

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2  
3 In the Matter of the Removal of and the Revocation of  
4 the Motor Vehicle Dealer and Sales Finance Company  
Licenses of:

5 **ARIEL B. PENA DBA PENA AUTO SALES**  
6 2515 West Van Buren  
Phoenix, Arizona 85009

7 Petitioners.

**No. 06F-BD006-BNK**

**SUPERINTENDENT'S FINAL  
DECISION AND ORDER**

8  
9 The Superintendent of Financial Institutions (the "Superintendent") having reviewed the record  
10 in this matter, including the Recommended Decision of the Administrative Law Judge attached and  
11 incorporated herein by this reference, adopts in part and modifies in part the Administrative Law  
12 Judge's Findings of Fact, Conclusions of Law and Recommended Order as follows.

13 **FINDINGS OF FACT**

14 The Superintendent adopts the Administrative Law Judge's Findings of Fact paragraphs 1-18  
15 and 20-52.

16 The Superintendent modifies paragraph 19 for the reason that the testimony of Mr. Richard  
17 Fergus does not include any acknowledgement whatsoever that the statutory violations noted in his  
18 examination report would result or not necessarily result in the Department seeking revocation of a  
19 license. (Transcript of Hearing, Volume II, pp. 196-224.)

20 Modified paragraph 19 shall state:

- 21 19. Mr. Charlton acknowledged that the violations found during the examination would not  
22 necessarily result in the Department seeking revocation of a license. Mr. Fergus testified  
23 that the violations the Department found as a result of the examination were violations  
24 the Department routinely finds.

25 The Superintendent further modifies the Findings of Fact by adding the following new  
26 paragraph substantiating Mr. Pena's knowledge of Pena Auto Sales' violation of the provisions of  
27 Chapter 2.1 of A.R.S. Title 44, specifically: A.R.S. § 44-289(B). (Transcript of Hearing, Volume II, p.  
28 219.)

1 New paragraph 53 shall state:

2 53. During Mr. Fergus' examination, in response to Mr. Fergus' inquiry, Mr. Pena informed  
3 Mr. Fergus that for vehicles that were repossessed or turned into Pena Auto Sales, the  
4 licensee did not provide the written notification that was required pursuant to A.R.S. §  
5 44-289(B).

6 **CONCLUSIONS OF LAW**

7 The Superintendent adopts the Administrative Law Judge's Conclusions of Law paragraphs 1-9  
8 and 11-13.

9 The Superintendent rejects Conclusion of Law paragraph 10 for the reason that substantial  
10 evidence in the record establishes that Mr. Pena, as the owner and manager of Pena Auto Sales,  
11 knowingly violated A.R.S. § 44-289(B). In addition, the Superintendent rejects Conclusion of Law  
12 paragraph 10 because A.R.S. § 44-283(A)(2) is an enabling statute providing the authority for the  
13 Superintendent to revoke or suspend a license and is not a prohibitive statute that can be violated by a  
14 licensee.

15 The Superintendent hereby modifies Conclusion of Law paragraph 14 for the reason that  
16 substantial evidence in the record establishes that Mr. Pena knowingly violated A.R.S. § 44-289(B).  
17 Pursuant to A.R.S. § 1-215(17), "'Knowingly' imports only a knowledge that the facts exist that bring  
18 the act or omission within the provisions of the statute using such word. It does not require any  
19 knowledge of the unlawfulness of the act or omission." Further, only Mr. Charlton opined as to the  
20 level of statutory violations warranting revocation of a license.

21 Modified paragraph 14 shall state:

22 14. The Superintendent has the authority to suspend or revoke Mr. Pena's motor vehicle  
23 license and Mr. Pena's sales finance company license pursuant to A.R.S. § 44-283 if  
24 the above violations were found to have been committed knowingly or due care was  
25 not exercised. The weight of the evidence did establish that Ariel B. Pena dba Pena  
26 Auto Sales knowingly violated A.R.S. § 44-289(B) and said violation was corrected  
27 after the Department's examination. There were no prior violations presented. Mr.  
28 Charlton represented that generally such violations do not, in any event, result in the

1 revocation of the license. Consequently, the weight of the evidence does not establish  
2 that revocation or suspension of the licenses is warranted in this instant matter.

3 The Superintendent further modifies the Conclusions of Law by adding new paragraph 15 for  
4 the reason that the Superintendent has the authority to order any remedy necessary or proper for the  
5 enforcement of the statutes and to impose a civil money penalty for knowing violations of A.R.S. § 44-  
6 289(B).

7 New paragraph 15 shall state:

8 15. The Superintendent has the authority to order any remedy necessary or proper for the  
9 enforcement of the statutes and rules regulating motor vehicle dealers and sales finance  
10 companies pursuant to A.R.S. §§ 6-124 and 6-131, including a civil money penalty  
11 pursuant to A.R.S. § 6-132 for any knowing violation of A.R.S. §§ 44-281 *et seq.* The  
12 weight of the evidence establishes that Ariel B. Pena dba Pena Auto Sales knowingly  
13 violated A.R.S. § 44-289(B) until he corrected his business practices following Mr.  
14 Fergus' examination.

15  
16 **ORDER**

17 Based on the above, IT IS ORDERED that Ariel B. Pena dba Pena Auto Sales pay to the  
18 Department a civil money penalty of five thousand dollars (\$5,000.00) for violations of A.R.S. § 44-  
19 289(B). Said payment shall be made payable to the Arizona Department of Financial Institutions by  
20 certified or cashier's check and shall be due to the Department on or before March 17, 2006.

21 Rationale: While the weight of the evidence did not support the removal of Mr. Pena under  
22 A.R.S. § 6-161 or the suspension or revocation of the licenses in issue pursuant to A.R.S. § 44-283,  
23 substantial evidence establishes that, as a licensee, Ariel B. Pena dba Pena Auto Sales is on notice of  
24 the statutes and rules governing his business as a motor vehicle dealer and sales finance company and  
25 that he violated those statutes as set forth in the Findings of Fact. The weight of the evidence  
26 establishes that Ariel B. Pena dba Pena Auto Sales knowingly violated A.R.S. § 44-289(B), warranting  
27 the imposition of a civil money penalty of not more than five thousand dollars (\$5,000.00), per  
28 violation per day in accordance with A.R.S. § 6-132.

1 NOTICE

2 The parties are advised that, pursuant to A.R.S. § 41-1092.09, this Order shall be final unless  
3 Petitioners submit a written motion for rehearing no later than thirty (30) days after service of this  
4 decision. The motion for rehearing or review must specify the particular grounds upon which it is  
5 based as set forth in A.A.C. R20-4-1219. A copy shall be served upon all other parties to the hearing,  
6 including the Attorney General, if the Attorney General is not the party filing the claim of error. In the  
7 alternative, the parties may seek judicial review of this decision pursuant to A.R.S. § 41-1092.08(H).

8 DATED this 8th day of March, 2006.

9 

10 Felecia Rotellini  
11 Superintendent of Financial Institutions

12 ORIGINAL filed this 8th day of  
13 March, 2006, in the office of:

14 Felecia Rotellini  
15 Superintendent of Financial Institutions  
16 Arizona Department of Financial Institutions  
17 ATTN: June Beckwith  
18 2910 North 44th Street, Suite 310  
19 Phoenix, Arizona 85018

20 COPY of the foregoing mailed/hand delivered  
21 This same date to:

22 Lewis D. Kowal, Administrative Law Judge  
23 Office of Administrative Hearings  
24 1400 West Washington, Suite 101  
25 Phoenix, AZ 85007

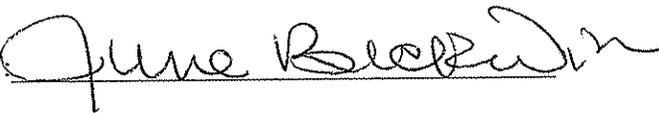
26 Craig A. Raby, Assistant Attorney General  
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1 Richard A. Fergus, Senior Examiner  
2 Arizona Department of Financial Institutions  
3 2910 N. 44th Street, Suite 310  
4 Phoenix, AZ 85018

5 AND COPY MAILED SAME DATE by  
6 Certified Mail, Return Receipt Requested, to:

7 Ariel B. Pena  
8 dba Pena Auto Sales  
9 2515 West Van Buren  
10 Phoenix, Arizona 85009  
11 Respondent

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BY 

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 06F-BD005-BNK

ARIEL B. PENA DBA PENA AUTO SALES  
2515 West Van Buren  
Phoenix, AZ 85009

ADMINISTRATIVE  
LAW JUDGE DECISION

**HEARING:** September 22, 2005, December 13 and 14, 2005. Record closed on January 17, 2006

**APPEARANCES:** Assistant Attorney General Craig A. Raby for the Arizona Department of Financial Institutions; Mark Hawkins, Esq. for Ariel Pena dba Pena Auto Sales

**ADMINISTRATIVE LAW JUDGE:** Lewis D. Kowal

1. At all times material to this matter, Ariel Pena ("Mr. Pena") was and is the owner of a used car business in the state of Arizona registered with the Secretary of State under the trade name of Pena Auto Sales.
2. Mr. Pena, doing business as ("dba") Pena Auto Sales, was and is authorized to transact business in Arizona as a motor vehicle dealer and as a sales finance company, pursuant to A.R.S. § 44-281(3) and (12), respectively.
3. As of September 13, 1999, the Arizona Department of Financial Institutions, formerly known as the Arizona State Banking Department ("Department"), has licensed Mr. Pena dba Pena Auto Sales as a motor vehicle dealer, license number MVD-0903126, and as a sales finance company, license number SF-0903127.
4. The Department conducts examinations of motor vehicle dealers and sales finance companies to ensure compliance with the law.
5. Richard Fergus ("Mr. Fergus"), currently the Manager of Licensing and Consumer Affairs for the Department, was during the relevant time a Senior Examiner for the Department. Mr. Fergus testified that Mr. Pena's businesses were due to be examined as a random initial examination, and that he arranged for such examination.
6. Although an examination was scheduled for Mr. Pena's businesses, the

1 examination was not held as originally scheduled because Pena Auto Sales was closed  
2 as a result of a civil forfeiture case instituted by the State of Arizona.

3 7. Mr. Fergus testified that as a cost savings for Mr. Pena, he arranged to conduct  
4 an examination at one time of the businesses conducted under Mr. Pena's motor  
5 vehicle dealer's license and sales finance company license.

6 8. Assistant Attorney General Cameron Holmes ("Mr. Holmes") contacted Robert  
7 Charlton ("Mr. Charlton"), an Assistant Superintendent who supervised examiners,  
8 whereby Mr. Charlton became aware of an investigation that had been conducted by a  
9 task force that involved the Arizona Attorney General's Office, the Arizona Department  
10 of Public Safety, and Immigration and Naturalization Services ("INS").<sup>1</sup> Pena Auto  
11 Sales was one of several automobile dealers in Phoenix, Arizona, believed to have  
12 participated in providing vehicles to smugglers of undocumented aliens and illegal  
13 drugs, using false names for the purchasing and obtaining of titles to vehicles, and  
14 creating false liens to facilitate recovery of the vehicles in the event that the vehicles  
15 were seized by a law enforcement agency while engaged in the illegal smuggling  
16 activity.

17 9. Mr. Holmes was involved in an organization of regulatory and law enforcement  
18 agencies known as the Financial Investigations Resources Group, consisting of the  
19 Arizona Attorney General's Office, the Department, the Arizona Department of Public  
20 Safety, and the Phoenix Police Department.

21 10. Mr. Fergus testified that when the Department became aware that Mr. Pena's  
22 business was reopened, Pena Auto Sales was added back to the list of licensed  
23 businesses to be examined.

24 11. According to Mr. Fergus, due to the issues surrounding Pena Auto Sales and at  
25 the direction of Mr. Charlton, the Department arranged for an examination of Pena Auto  
26 Sales to be conducted by Mr. Fergus on January 31, 2005.

27 12. During the examination process, Mr. Fergus selected at random nineteen files to  
28 be reviewed.

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<sup>1</sup> After September 11, 2001, INS became known as Immigration and Customs Enforcement ("ICE").

1 13. As a result of the examination, the Department found that in seven files, Pena  
2 Auto Sales failed to provide the required notification to customers who defaulted on  
3 their retail installment contracts. The Department also found in seven files that Pena  
4 Auto Sales failed to disclose all payment terms, final payment accounts, and dates on  
5 at least seven retail installment contracts.

6 14. In an examination report, the Department noted that Pena Auto Sales did not  
7 disclose the service contract price on four Great Lakes Warranty Corporation Service  
8 Contracts that were financed by customers and included on the retail installment  
9 contract. Mr. Fergus testified that this is not a violation but, without such information,  
10 he could not verify the information contained in the retail installment contracts.

11 15. The Department provided Mr. Pena with the results of the examination and Mr.  
12 Pena was supposed to provide a written response to the Department as to how he  
13 would rectify the noted violations. Mr. Pena testified that the same day he received the  
14 information from the Department as to the violations, he took corrective measures to  
15 avoid those violations in the future.

16 16. In a letter dated December 15, 2005 (Exhibit A) directed to the attention of Mr.  
17 Charlton, Mr. Pena provided a written response to the Department's examination  
18 reports and addressed the noted violations and indicated that Pena Auto Sales has  
19 ceased selling warranties.

20 17. The Department initiated the instant disciplinary action based on the violations  
21 found as a result of the examination and information the Department received from Mr.  
22 Holmes indicating that Mr. Pena Auto Sales had engaged in illegal activity involving the  
23 use of Mr. Pena's motor vehicle dealer license.

24 18. Through this action, the Department seeks revocation of the above-mentioned  
25 licenses and the removal of Mr. Pena from those businesses.

26 19. Both Mr. Fergus and Mr. Charlton acknowledged that the violations found during  
27 the examination would not necessarily result in the Department seeking revocation of a  
28 license. Mr. Fergus testified that the violations the Department found as a result of the  
29 examination were violations the Department routinely finds.

30 20. The information that Mr. Holmes relayed to the Department originated from  
information law enforcement agencies obtained from Gary Pringle ("Mr. Pringle").

1 21. Prior to his involvement with law enforcement agencies, Mr. Pringle had been  
2 involved in repossession of vehicles and became the person who helped initiate a task  
3 force formed to investigate auto dealers selling vehicles to illegal alien smugglers and  
4 the use of false liens to recover the vehicles impounded by the INS.

5 22. Mr. Pringle had previously done repossession work for Juan Jose Collazo ("Mr.  
6 Collazo"), who, Mr. Pringle knew, used vehicles to smuggle undocumented aliens into  
7 the United States.

8 23. Mr. Pringle testified that during the time he performed repossession work for Mr.  
9 Collazo his activities were legal. He testified that subsequently the law changed and  
10 that such activity would now be considered illegal.

11 24. Mr. Pringle had left Arizona and began a business in New York City. As a result  
12 of September 11, 2001, that business failed. He then returned to Arizona where he  
13 began repossessing vehicles and performing skip tracing.

14 25. Upon his return to Arizona, Mr. Pringle became reacquainted with Mr. Collazo  
15 and was invited to participate in illegal activity involving repossessing vehicles that were  
16 used for smuggling of undocumented aliens that were seized by the INS. This occurred  
17 after the law had changed regarding repossession of impounded vehicles that were  
18 used for smuggling purposes. Mr. Pringle agreed to participate in such illegal activity.  
19 However, before Mr. Pringle performed any such work, he contacted law enforcement  
20 officials.

21 26. Because law enforcement was interested in Mr. Collazo and the illegal activities  
22 they believed he was engaged in, a task force was formed that resulted in an  
23 investigation of approximately nine auto dealerships involved in illegal activity, which  
24 included Pena Auto Sales.

25 27. During 2003 and 2004, Mr. Pringle was engaged by Pena Auto Sales to  
26 repossess approximately fifteen vehicles.

27 28. Mr. Pringle testified that, based on information obtained from a database, Pena  
28 Auto Sales had a high incidence of having vehicles that were repossessed that  
29 contained false information as to names, social security numbers and addresses of the  
30 purchasers of the vehicles, which caused him to become suspicious of Pena Auto  
Sales' business.

1 29. Mr. Pringle did not testify with specificity as to the information he obtained from  
2 the above-mentioned database and could not provide copies of the paperwork from  
3 which information contained within the database was based. Mr. Pringle testified that  
4 such information was contained in the database that was in the possession of law  
5 enforcement. There was no showing as to why such information could not be obtained  
6 or presented to establish Mr. Pringle's reliability concerning such information.

7 30. The Administrative Law Judge finds that the testimony Mr. Pringle presented  
8 concerning his suspicion of Mr. Pena involves unreliable hearsay. Such testimony is  
9 discounted and given little weight because there was no showing of reliability of the  
10 database or the information that Mr. Pringle claimed was contained therein.

11 31. Mr. Pringle testified that:

12 a. The two vehicles he recovered from INS were for persons whom he  
13 believed were associated with Mr. Collazo.

14 b. He was aware that the above-mentioned two vehicles were purchased  
15 from Pena Auto Sales, which caused him to suspect Pena Auto Sales'  
16 association with illegal alien smugglers.

17 c. With respect to the two vehicles, he did not recover the vehicles for Mr.  
18 Pena, he did not know the identity of the salesperson that sold the vehicles to  
19 the purchasers, nor did he know the nature of the sales transactions.

20 d. He suspected Mr. Pena of being involved with providing vehicles for the  
21 use of smuggling and providing false information to create false lien to retrieve  
22 those vehicles upon impound by INS. However, Mr. Pringle acknowledged that it  
23 was possible that the purchasers of the vehicles provided false information to  
24 Pena Auto Sales and, if that was the case, Pena Auto Sales stood to be hurt  
25 financially if the vehicles could not be recovered.

26 e. He was unaware of any documentation or files showing any wrongdoing  
27 by Mr. Pena.

28 f. There was one vehicle, a Ford F150 truck, that Mr. Pena initially wanted  
29 Mr. Pringle to recover from INS. However, Mr. Pringle testified that Mr. Pena  
30 decided to recover the vehicle himself and, to his knowledge, Mr. Pena was  
attempting to recover that vehicle in a lawful manner.

1 g. He went to Mr. Pena on or about January 15, 2005, and requested that  
2 Mr. Pena engage in illegal activity involving selling vehicles to smugglers of  
3 undocumented aliens. At that time, there was no discussion about falsifying  
4 titles to vehicles.

5 h. Mr. Pena initially agreed to become involved in that activity but  
6 subsequently, when Mr. Pringle contacted him by telephone, Mr. Pena changed  
7 his mind and did not want to participate in the illegal activity.

8 i. During the above-mentioned conversation, Mr. Pringle informed Mr. Pena  
9 that he was trying to purchase vehicles with fictitious names or liens and Mr.  
10 Pena declined to participate in such acts.

11 j. Around January 24, 2005, Mr. Pringle unsuccessfully attempted to contact  
12 Mr. Pena and although he left several messages for him at Pena Auto Sales, he  
13 had no further contact with Mr. Pena.

14 32. In contrast to Mr. Pringle's testimony, Mr. Pena testified that during the January  
15 2005 meeting he understood that Mr. Pringle wanted him to participate in an illegal  
16 scheme and he declined. Mr. Pena also testified that after that time, he instructed his  
17 employees to not deal with paper provided by Mr. Pringle and that he was to be notified  
18 of any further contact made by Mr. Pringle.

19 33. Despite the conflicting evidence presented as to whether Mr. Pena first accepted  
20 and then renounced his participation in an illegal scheme with Mr. Pringle, the evidence  
21 does not establish that Mr. Pena ever engaged in any illegal activity or scheme  
22 involving Mr. Pringle.

23 34. Subsequent to Mr. Pringle's attempt to have Mr. Pena engage in illegal activity,  
24 the task force initiated an investigation of approximately nine auto dealerships that  
25 included Pena Auto Sales. During that investigation, a confidential informant, Aramejo  
26 Romero ("Mr. Romero"), was sent to Pena Auto Sales on February 17, 2005. On that  
27 date, Mr. Romero dealt with Manuel Soriano ("Mr. Soriano"), the sole salesperson for  
28 Pena Auto Sales at that time.

29 35. Although Mr. Romero wore a "body bug", the evidence established that the taped  
30 conversations that occurred between Mr. Romero and Mr. Soriano, which were in

1 Spanish, were of inferior quality. Both the Department and Mr. Pena acknowledged  
2 that their review of the tapes revealed that they were incoherent.

3 36. During the hearing, Larry Flick, an investigator for the Arizona Attorney General's  
4 Office ("Investigator Flick"), who was assigned to the task force but was not the case  
5 agent regarding the Pena Auto Sales investigation, testified as to what Mr. Romero told  
6 him during a debriefing after Mr. Romero and Mr. Soriano engaged in an illegal  
7 transaction.

8 37. The evidence of record established that Mr. Soriano accepted identification from  
9 Mr. Romero for the purchase of a used vehicle and that, at the time, Mr. Romero  
10 presented a driver's license having the name of and depicting a photograph of Isaac  
11 David Vallejo rather than Mr. Romero.

12 38. Mr. Soriano accepted the identification of Mr. Vallejo from Mr. Romero and sold  
13 him a vehicle in the name of Mr. Vallejo.

14 39. The Department contended that the purchase contract showing a purchase price  
15 of \$3,000.00 for the vehicle Mr. Romero purchased from Mr. Soriano using Mr. Vallejo's  
16 identification while the receipt showed payment of \$3,800.00 created a fictitious lien of  
17 \$800.00 in favor of Pena Auto Sales.

18 40. Investigator Flick testified that during the debriefing with Mr. Romero, Mr. Pena's  
19 name was never mentioned.

20 41. Mr. Pena testified that he was not at the dealership's lot when the transaction  
21 occurred between Mr. Soriano and Mr. Romero.

22 42. Mr. Pena also testified that he was unaware that Mr. Soriano engaged in such  
23 illegal activity and that he was unaware that Mr. Soriano had a criminal history.

24 43. Terry Nelson, an investigator for the Arizona Attorney General's Office,  
25 ("Investigator Nelson"), testified that he became involved in the task force in April 2004  
26 and became the assigned case agent for the investigation of Pena Auto Sales towards  
27 the end of July 2004.

28 44. The evidence of record established that as a result of the above-mentioned  
29 transaction that occurred between Mr. Soriano and Mr. Romero, Mr. Soriano was  
30 charged in *State of Arizona v. Jose Manuel Soriano*, Maricopa County Superior Court  
Case No. CR04-020382-001BT ("Case No. CR04-020382") with Conspiracy, Illegally

1 Conducting an Enterprise, Fraudulent Schemes and Artifices, Fraudulent Schemes and  
2 Practices, and Forgery.

3 45. In Case No. CR04-020382, Mr. Soriano entered a plea of guilty to Forgery, a  
4 class 4 felony. The Court entered judgment in No. CR04-020382, convicting Mr.  
5 Soriano of Forgery, a class 4 felony.

6 46. After the above conviction, Mr. Soriano met with Investigator Nelson, Assistant  
7 Attorney General Steve Lepley and a paralegal for Reginald Cooke, Mr. Soriano's legal  
8 counsel. During that meeting, Mr. Soriano was interviewed by Mr. Lepley and  
9 Investigator Nelson. Towards the end of the meeting, an affidavit (Exhibit 3) was  
10 prepared by Mr. Lepley for Mr. Soriano's execution.

11 47. Mr. Soriano's affidavit was offered into evidence by the Department for the  
12 purpose of asserting the truth of certain statements, particularly, statements reflecting  
13 that Mr. Soriano advised Mr. Pena of Mr. Soriano's illegal activity and that Mr. Soriano  
14 worked under the supervision of Mr. Pena.

15 48. A presentence investigation report of Mr. Soriano (Exhibit 7) contains statements  
16 that directly conflict with certain statements set forth in Mr. Soriano's Affidavit.

17 49. It is noted that Mr. Soriano was in the United States illegally, that in February  
18 2005, he was arrested on a traffic warrant for driving on a suspended license, and that  
19 Mr. Soriano had previously been deported from the United States because of prior  
20 felony convictions.

21 50. The weight of the evidence of record reflects poorly on Mr. Soriano's character  
22 and casts doubt as to the accuracy of the statements contained in his Affidavit. Further,  
23 the existence of statements contained in the above-mentioned presentence  
24 investigation report that conflict with statements made in the Affidavit calls into question  
25 the accuracy of the statements contained in both documents.

26 51. Under the circumstances, the Affidavit of Mr. Soriano is discounted and afforded  
27 no weight and the above-mentioned presentence investigation report is given little  
28 weight.

29 52. Mr. Pena testified:

30 a. Between 1999 and 2004, he conducted his business lawfully.

1 b. When he hired Mr. Soriano, he had no information that indicated Mr.  
2 Soriano was a dishonest person.

3 c. He trained Pena Auto Sales salesmen to report to him in the event that  
4 they are provided with identification with a photograph that did not match the  
5 person presenting the identification, and that they should only accept correct  
6 identification.

7 d. He never placed a false lien on a vehicle for the purpose of attempting to  
8 retrieve it from the INS. Prior to September 2004, he had no knowledge that  
9 anyone at Pena Auto Sales had done that.

10 e. He was not on Pena Auto Sales' lot on February 17, 2004.

11 f. He did not authorize any illegal transaction that Mr. Soriano may have  
12 conducted.

13 g. He did not discuss with Mr. Soriano any illegal activity that occurred  
14 involving Mr. Soriano or Pena Auto Sales.

15 h. He has no connection to any alien smuggling organization engaged in  
16 using false liens. His auto dealership business did not depend on or benefit from  
17 any such organization or use of false liens.

18 i. Prior to September 2004, he never heard of a person with the last name  
19 Collazo.

### 20 CONCLUSIONS OF LAW

21 1. The Superintendent of the Department ("Superintendent") is charged with the  
22 duty to regulate all persons engaged in the motor vehicle dealer business and sale  
23 finance company business, and to enforce all statutes and rules relating to such  
24 businesses. See A.R.S. § 44-281 *et seq.*

25 2. The evidence of record as set forth above established that by failing to provide  
26 the required notification to customers who defaulted on their retail installment contracts,  
27 Pena Auto Sales violated the provisions of A.R.S. § 44-289(B).

28 3. The evidence of record established that the conduct of Pena Auto Sales in failing  
29 to disclose to each customer all required information, including payment terms, final  
30 payment amounts, and dates on all retail installment contracts, constitutes a violation of  
A.R.S. § 44-287(B).

1 4. The evidence of record established that Pena Auto Sales failed to comply with all  
2 of the requirements and prohibitions as to retail installment contracts, and thereby  
3 violated A.R.S. § 44-286.

4 5. The Department contended that Mr. Pena either knowingly engaged in selling  
5 vehicles to illegal alien smugglers and provided false titles and false liens for the  
6 purpose of recovering impounded vehicles from the INS or was negligent in the  
7 supervision of his motor vehicle business in allowing those illegal acts to occur. While  
8 the evidence presented established that the Department had reason to be concerned  
9 about Mr. Pena's business activities, there was no credible evidence presented that  
10 established Mr. Pena engaged in such illegal acts or knew of such acts and permitted  
11 them to occur.

12 6. The evidence is not convincing that Mr. Pena ever accepted Mr. Pringle's offer to  
13 engage in illegal activity to sell vehicles to illegal alien smugglers. However, even if Mr.  
14 Pringle's testimony were considered to be more persuasive than Mr. Pena's, which the  
15 Administrative Law Judge does not find to be the case, at best, the record shows that  
16 Mr. Pringle testified as to Mr. Pena accepting his offer but then later changing his mind  
17 and not performing the illegal activity.

18 7. Although the Department would have this Tribunal find the illegal acts of Mr.  
19 Soriano, as set forth in the above Findings of Fact, to be attributed to Mr. Pena, there is  
20 no credible evidence to impute that Mr. Pena either knew or should have known of such  
21 activity.

22 8. The evidence of record regarding Mr. Soriano established him to have a criminal  
23 background, and put his honesty, character and credibility at issue. Consequently, in  
24 light of Mr. Soriano's bad character and the existence of inconsistent statements made  
25 in his Affidavit juxtaposed to the presentence investigation report in Case Number No.  
26 CR04-020382, the Affidavit of Mr. Soriano is determined to not be credible and is given  
27 no weight.

28 9. Investigator Flick testified as to information relayed to him by Mr. Romero during  
29 a debriefing regarding the Romero/Soriano transaction. During the debriefing, Mr.  
30 Pena's name was not mentioned. Mr. Pena was not on the lot when the sales  
transaction occurred between Mr. Soriano and Mr. Romero. The evidence presented

1 by the Department proved that an illegal transaction occurred between Mr. Soriano and  
2 Mr. Romero but there was no credible evidence presented that showed that Mr. Pena  
3 was either of aware of or should have been aware of such illegal activity.

4 10. The weight of evidence of record failed to demonstrate that Mr. Pena knowingly  
5 committed a violation of any provision contained in Chapter 2.1 of A.R.S. Title 44 or any  
6 rule or order adopted or issued pursuant to Chapter 2.1. The weight of the evidence of  
7 record also did not establish that Mr. Pena failed to exercise due care to prevent a  
8 violation of any provision contained in Chapter 2.1 of A.R.S. Title 44 or any rule or order  
9 adopted or issued pursuant to Chapter 2.1. Consequently, no violation of A.R.S. § 44-  
10 283(A)(2) is found.

11 11. The weight of the evidence of record does not establish conduct that would  
12 constitute fraudulent misrepresentation, circumvention or concealment by Mr. Pena  
13 through whatever subterfuge or device of any of the material particulars or the nature  
14 there of required to be stated or furnished to the retail buyer within the meaning of  
15 A.R.S. § 44-283(A)(4). Consequently, no violation of A.R.S. § 44-283(A)(4) is found.

16 12. The weight of the evidence of record does not establish that Mr. Pena's conduct  
17 constitutes acts, omissions or practices in the business transactions of Pena Auto Sales  
18 that reflect personal dishonesty or unfitness to continue in office or to participate in the  
19 conduct of the affairs of Pena Auto Sales, within the meaning of A.R.S. § 6-161(A)(1).

20 13. The weight of the evidence of record does not constitute grounds for the  
21 Superintendent to order the removal of Mr. Pena from office or to order the prohibition  
22 of Mr. Pena from further participation in any manner as a director, officer, employee,  
23 agent or other person in the conduct of the affairs of Pena Auto Sales within the  
24 meaning of A.R.S. § 6-161.

25 14. The Superintendent has the authority to suspend or revoke Mr. Pena's motor  
26 vehicle dealer license and Mr. Pena's sales finance company license pursuant to A.R.S.  
27 § 44-283 if the above violations were found to have been committed knowingly or due  
28 care was not exercised. Although the weight of the evidence did not establish that the  
29 above violations were knowingly committed or that due care was not exercised, it did  
30 establish that the violations have been corrected, there were no prior violations  
presented, and the Department employees represented that generally such violations

1 do not, in any event, result in the disciplinary measures being sought. Consequently,  
2 the weight of the evidence established that discipline is not warranted in the instant  
3 matter.

4 **ORDER**

5 Based on the above, IT IS ORDERED that no disciplinary action be taken by the  
6 Department against Mr. Pena dba Pena Auto Sales.

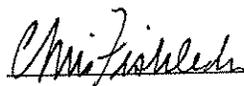
7 Done this day, January 31, 2006.

8  
9  
10 

11 \_\_\_\_\_  
12 Lewis D. Kowal  
13 Administrative Law Judge

14 Original transmitted by mail this  
15 1 day of February, 2006, to:

16  
17 Department of Financial Institutions  
18 Felicia Rotellini, Superintendent  
19 ATTN: June Beckwith  
20 2910 North 44th Street, Suite 310  
21 Phoenix, AZ 85018

22 By  \_\_\_\_\_