

NOTE: Appearing first is the Full Board summary which is the last meeting of the day. The committees will follow in the order of which time they were conducted. The Dealer Board staff felt it would benefit our readers to have the last meeting of the day appear first on the website.

~ **FINAL** ~

Meeting Summary
Motor Vehicle Dealer Board
Monday, January 12, 2009

Vice-Chairperson Wanda Lewark called the Dealer Board meeting to order at 10:52 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. The roll was called and there were 15 Board members present. Present were members Lynn Hooper, Henry Jones, David Lacy, Chip Lindsay, Hugh McCreight, Thomas Moorehead, Pat Patrick, Frank Pohanka, Kevin Reilly, Vince Sheehy, Larry Shelor, Joe Tate, Robert Woodall and Tommy Woodson. (Absent: D.B. Smit, Jonathan Blank, Todd Haymore, Jimmy Whitten). Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Wanda Neely and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office. Alice Weedon acted as Recording Secretary.

PUBLIC COMMENT

The November 10, 2008 meeting summary was approved.

STATUTORY COMMITTEE REPORTS

Dealer Practices Committee:

Chairman Hugh McCreight summarized discussions held and actions that were taken during the Committee Meeting.

- **Douglas E. Aust and Aust Enterprises.** Chairman Hugh McCreight summarized for the Board the discussion held in the committee meeting regarding Douglas E. Aust and Aust Enterprises. Based on that discussion, Mr. McCreight made the following motion: Based on the evidence and a report of an informal fact-finding conference as prepared by a hearing officer, at its May 2008 meeting, the Motor Vehicle Dealer Board assessed a \$1,000 civil penalty on Douglas E. Aust and Aust Enterprises and suspended all licenses issued by the Board to Mr. Aust for a minimum of 30 days or until what time Mr. Aust completed the dealer-operator class, whichever was longer, for alleged violations of Va. Code Sections 46.2-1510 (failure to have an established place of business); 46.2-1518 (failure to display salesperson list); 46.2-1529 (record keeping), 46.2-1529(1) and 46.2-1530 (related to the buyers order); 46.2-1532 (not completing odometer record); 46.2-1533 (failure to maintain posted business hours); 46.2-1537 (failure to have salespersons properly licensed) and 46.2-1548/1550 (use of dealer's license plates). Mr. Aust appealed the Board's decision and requested a formal hearing. The Board has reviewed and considered the facts and evidence and the report of a formal hearing as prepared by the hearing officer concerning Mr. Douglas E. Aust and Aust Enterprises Auto Auction for the alleged violations as enumerated above. Based on due consideration, the Board believes a civil penalty should be assessed against Douglas E. Aust and Aust Enterprises for violations of Va. Code Section 46.2-1533. The Board hereby assesses a \$250 civil penalty against Douglas E. Aust and Aust Enterprises

Pat Patrick seconded. The motion carried unanimously.

- **James D. Barnes and Route 100 Auto.** Chairman Hugh McCreight summarized for the Board the discussion held in the committee meeting regarding James D. Barnes and Route 100 Auto. Based on that discussion, Mr. McCreight made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning James D. Barnes t/a Route 100 Auto for alleged violations of Va. Code Sections 46.2-1533 (business hours) and 46.2-1575(2) (failure to comply subsequent to receipt of a written warning from the Department or Board). Based on due consideration, the Board believes a civil penalty should be assessed against James D. Barnes t/a Route 100 Auto. The Board hereby assesses a \$1,000 civil penalty against James D. Barnes t/a Route 100 Auto.

Lynn Hooper seconded. The motion carried unanimously.

- **Darrell E. Lay and North Stafford Auto.** Chairman Hugh McCreight summarized for the Board the discussion held in the committee meeting regarding Darrell E. Lay and North Stafford Auto. Based on that discussion, Mr. McCreight made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Darrell E. Lay t/a North Stafford Auto for alleged violations of Va. Code Sections 46.2-1575(9) (having been convicted of any criminal act involving the business of selling vehicles), 46.2-1575(10) (Willfully retaining a title to a motor vehicle that has not been completely and legally assigned to him), 46.2-1575(12) (leasing, renting, lending or otherwise allowing the use of a dealer's license plate by persons not specially authorized to do so) and 46.2-1575(18) (failing to maintain automobile liability insurance). Based on due consideration, the Board believes a civil penalty should be assessed against Darrell E. Lay t/a North Stafford Auto. The Board hereby assesses a \$1,000 civil penalty against Darrell E. Lay t/a North Stafford Auto and based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Lay in running his dealership. The Board mandates that Mr. Lay successfully complete the dealer-operator course by July 12, 2009. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Mr. Lay by the Board until what time Mr. Lay has successfully completed the course.

Larry Shelor seconded. The motion carried unanimously.

- **Charles J. Manning and M&M Motors.** Chairman Hugh McCreight summarized for the Board the discussion held in the committee meeting regarding Charles J. Manning and M&M Motors. Based on that discussion, Mr. McCreight made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Charles J. Manning t/a M & M Motors for alleged violations of Va. Code Sections 46.2-1533 (failure to maintain posted business hours) and 46.2-1575(2) (failure to comply with the law after receiving a written warning). Based on due consideration, the Board believes a civil penalty should be assessed against Charles J. Manning t/a M & M Motors. The Board hereby assesses a \$500.00 civil penalty against Charles J. Manning t/a M & M Motors; and based on due consideration, the Board believes that all licenses issued by the Board to Mr. Manning should be revoked. The Board hereby revokes all licenses issued by the Board to Mr. Manning.

Kevin Reilly seconded. The motion carried unanimously.

Licensing Committee

Chairman Chip Lindsay summarized discussions held and actions that were taken during the Committee Meeting.

- **Thurman G. Pritchard, Jr., Salesperson.** Chairman Chip Lindsay summarized for the Board the discussion held in the committee meeting regarding Thurman G. Pritchard, Jr. Based on that discussion, Mr. Lindsay made the following motion: Based on the evidence and a report of an informal fact finding conference as prepared by a hearing officer, the executive director, under the authority granted by the Motor Vehicle Dealer Board, denied the application for a salesperson’s license submitted by Mr. Thurman G. Pritchard. Mr. Pritchard appealed the denial and requested a formal hearing and the Board has reviewed and considered the facts and evidence and the report of a formal hearing as prepared by the hearing officer concerning Mr. Thurman G. Pritchard. Based on due consideration, the Board believes that Mr. Pritchard’s motor vehicle salesperson’s license should be denied. The Board hereby denies the application for a salespersons license submitted by Mr. Thurman G. Pritchard.

Larry Shelor seconded. The motion carried unanimously.

Advertising Committee

Chairman Lynn Hooper summarized discussions that were held during the Committee Meeting.

Transaction Recovery Fund Committee:

Chairman Larry Shelor summarized discussions held and actions that were taken during the Committee Meeting.

- **Donald I. Pullen and Broadview Auto Sales & Thomas J. Ramey, (1) April Selmon-Grogg, (2) Scott A. Markeim, (3) Charles W. Shoemaker, Jr. (4) Christopher T. & Michelle S. Beverly and (5) Joyce Smals and RSD Motors & Rodney J. Price.** Chairman Larry Shelor summarized for the Board the discussion held in the Committee meeting regarding Donald I. Pullen and Broadview Auto Sales & Thomas J. Ramey, (1) April Selmon-Grogg, (2) Scott A. Markeim, (3) Charles W. Shoemaker, Jr. (4) Christopher T. & Michelle S. Beverly and (5) Joyce Smals and RSD Motors & Rodney J. Price. Based on that discussion and the recommendations in these cases, Mr. Shelor made the following motion: Pursuant to § 46.2-1527.1 et. seq. of the Code of Virginia, which is known as the Motor Vehicle Transaction Recovery Fund (“Fund”), the Board has reviewed and considered a claim submitted for payment from the Fund and based on due consideration and recommendation of the hearing officer, the Board believes the following claims should be payable from the Fund. The Board hereby approves and reaffirms the following claims and payment amount subject to compliance by the claimant with statutory requirements:

Donald I Pullen and Broadview Auto Sales	\$12,747.97
April Selmon-Grogg and RSD Motors	\$3,620.49
Scott A. Markeim and RSD Motors	\$9,809.39
Charles W. Shoemaker, Jr. and RSD Motors	\$6,853.00
Christopher T & Michelle S. Beverly and RSD Motors	\$1,053.00*
Joyce Smals and RSD Motors	\$600.85

David Lacy seconded. The motion carried unanimously.

*Amended motion by Henry Jones on the Beverly’s for \$1,053.00. Frank Pohanka seconded. The motion carried unanimously.

- **(1) Michael DiBona and TLT Export and Terry L. Timmerman and (2) Nancy G. Fann and Tri State Auto and Saleem Khan.** Chairman Larry Shelor summarized for the Board the discussion held in the committee meeting regarding (1) Michael DiBona and TLT Export and Terry L. Timmerman and (2) Nancy G. Fann and Tri State Auto and Saleem Khan. Based on that discussion and the recommendations in these cases, Mr. Shelor made the following motion: Pursuant to § 46.2-1527.1 et. Seq. of the Code of Virginia, which is known as the Motor Vehicle Transaction Recovery Fund (“Fund”), the Board has reviewed and considered a claim submitted for payment from the Fund and based on due consideration and recommendation of the hearing officer, the Board believes the claims should be denied. The Board hereby denies these claims.

Lynn Hooper seconded. The motion carried unanimously.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

- **Legislative Suggestion.** Bruce Gould indicated that due to the economy crunch, some dealers are going out of business. He suggested that maybe a legislative proposal could be created so that dealers, who have a good standing with the Board, could possibly come back into the business a couple of years from now and not be responsible for carrying a bond. General discussion followed. Consensus of the Board was to take no position if such legislation was proposed.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

- **Executive Director’s Report.** Bruce Gould indicated that he will keep the Board members informed on the General Assembly issues. He also indicated that the meeting was being recording by a digital recorder.

The next meeting will be scheduled for March 9, 2009.

There being no further business to come before the Motor Vehicle Dealer Board, Vice-Chairperson Lewark adjourned the meeting at 11:51 a.m.

Meeting Summary
Dealer Practices Committee
Monday, January 12, 2009

Chairman Hugh McCreight called the Dealer Practices Committee meeting to order at 8:35 a.m. in Room 702 of the DMV Headquarters Building at 2300 W. Broad Street in Richmond. Present were Committee members Wanda Lewark, David Lacy, Chip Lindsay, Thomas Moorehead, Kevin Reilly, Vince Sheehy, Larry Shelor, Robert Woodall and Tommy Woodson. (Absent: Jonathan Blank). Other Board members present: D.B. Smit, Pat Patrick, Frank Pohanka, Henry Jones, Lynn Hooper, Joe Tate. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Wanda Neely and Frank McCormick represented the Dealer Board. Eric Fiske from the Attorney General's Office.

The November 10, 2008 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

Update: November Actions. Peggy Bailey reported on the actions taken at the Dealer Practices Committee meeting on November 10, 2008.

TABLED ISSUE: Review and Action: Formal Hearing:

- **Douglas E. Aust and Aust Enterprises.** Historical overview leading up to the formal hearing: On April 16, 2008, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Sections 46.2-1510 (failure to have an established place of business); 46.2-1518 (display of salesperson's licenses); 46.2-1529(1) (related to the buyers order); 46.2-1530 (related to the buyers order); 46.2-1532 (odometer disclosure); 46.2-1533 (business hours); 46.2-1537 (failure to have salespersons properly licensed) and 46.2-1548/1550 (use of dealer's license plates). At the May 14, 2008 Dealer Board Committee and Full Board Meeting, the Committee adopted a resolution to assess a civil penalty of \$1,000 for violations of the above said Code Sections and to successfully complete the Dealer-Operator course. Also, the Board suspended all licenses and certificates issued by the Board to Mr. Douglas E. Aust for a minimum of 30 days or until what time Mr. Aust successfully completes the dealer-operator class, which ever is longer. On June 16, 2008, Mr. Aust appealed for a formal hearing. On August 12, 2008, a formal hearing was conducted to address the alleged violations as mentioned above. Based on the information provided at the conference, the hearing officer recommended that the original civil penalty of \$250.00 be reinstated and that the hearing officer does not think that a suspension of the dealership license is appropriate. Further inspections of Aust Enterprises should be conducted to confirm that the dealership is in compliance with Board requirements.

Mr. Aust's attorney, Larry A. Pochucha was present and spoke on Mr. Aust's behalf.

Motion was made by Robert Woodall to accept the hearing officer's recommendation. Larry Shelor seconded. The motion carried unanimously.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conference:

- **James D. Barnes and Route 100 Auto.** On November 3, 2008, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Sections 46.2-1533 (business hours) and 46.2-1575(2) (failure to comply subsequent to receipt of a written warning from the Department or Board). Based on the information provided at the conference, the hearing officer recommended that the Board accept Mr. Barnes offer to close his business and assess a civil penalty of \$1,000.

Motion was made by Robert Woodall to accept the hearing officer's recommendation. Robert Woodson seconded. The motion carried unanimously.

- **Darrell E. Lay and North Stafford Auto.** On November 24, 2008, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Sections 46.2-1575(9) (having been convicted of any criminal conviction involving the business of selling vehicles), 46.2-1575(10) (Willfully retaining in possession title to a motor vehicle that has not been completely and legally assigned to him), 46.2-1575(12) (leasing, renting, lending or otherwise allowing the use of a dealer's license plate by persons not specially authorized under this title) and 46.2-1575(18) (failing to maintain automobile liability insurance, issued by a company licensed to do business in the Commonwealth, or a certificate of self-insurance as defined in 46.2-368, with respect to each dealer's license plate issued to the dealer by DMV. Based on the information provided at the conference, the hearing officer recommended that Mr. Lay attend the Dealer-Operator course and to assess a civil penalty of \$500 per violation of 46.2-1575(9),(10),(12) & (18) for a total civil penalty of \$2,000.

Mr. Lay was present and spoke on his own behalf.

Motion was made by David Lacy to accept the hearing officer's recommendation. Vince Sheehy seconded. The motion carried unanimously.

Review and Action: Formal Hearing:

- **Charles J. Manning and M & M Motors.** Historical overview leading up to the formal hearing: On July 7, 2008, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Sections 46.2-1533 (failure to maintain posted business hours) and 46.2-1575(2) (failure to comply with the law after receiving a written warning). At the September 8, 2008 Dealer Board Committee and Full Board meeting, the Committee adopted a resolution to assess a civil penalty of \$500 and to revoke all licenses issued to Mr. Manning for violations of the above said Code Sections. On September 29, 2008, the Board received Mr. Manning's request to appeal this decision. On December 1, 2008, a formal hearing was conducted to address the alleged violations of VA Code Sections 46.2-1533 (failure to maintain posted business hours) and 46.2-1575(2) (failure to comply with the law after receiving a written warning). Based on information provided at the hearing, the hearing officer recommended that the Board revoke Mr. Manning's licenses and assess a civil penalty of \$500.

Motion was made by Robert Woodall to accept the hearing officer's recommendation. Robert Woodson seconded. The motion carried unanimously.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for March 9, 2009.

The meeting adjourned at 9:16 a.m.

Meeting Summary
Dealer Licensing Committee
Monday, January 12, 2009

Chairman Chip Lindsay called the Dealer Licensing Committee meeting to order at 9:16 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members Lynn Hooper, Henry Jones, Hugh McCreight, Pat Patrick, Frank Pohanka, Joe Tate and Robert Woodall. (Absent: Jimmy Whitten) Other Board members present: Vince Sheehy, Thomas Moorehead, David Lacy, D.B. Smit, Larry Shelor, Wanda Lewark, Kevin Reilly, Thomas Woodson. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Wanda Neely and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office.

The November 10, 2008 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

Update: November Actions. Peggy Bailey reported on the actions taken at the Dealer Licensing Committee meeting on November 10, 2008.

Update: Dealer-Operator Continuing Education. Bruce Gould indicated that the next step is for regulations to be written and sent to the Governor's office for approval for publication in the Virginia Register of Regulations. From past experience, we know that during the General Assembly session, the Governor does not review proposed regulations. The draft regulations will be submitted after the General Assembly session.

OLD BUSINESS FROM THE FLOOR:

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conference:

Review and Action: Formal Hearing:

- **Thurman G. Pritchard, Jr., Salesperson.** Historical overview leading up to the formal hearing: Mr. Pritchard had been convicted of a misdemeanor and several "traffic" offenses related to the automobile sales business in North Carolina. As a result of these convictions, his dealer license was revoked and he is not allowed to be licensed in NC. When he applied for a sales license in Virginia, he did not note these convictions. Upon learning of the convictions and the circumstances surrounding these convictions, the executive director denied the license application.

Mr. Pritchard appealed and on February 6, 2008 an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1575 (1) having made a material misstatement on an application for a motor vehicle salesperson's license, (6) having used deceptive acts or practices; (8) having been convicted of any fraudulent act in connection with the business of selling vehicles; and (12) leasing, renting, lending, or otherwise allowing the use of a dealer's license plate by person not specifically authorized. Based on the information provided at the conference, the hearing officer recommended that Mr. Pritchard be allowed to reapply for a salesperson's license after an additional wait of six months. After reviewing the information provided at the informal, Mr. Gould, as authorized by the Board, denied Mr. Pritchard's application for a motor vehicle salesperson's license. On June 13, 2008, Mr. Gould received a letter from Mr. Pritchard appealing Mr. Gould's decision and requested a formal hearing. On October 8, 2008, a formal hearing was conducted to address the alleged violations as stated above. Based on the information provided at the hearing, the hearing officer recommended that, either his license be issued immediately or that he be permitted to re-file his application immediately with the answers marked correctly. His license, if possible, should be restricted to the wholesale business. He further recommended that Mr. Pritchard be assessed a civil penalty of \$500.00.

Motion was made by Lynn Hooper to deny Mr. Pritchard a license with no civil penalty. Reason for denial is because of the severity of the violations he committed in North Carolina as a dealer and the fact they were directly related to the motor vehicle sales business. Hugh McCreight seconded. The motion carried unanimously.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for March 9, 2009

The meeting adjourned at 9:29 a.m.

Meeting Summary
Advertising Committee
Monday, January 12, 2009

Chairman Lynn Hooper called the Advertising Committee meeting to order at 9:29 a.m. in Room 702, at DMV Headquarters, 2300 West Broad Street, Richmond, Virginia. Present were Committee members Kevin Reilly, Vince Sheehy, Larry Shelor, Joe Tate and Thomas Woodson (Absent: Jonathan Blank, Todd Haymore, Jimmy Whitten) Other Board members present: Thomas Moorehead, Pat Patrick, David Lacy, Hugh McCreight, Frank Pohanka, D.B. Smit, Wanda Lewark, Henry Jones. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Wanda Neely and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office.

The November 10, 2008 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

Update: November Actions. Peggy Bailey reported on the actions taken at the Dealer Practices Committee meeting on November 10, 2008.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

The next meeting was scheduled for March 9, 2009.

NEW BUSINESS FROM THE FLOOR

In reviewing the Advertising Report to the Committee, Lynn Hooper indicated that he would like to see the Advertising Reports put back into the books, rather than e-mailed.

There was no other new business from the floor.

The meeting adjourned at 9:32 a.m.

Meeting Summary
Transaction Recovery Fund Committee
Monday, January 12, 2009

Chairman Larry Shelor called the Transaction Recovery Fund Committee meeting to order at 9:32 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members: Henry Jones, David Lacy, Wanda Lewark, Pat Patrick and Frank Pohanka. (Absent: Jonathan Blank, Todd Haymore). Other Board members present: Jimmy Whitten, Hugh McCreight, D.B. Smit, Lynn Hooper, Kevin Reilly and Tommy Woodson. Executive Director Bruce Gould, Peggy Bailey and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office.

The November 10, 2008 summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conference Results:

- **Donald I. Pullen and Broadview Auto Sales & Thomas J. Ramey.** On November 9, 2007, Mr. Pullen purchased from Broadview Auto Sales, a 2004 Ford Expedition for total purchase price of \$23,499.00. As part of the transaction, he used his 2004 Ford Explorer as a trade-in. He had a balance owed of \$12,674.07 and Broadview allowed \$12,850.00 leaving a trade equity of \$175.03. Within a couple of days, Broadview sold his 2004 Ford Explorer trade-in and they were to pay off the existing lien. Broadview never paid the lien off. In January of 2008, Mr. Pullen was being held liable for the loan of a vehicle he no longer owned.

On January 25, 2008, Mr. Pullen obtained a Warrant in Debt against Broadview as well as Thomas J. Ramey, owner of Broadview Auto Sales for breach of contract. On February 27, 2008, Mr. Pullen was awarded a judgment against Broadview and Mr. Ramey; however, the judgment was voided because Broadview and Mr. Ramey had filed bankruptcy on February 20, 2008. Mr. Pullen was then forced to obtain legal counsel in order to Petition the Bankruptcy Court in order to have the debt non-dischargeable. On July 9, 2008, the United States Bankruptcy Court awarded Mr. Pullen judgment in the amount of \$13,000.00. On September 24, October 22, 24 and 31, 2008 the Dealer Board received Mr. Pullen's paperwork related to filing a claim against the Transaction Recovery Fund.

After carefully reviewing all the documentation, the staff recommends that the Recovery Fund Committee and Full Board approve Mr. Pullen's claim in the amount of \$12,747.97. This amount is based on the loan payoff of \$12,675.97 and the court costs of \$72.00. On December 2, 2008, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that the Board pay Mr. Pullen's claim of \$12,747.97.

Motion was made by Henry Jones to accept the hearing officer's recommendation. David Lacy seconded. The motion carried unanimously.

- **Michael DiBona and TLT Export & Terry L. Timmerman.** On December 6, 2006, Mr. DiBona provided Mr. Timmerman with a check payable to TLT Export in the amount of \$47,810.00 for the purchase of a new Shelby GT500 Mustang, in which Mr. Timmerman ordered on November 7, 2006. At the time, Mr. Timmerman indicated it would take approximately 12 weeks to have the special order vehicle built. Mr. DiBona requested from Mr. Timmerman the identification number so that he could track the progress of the vehicle. In February of 2007 Mr. Timmerman provided Mr. DiBona the ID number; however, the number was not valid. After many excuses of where the vehicle was and reading stories in the paper about the FBI investigating Mr. Timmerman, in June of 2007, Mr. DiBona obtained an attorney in order to pursue Mr. Timmerman and TLT Export civilly in court.

On November 9, 2007, the Circuit Court awarded Mr. DiBona judgment against Terry L. Timmerman for fraud and dishonest conduct in the amount of \$47,810.00 actual damages, \$2,000.00 punitive damages, \$1,019.00 in attorney fees and \$131.00 in court costs. In February 2008, Mr. Timmerman's surety bond company denied Mr. DiBona's claim, indicating that the bond did not become effective until January 2007, and Mr. DiBona's claim transaction began prior to that. It became apparent that Mr. Timmerman was not established as a dealer until January 31, 2007 and this transaction began in December of 2006. In September of 2008, the Dealer Board received Mr. DiBona's paper work related to filing a claim against the Transaction Recovery Fund.

After carefully reviewing all the documentation, the staff recommends that the Recovery Fund Committee and Full Board deny Mr. DiBona's claim due to the fact that Mr. Timmerman was not licensed at the time of this transaction. On December 2, 2008, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that the Board obtain a legal opinion from the State Attorney General's Office on the conflict between the judges ruling that the Commonwealth licensed Timmerman, and the code requirement that one must be licensed before a payment is awarded. If the legal opinion were in favor of Mr. DiBona, he would recommend \$20,000.00. If that opinion is that Timmerman was not licensed at the time of the transaction, then the recommendation would be to deny this claim.

Eric Fiske spoke in regards to this claim.

Motion was made by Joe Tate to deny Mr. DiBona's claim because Mr. Timmerman was not established as a dealer at the time the transaction began and more importantly, payment from the Fund cannot be made until the bond has been exhausted. Pat Patrick seconded. The motion carried unanimously.

- **Nancy G. Fann (Guardian for Grant C. Fann, age 17) and Tri State Auto & Saleem Khan.** On June 25, 2006, Grant Fann placed a bid on eBay to purchase a 2002 Toyota Celica for a purchase price of \$7,300.00. No where on the advertisement did it indicate that Tri State Auto was selling the vehicle. Mr. Grant and his grandfather took possession of the vehicle from a John Forte of Tri State Auto who also provided him with paperwork from the dealership. Upon returning to their home state of Tennessee, the car began to experience problems. By July 31, 2006, the vehicle was determined to be unsafe to drive. Nancy Fann, mother of Grant Fann, began the process of filing a complaint with eBay against Tri State Auto. eBay indicated that their Vehicle Purchase Protection Program indicated the vehicle was not qualified for coverage. Ms. Fann filed a complaint with the Consumer Affairs in Richmond and, after exhausting their efforts, forwarded Ms. Fann's complaint to the Dealer Board.

The Board indicated to Ms. Fann that an investigation was warranted and on November 20, 2006, a field representative for the Board found that John Forte working at Tri State was not licensed. The records indicate that Tri State obtained the car from Bonilla Motors in Maryland and Mr. Khan, owner of Tri State denied knowing Bonilla Motors or ever purchasing vehicles from them. The field representative contacted Bonilla and they indicated that they sold the Celica to Tri State as well as other vehicles. In May of 2007, Tri State Auto was brought to the Board for an informal fact-finding conference to address violations to the Motor Vehicle Dealer Board Codes. After being found in violation, it was recommended that Mr. Khan and Tri State be assessed a civil penalty of \$1,000 and have all licenses revoked. Mr. Khan appealed and requested a formal hearing. In October of 2007, the formal hearing was conducted and their recommendation was almost verbatim as the hearing officer's of the informal fact-finding conference.

In January of 2008, the Board reviewed the facts and findings and assessed a civil penalty of \$1,000 and revoked all licenses by the Board to Mr. Khan. In May of 2008, Ms. Fann submitted a Summons for judgment against Saleem Khan and Tri State Auto. In June 2008, the Tennessee courts awarded Ms. Fann judgment in the amount of \$12,000.00 against Saleem Khan and Tri State for loss of money in connection with her son's purchase of a vehicle deemed hazardous. In August of 2008, Consumer Affairs notified Ms. Fann and informed her that Mr. Khan and his family had left the US and returned to Pakistan. He recommended that she file a claim with the Transaction Recovery Fund in Virginia. In September of 2008, the Dealer Board received Ms. Fann's paper work related to filing a claim against the Transaction Recovery Fund.

After carefully reviewing all the documentation, staff does not have a recommendation and requested that the Recovery Fund Committee and Full Board make the determination as to deny or approve Ms. Fann's claim due to the fact that the code says in part "judgment in a court of competent jurisdiction in the Commonwealth". Her judgment was obtained in another state. On December 2, 2008, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that if there was jurisdiction here, he would recommend favorably in Ms. Fann's behalf, but not for the \$12,000, but for the \$6,000, the actual cost of the vehicle, but he did not feel he had jurisdiction to make such a recommendation. He indicated that perhaps the Board could recommend a legal review for the purpose of any legislative considerations that may be needed to address future sales via the internet.

Eric Fiske spoke on this issue as well.

Motion was made by Pat Patrick to deny this claim, since Ms. Fann filed the claim instead of her son who was the actual purchaser of the vehicle in question and because the judgment was not in a Virginia Court. Frank Pohanka seconded. The motion carried unanimously.

- **RSD Motors and Rodney J. Price.** Brief background on Mr. Price and RSD Motors: The Commonwealth of Virginia obtained criminal charges against Rodney J. Price for 8 felonies and 35 misdemeanor charges as a result of his business practices with RSD Motors. On June 23, 2008, the General District Court of Waynesboro City issued an Order against Rodney J. Price. Upon his guilty pleas; the Court suspended the misdemeanor charges pending the following conditions: (a) 2 year probation (b) pay restitution within 2 years (c) pay court costs within 2 years and (d) continue to cooperate with DMV insuring the ownership and possession of all vehicles are transferred to the rightful owners. Mr. Price fraudulently sold numerous vehicles without written consent of the owner, lienor, or titleholders. As well, as embezzle the state taxes and state fees for the vehicles he sold. Apparently, Mr. Price had misappropriated the funds he received through the sell of the vehicles, therefore, unable to obtain clear titles to the vehicles. Unfortunately, the victims have had titles held pending the lawsuits, repay the DMV fees, occurred costs for repairs, insurance, county stickers and some may have even loss possession or had to park the vehicles due to the fraudulent activities of Mr. Price and RSD Motors, Inc.

- **April Selmon-Grogg:** On February 8, 2008, Ms. Selmon-Grogg purchased a 2001 Dodge Durango for a total purchase price of \$6,305.53. On July 7, 2008, she filed a Warrant in Debt in the Waynesboro General District Court against Mr. Price. On August 1, 2008, the Waynesboro General District Court awarded Ms. Selmon-Grogg judgment against Rodney Jay Price in the amount of \$3,567.49 plus \$53.00 in costs for a total of \$3,620.49.

After carefully reviewing all the documentation, staff recommends that the Recovery Fund Committee and Full Board approve Ms. Selmon-Grogg's claim in the amount of \$3,620.40. On December 2, 2008, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that the Board pay Ms. Selmon-Grogg's claim of \$3,620.49.

Motion was made by Frank Pohanka to accept the hearing officer's recommendation. David Lacy seconded. The motion carried unanimously.

- **Scott A. Markeim:** On February 22, 2008, Mr. Markeim purchased a 2005 Dodge Stratus for a total purchase price of \$8,883.13. On April 11, 2008, Mr. Markeim filed for a Warrant in Debt against Mr. Price. On October 3, 2008, the Waynesboro General District Court awarded Mr. Markeim judgment against Mr. Price in the amount of \$9,761.39 plus \$48.00 in costs for a total of \$9,809.39.

After carefully reviewing all the documentation, staff recommends that the Recovery Fund Committee and Full Board approve Mr. Markeim's claim in the amount of \$9,481.78 plus \$48.00 in costs for a total of \$9,529.78. On December 15, 2008, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that the Board pay Mr. Markeim's claim of \$9,529.78.

Motion was made by Henry Jones to accept the hearing officer's recommendation. Pat Patrick seconded. The motion carried unanimously.

- **Charles W. Shoemaker, Jr.** On January 26, 2008, Mr. Shoemaker purchased a 1998 Ford F150 pickup for a total purchase price of \$5,799.85. On August 29, 2008, Mr. Shoemaker filed a Warrant in Debt in the Waynesboro General District court against Mr. Price in the amount of \$6,800.00 plus \$53.00 in costs. On October 3, 2008, the Waynesboro General District Court awarded Mr. Shoemaker judgment against Mr. Price in the amount of \$6,800.00 plus \$53.00 in costs for a total of \$6,853.00.

After carefully reviewing all the documentation, staff recommends that the Recovery Fund Committee and Full Board approve Mr. Shoemaker's claim in the amount of \$5,799.85, inspection fee \$16.00, the repair of windshield \$175.00 and \$53.00 in costs for a total of \$6,043.85. On December 15, 2008, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that the Board pay Mr. Shoemaker's claim of \$6,043.85.

Motion was made by Henry Jones to accept the hearing officer's recommendation. Frank Pohanka seconded. The motion carried unanimously.

- **Christopher T. & Michelle S. Beverly.** On July 6, 2007, the Beverly's purchased a 2002 Chevrolet Trailblazer for a total purchase price of \$13,529.53. On August 14, 2008, Mr. Beverly filed a Warrant in Debt against Mr. Price and RSD Motors in the amount of \$1,454.09 plus \$53.00 in costs. On September 5, 2008, the Waynesboro General District Court awarded Mr. Beverly judgment against Mr. Price and RSD Motors in the amount of \$1,454.09 with interest rate of 6% from date of judgment plus \$53.00 in costs.

After carefully reviewing all the documentation, staff recommends that the Recovery Fund Committee and Full Board approve the Beverly's claim in the amount of \$1,454.09 plus \$53.00 in costs for a total of \$1,507.09. On December 15, 2008, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that the Board pay the Beverly's claim of \$1,507.09.

Motion was made by David Lacy to accept the hearing officer's recommendation. Pat Patrick seconded. Committee wanted to discuss the issue of the warranty, so Mr. Lacy withdrew his motion.

Motion was made by Henry Jones to pay the claim based on the non-payment of the purchase of the warranty by the Beverly's in the amount of \$1,000 plus \$53.00 in court costs. (Rationale for not paying the judgment amount of \$1,454.09 is that the Board has historically considered that repairs to a vehicle, after the sale, are not necessarily in "connection with the purchase" and in this case, are not reflected as such on the face of the judgment. However, the Board determined that the Beverly's had been the victim of fraud by the action of the dealer, in that he increased the price of their vehicle in order to purchase them an extended warranty and never submitting payment or the contract to the Guardian Warranty Corporation.) David Lacy seconded. The motion carried unanimously.

- **Joyce Smals.** On December 18, 2007, Ms. Smals purchased a 2004 GMC Sonoma for a total amount of \$16,593.45. Ms. Smals was allowed \$3,000 trade in for her vehicle. On August 11, 2008, Ms. Smals obtained a Warrant in Debt against Mr. Price and RSD Motors in the amount of \$547.85 plus \$53.00 in costs. On October 3, 2008, the Waynesboro General District Court awarded Ms. Smals judgment against Mr. Price and RSD Motors in the amount of \$547.85 plus \$53.00 in costs for a total of \$600.85.

After carefully reviewing all the documentation, staff recommends that the Recovery Fund Committee and Full Board approve Ms. Smals claim in the amount of \$547.85 plus \$53.00 in costs for a total of \$600.85. On December 15, 2008, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that the Board pay Ms. Smals' claim of \$600.85.

Motion was made by Henry Jones to accept the hearing officer's recommendation. Pat Patrick seconded. The motion carried unanimously.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for March 9, 2009

The meeting adjourned at 10:34 a.m.