and revokes Respondent's license for violations of §§ 44-20-121(6)(l), 44-20-121(6)(e), and 44-20-121(7)(a), C.R.S.

I. DISCUSSION

Respondent challenges several aspects of the Initial Decision. First, he challenges certain factual findings regarding his relationship with the Truck Town Motors dealership where he was employed as a licensed motor vehicle salesperson. He also contends that he did not violate license law, largely because remitting payment to the selling dealership and delivering title to the retail buyer are obligations of his dealership, and failures related to those duties should not be attributed to him as an individual salesperson. Consequently, Respondent argues that no discipline should be imposed on his license. The Division disagrees, highlighting Respondent's misrepresentations to the selling dealership and to the retail buyer, and arguing that the Board should adopt the Initial Decision and revoke Respondent's license.

Respondent first contends that the Initial Decision's factual findings are erroneous where they identify him as the subject of the licensing complaints, and by specifically indicating that he was a "purchasing agent" of the dealership. To overturn a finding of evidentiary fact, Respondent must show that it is contrary to the weight of the evidence. § 24-4-105(15)(b), C.R.S. The Board finds adequate support in the record for the challenged findings. Though the two consumer complaints listed the dealership where Respondent was a salesperson and were investigated by the Division as complaints against the dealership, those same complaints identify Respondent by name and describe Respondent's actions. *See, e.g.,* R-417-23 (Ex. 2) (Elite Motors' complaint identifies Respondent as the only

person dealt with and details his misrepresentations); R-500-09 (Ex. 9) (buyer's complaint identifies Respondent as a person dealt with and details a series of misleading statements regarding title). In addition, the record establishes that Division opened its own complaint against Respondent's license. *See* R-514 (Ex 14); *see also* § 44-20-104(3)(f)(I). As for whether Respondent was a purchasing agent, the exceptions do not dispute that it was Respondent—in his capacity as a licensed motor vehicle salesperson—who negotiated the purchase of the vehicle at issue on behalf of Truck Town Motors. *See* Initial Decision, Findings of Fact ¶¶ 2, 10-17, 30; 8/19/2024 Hrg. Tr. 78:10-25, 10:11-15. Thus, the Board determines that the challenged findings are not contrary to the weight of the evidence.

Next, Respondent challenges the legal conclusions that he indulged in a fraudulent business practice and defrauded a retail buyer to his damage, arguing that the Hearing Officer erroneously held Respondent accountable for obligations of the dealership where he was employed. Reviewing the Initial Decision as a whole, the Board finds substantial record support and a reasonable basis in the law for the violations found by the Hearing Officer, as explained below. *See State Bd. of Med. Exam'rs v. McCroskey*, 880 P.2d 1188, 1195 (board may substitute its own judgment for that of ALJ regarding ultimate conclusions).

Respondent played a central role in the vehicle's purchase and its subsequent sale. The Board is authorized to discipline him for his actions—in particular, for the multiple and prolonged misrepresentations Respondent made to both the seller-dealership and the retail buyer. *See, e.g.,* Initial Decision, Findings of Fact ¶¶ 19-20,

39-44; Initial Decision, Analysis ¶ 6. Contrary to Respondent's contention, his license is not being disciplined by the Board for any failures of the dealership with respect to the delayed payment and delayed title transfer, but for his actions during these processes. Regardless of which licensee bears ultimate responsibility for those obligations, Respondent's deceptive conduct violated §§ 44-20-121(6)(l) and 44-20-121(6)(e). *See generally Colo. Motor Vehicle Dealer Bd. v. Butterfield*, 9 P.3d 1148 (Colo. App. 2000). The Board finds that the necessary elements of both violations, *id.* at 1152, are supported by substantial evidence in the record: (1) Respondent made a false representation or failed to disclose a material fact; (2) Respondent knew the misrepresentation was false or that a disclosure should be made; (3) the party to whom Respondent made the representation did not know of its falsity or was unaware of the undisclosed fact; (4) Respondent's conduct was undertaken with the intent that it be acted upon; and, with respect to § 44-20-121(6)(l), damage to the retail buyer. *See, e.g.*, R-450-87 (Ex. 5); R-417-23 (Ex. 2); R-588-632 (Ex. G, English translation); R-651-69 (Ex. H, English translation); 7/18/2024 Hrg. Tr. 136:9-137:11; 8/19/2024 Hrg. Tr. 125:3-126-19, 131:16-135:2.

Respondent further contends that he cannot have engaged in fraudulent conduct because he made no misrepresentations at the time of the sale. Because the relevant statutes and case law establish no time limitation for a licensee's fraud, the Board does not read the applicable statutory provisions so narrowly. Moreover, even if the Board were to agree with Respondent that the "time of sale" is relevant for purposes of assessing violations of §§ 44-20-121(6)(l) and 44-20-121(6)(e), the retail

buyer in this instance was not provided the title to the vehicle until May 2024, after the seller-dealership finally received payment. Initial Decision, Findings of Fact ¶¶ 28, 29. Thus, as far as the Board is concerned, the sale was not complete until the retail buyer was provided the title and Respondent's multiple misrepresentations occurred during the "time of sale" in this matter.

As for the third violation found by the Hearing Officer, that Respondent was unfit of licensing character or record, Respondent contends that the conclusion is unsupported by any evidence because the consumer complaints were filed against the dealership where he was employed. As discussed above, the Board rejects this argument because there were complaints against Respondent. Nor is the Board persuaded by Respondent's argument that his salesperson's license cannot be disciplined because the applicable rule (1 Code Colo. Regs. 205-1, Regulation 44-20-121(7)(a)) applies only to business entities, as the plain language of the statute applies to both dealerships and salespersons. *See* § 44-20-121(7) (discipline may be imposed on "any license issued pursuant to this part 1"); *see also Butterfield*, 9 P.3d at 1153 (remanding for reconsideration of whether salesperson's conduct constituted unfitness of licensing character without questioning whether such finding could be based on fraud-based violation).

Finally, having found that Respondent violated license law, the Board must determine whether and how to discipline his motor vehicle salesperson's license. Among other possible sanctions, the Board may revoke a motor vehicle salesperson's license for a violation of § 44-20-121(6) or of § 44-20-121(7). The Board has great discretion in deciding the final discipline for violations of license law. *See* §§ 44-20-104(3)(e), 44-20-121(6), 44-20-121(7); 1 Code Colo. Regs. 205-1, Regulation 44-20-104(4); *see also Davis v. Bd. of Psychologist Exam'rs*, 791 P.2d 1198, 1202 (Colo. App. 1989). The Board exercises its authority consistent with the mission of protecting consumers through its licensing and supervision of motor vehicle dealers and salespersons. § 44-20-101(1).

Respondent does not deny or justify his multiple misrepresentations, instead arguing that, for various reasons, those misrepresentations should not result in any license discipline for him. The Hearing Officer found that Respondent did not take responsibility for his actions, a finding that has not been challenged on exceptions. Initial Decision, Findings of Fact ¶ 58. Respondent is not facing discipline for unintentional falsehoods or an isolated incident, but rather for a pattern of intentional lies over a period of many months to further his own ends. He expresses no remorse, and the Board does not find any satisfactory explanation for his egregious conduct or adequate mitigation thereof. In addition to the harm to the retail buyer, Respondent's untruths undermine the public trust in the profession. Respondent's violations are severe in their deceptive and prolonged nature, and as such, they warrant the most serious sanction of revocation.

II. ORDER

For the reasons stated, the Board adopts the Findings of Fact and Conclusions of Law from Hearing Officer's Initial Decision as part of this Final Board Order, and orders that Respondent's motor vehicle salesperson license is revoked.

DONE and ORDERED this 19th day of August, 2025.

MOTOR VEHICLE DEALER BOARD



David Guttenberg, First Vice-President
Colorado Motor Vehicle Dealer Board
1707 Cole Boulevard, Suite 300
Lakewood, CO 80401

This decision becomes final upon mailing. Any party adversely affected or aggrieved by any agency action may commence an action for judicial review before the Court of Appeals within forty-nine (49) days after the date of the service of this order. §§ 44-20-122(5) and 24-4-106(11), C.R.S

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this **FINAL BOARD ORDER** was served on the following parties via email and United States Mail, first class, postage prepaid, this 20th day of August, 2025, and with courtesy copy by electronic mail to the electronic mail addresses as follows:

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