

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 11, 2010

Vice-Chairman Frank Pohanka called the Dealer Board meeting to order at 11:30 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. The roll was called and there were 13. Board members present. Present were members Lynn Hooper, T. K. Hughes, Henry Jones, David Lacy, Chip Lindsay, Pat Patrick, Kevin Reilly, Matt Queen, Joe Tate, Jimmy Whitten, Robert Woodall and Tommy Woodson. (Absent: Todd Haymore, Wanda Lewark, Thomas Moorehead, Larry Shelor, Sally Woodson, D.B. Smit). 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

There was no public comment.

The November 9, 2009 meeting summary was approved.

STATUTORY COMMITTEE REPORTS

Dealer Practices Committee:

Chairman Kevin Reilly summarized discussions held and actions that were taken during the Committee Meeting.

- **Bradley A. Kaufman and Custom Auto Sales, Inc.** Chairman Kevin Reilly summarized for the Board the discussion held in the committee meeting regarding Bradley A. Kaufman and Custom Auto Sales, Inc. Based on that discussion, Mr. Reilly 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 Bradley A. Kaufman and Custom Auto Sales, Inc for alleged violations of Va. Code Sections 46.2-1510 (failure to have an established place of business), 46.2-1515 (failure to display current dealer certificate), 46.2-1529 (failure to maintain all dealer records on the premises of the licensed location), 46.2-1532 (odometer disclosure), 46.2-1533 (failure to maintain posted business hours), 46.2-1547 (failure to maintain liability insurance), 46.2-1548 (dealer plate records required), 46.2-1550 (improper use of or permitting the improper use dealer's license plates), 46.2-1575(2) (failure to comply subsequent to receipt of a written warning), (9) (having been convicted of any criminal act involving the business of selling vehicles) and (18) (failure to maintain automobile liability insurance). Based on due consideration, the Board believes a civil penalty should be assessed against Bradley A. Kaufman and Custom Auto Sales, Inc. The Board hereby assesses a \$1,000 civil penalty against Bradley A. Kaufman and Custom Auto Sales, Inc; and based on due consideration, the Board believes that all licenses issued by the Board to Mr. Bradley A. Kaufman should be suspended until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative. The Board hereby suspends all licenses issued by the Board to Mr. Bradley A. Kaufman until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative.

Matthew Queen seconded. The motion carried unanimously.

- **Jeffrey S. Jennings and Jennings Automotive, LLC.** Chairman Kevin Reilly summarized for the Board the discussion held in the committee meeting regarding Jeffrey S. Jennings and Jennings Automotive, LLC. Based on that discussion, Mr. Reilly 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 Jeffrey S. Jennings and Jennings Automotive, LLC. for alleged violations 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 (failure to maintain all dealer records on the premises of the licensed location), 46.2-1537 (failure to have salespersons properly licensed), 46.2-1550 (improper use of or permitting the improper use dealer's license plates), 46.2-1574 (failure to be responsible for the acts of the dealers salespersons) and 46.2-1575(2) (failure to comply subsequent to receipt of a written warning). Based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Jeffrey S. Jennings in running his dealership. The Board mandates that Mr. Jeffrey S. Jennings successfully complete the dealer-operator course by March 31, 2010. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Mr. Jeffrey S. Jennings by the Board until what time Mr. Jeffrey S. Jennings has successfully completed the course.

Robert Woodall seconded. The motion carried unanimously.

- **John W. Hawk and Auto Wholesalers of Orange.** Chairman Kevin Reilly summarized for the Board the discussion held in the committee meeting regarding John W. Hawk and Auto Wholesalers of Orange. Based on that discussion, Mr. Reilly made the following motion: The Board has reviewed and considered the facts and evidence and the report of a formal hearing as prepared by the hearing officer concerning John W. Hawk and Auto Wholesalers of Orange for alleged violations of Va. Code Sections 46.2-1515 (failure to display current dealer certificate), 46.2-1516 (Supplemental sales location), 46.2-1529 (Failure to maintain all dealer required records), 46.2-1539 (inspections of vehicles required, in specific, safety inspection requirements), 46.2-1547 (failure to have liability insurance on his dealer plates), 46.2-1548/1550 (improper use of or permitting the improper use dealer's license plates), 46.2-1559 (Records to be kept by dealers; inspection), 46.2-1574 (failure to be responsible for the acts of the dealers salespersons) and 46.2-1575(2) (failure to comply subsequent to receipt of a written warning/willful failure to comply), (4) (Defrauding any retail buyer to the buyer's damage), (6) (having used deceptive acts or practices), (7) (Knowingly advertising by any means any assertion, representation, or statement of fact which is untrue, misleading, or deceptive) and (18) (failure to maintain automobile liability insurance). Based on due consideration, the Board believes a civil penalty should be assessed against John W. Hawk and Auto Wholesalers of Orange. The Board hereby assesses a \$6,000 civil penalty against John W. Hawk and Auto Wholesalers of Orange; and based on due consideration, the Board believes that Mr. Hawk must refund to customers any and all processing fees collected by this dealer and/or his salespersons as this dealer does not charge a processing fee. Mr. Hawk must conduct a self-audit by March 31, 2010 of all of its retail buyers orders in order to identify instances where a processing fee was collected. The audit must include at minimum, a written report detailing how the audit was performed; the number of buyer's orders reviewed; and a listing of all customers who paid a processing fee. Board staff will "spot check" buyer's orders and therefore all records and buyer's orders must be readily available to MVDB staff.

Within 30 days of the Board's staff review of the audit report, Mr. Hawk must refund to customers, any processing fees collected. Failure to be the subject of a satisfactory inspection and refund all processing fees within the time frames as stated in this resolution, will result in the suspension of all licenses and certificates issued to Mr. Hawk by the Board until such time that he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative and all processing fees have been refunded to customers. Based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. John W. Hawk in running his dealership. The Board mandates that Mr. John W. Hawk successfully complete the dealer-operator course by March 31, 2010. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Mr. John W. Hawk by the Board until what time Mr. John W. Hawk has successfully completed the course.

Joe Tate seconded. The motion carried unanimously.

Licensing Committee

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

- **Update: Continuing Education Regulations.** Chairman Chip Lindsay summarized for the Board the discussion held in the committee meeting regarding Continuing Education Regulations.
- **Diane M. Acree, Salesperson.** Chairman Chip Lindsay summarized for the Board the discussion held in the committee meeting regarding Diane M. Acree. Based on that discussion, Mr. Lindsay 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 Diane M. Acree for alleged violations of Va. Code Sections 46.2-1575 (4) defrauding any other person in the conduct of the licensee's business; (6) having used deceptive acts or practices; (8) having been convicted any fraudulent act in connection with the business of selling vehicles and (13) having been convicted of a felony. Based on due consideration, the Board believes no action should be taken against Diane M. Acree. The Board hereby takes no further action against Diane M. Acree.

Henry Jones seconded. The motion carried unanimously.

- **Eugene L. Helmick, Salesperson.** Chairman Chip Lindsay summarized for the Board the discussion held in the committee meeting regarding Eugene L. Helmick. Based on that discussion, Mr. Lindsay 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 Mr. Eugene L. Helmick for alleged violations of Va. Code Sections 46.2-1575 (4) defrauding any other person in the conduct of the licensee's business; (6) having used deceptive acts or practices; (8) having been convicted any fraudulent act in connection with the business of selling vehicles and (13) having been convicted of a felony. Based on due consideration, the Board believes no action should be taken against Mr. Eugene L. Helmick. The Board hereby takes no further action against Mr. Eugene L. Helmick.

Henry Jones seconded. The motion carried unanimously.

- **Michael W. Helmick, Salesperson.** Chairman Chip Lindsay summarized for the Board the discussion held in the committee meeting regarding Michael W. Helmick. Based on that discussion, Mr. Lindsay 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 Mr. Michael W. Helmick for alleged violations of Va. Code Sections 46.2-1575 (4) defrauding any other person in the conduct of the licensee's business; (6) having used deceptive acts or practices; (8) having been convicted any fraudulent act in connection with the business of selling vehicles and (13) having been convicted of a felony. Based on due consideration, the Board believes no action should be taken against Mr. Michael W. Helmick. The Board hereby takes no further action against Mr. Michael W. Helmick

Henry Jones seconded. The motion carried unanimously.

- **Eugene B. Helmick, Salesperson.** Chairman Chip Lindsay summarized for the Board the discussion held in the committee meeting regarding Eugene B. Helmick. Based on that discussion, Mr. Lindsay 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 Mr. Eugene B. Helmick for alleged violations of Va. Code Sections 46.2-1575 (4) defrauding any other person in the conduct of the licensee's business; (6) having used deceptive acts or practices; (8) having been convicted any fraudulent act in connection with the business of selling vehicles and (13) having been convicted of a felony. Based on due consideration, the Board believes no action should be taken against Mr. Eugene B. Helmick. The Board hereby takes no further action against Mr. Eugene B. Helmick

Henry Jones 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.

- **David Barton and Terry L. Timmerman and TLT Export.** Vice-Chairman Henry Jones summarized for the Board the discussion held in the committee meeting regarding David Barton and Terry L. Timmerman and TLT Export. Based on that discussion and the recommendations in these cases, Mr. Jones 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 claim should not be payable from the Fund.

T.K. Hughes seconded. The motion carried unanimously.

NEW BUSINESS

NEW BUSINESS FROM THE FLOOR

The next meeting will be scheduled for March 8, 2010.

- **Executive Director's Report.** Bruce Gould indicated that Todd Haymore, from the Department of Agriculture and Consumer Services, will no longer be a Board member, due to his recent promotion.

There being no further business to come before the Motor Vehicle Dealer Board, Vice-Chairman Pohanka adjourned the meeting at 11:49 a.m.

Meeting Summary
Dealer Practices Committee
Monday, January 11, 2010

Chairman Kevin Reilly called the Dealer Practices Committee meeting to order at 9:02 a.m. in Room 702 of the DMV Headquarters Building at 2300 W. Broad Street in Richmond. Present were Committee members T.K. Hughes, David Lacy, Chip Lindsay, Matt Queen, Robert Woodall, and Tommy Woodson. (Absent: Wanda Lewark, Thomas Moorehead, Sally Woodson, Larry Shelor). Other Board members present: Joe Tate, Frank Pohanka, Henry Jones, Pat Patrick, Lynn Hooper, 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.

The November 9, 2009 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 9, 2009.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

Review and Action: Information Fact-Finding Conferences:

- **Bradley A. Kaufman and Custom Auto Sales, Inc.** On October 20, 2009, 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), 46.2-1515 (failure to display current dealer certificate), 46.2-1529 (failure to maintain all dealer records on the premises of the licensed location), 46.2-1532 (odometer disclosure), 46.2-1533 (failure to maintain posted business hours), 46.2-1547 (failure to maintain liability insurance), 46.2-1548 (dealer plate records required), 46.2-1550 (improper use of or permitting the improper use dealer's license plates), 46.2-1575(2) (failure to comply subsequent to receipt of a written warning), (9) (having been convicted of any criminal act involving the business of selling vehicles) and (18) (failure to maintain automobile liability insurance). Based on the information provided at the conference, the hearing officer recommended that Mr. Kaufman take the Dealer-Operator Course and to assess a civil penalty of 1,000. It was noted that Mr. Kaufman has already taken the course in the past.

Motion was made by Robert Woodall to suspend his license until he has a satisfactory inspection and assess a civil penalty of \$1,000. Matthew Queen seconded. The motion carried unanimously.

- **Jeffrey S. Jennings and Jennings Automotive, LLC.** On December 16, 2009, 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 (failure to maintain all dealer records on the premises of the licensed location), 46.2-1537 (failure to have salespersons properly licensed), 46.2-1550 (improper use of or permitting the improper use dealer's license plates), 46.2-1574 (failure to be responsible for the acts of the dealers salespersons) and 46.2-1575(2) (failure to comply subsequent to receipt of a written warning). Based on the information provided at the conference, the hearing officer recommended Mr. Jennings take the Dealer-Operator Course at the earliest opportunity and a complete inspection of Jennings Automotive, LLC be conducted prior to the end of the first quarter of 2010.

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

Motion was made by Matthew Queen to accept the hearing officer's recommendation. Tommy Woodson seconded. The motion carried unanimously.

Review and Action: Formal Hearing:

- **John W. Hawk and Auto Wholesalers of Orange.** Historical overview leading up to the formal hearing: On June 9, 2009, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Sections 46.2-1515 (failure to display current dealer certificate), 46.2-1516 (Supplemental sales location), 46.2-1529 (Failure to maintain all dealer required records), 46.2-1539 (inspections of vehicles required, in specific, safety inspection requirements), 46.2-1547 (failure to have liability insurance on his dealer plates), 46.2-1548/1550 (improper use of or permitting the improper use dealer's license plates) 46.2-1559 (Records to be kept by dealers; inspection), 46.2-1574 (failure to be responsible for the acts of the dealers salespersons) and 46.2-1575(2) (failure to comply subsequent to receipt of a written warning/willful failure to comply), (4) (Defrauding any retail buyer to the buyer's damage), (6) (having used deceptive acts or practices), (7) (Knowingly advertising by any means any assertion, representation, or statement of fact which is untrue, misleading, or deceptive) and (18) (failure to maintain automobile liability insurance). At the July 13, 2009 Dealer Board Committee and Full Board Meeting, the Committee adopted a resolution to assess a civil penalty of \$9,500 for violations of the above said Code Sections. Also, the Board revoked the dealer's license. On July 20, 2009, Mr. Hawk appealed and requested a formal hearing. On October 6, 2009, a formal hearing was conducted to address the above alleged violation(s). Based on the information provided at the hearing, the hearing officer recommended that a civil penalty of \$12,000 be assessed and revocation of licenses and the return of all dealer tags.

Mr. Hawk and his attorney, Robert Cunningham, were present and Mr. Cunningham spoke on behalf of his client.

Motion was made by Chip Lindsay to assess a civil penalty of \$6,000 against Mr. Hawk and Auto Wholesalers of Orange; Mr. Hawk must refund to customers any and all processing fees collected, a self-audit be conducted by March 31, 2010 of all retail buyers orders in order to identify instances where a processing fee was collected; the Board will spot check buyer's orders and records, therefore all records and buyers orders must be readily available to the Dealer Board; within 30 days must refund any processing fees collected; and Mr. Hawk must successfully complete the Dealer Operator Course by March 31, 2010. Matthew Queen seconded. The motion carried unanimously.

- **Agentti Buying Service.** Jeff Pelfrey and Tim Churchwell introduced their company as a consulting company comprised of professionals and experts in the automobile industry that educate and advise consumers in connection with automobile model selection, research, location of available vehicles, and the sales process and the paperwork. Their services help consumers approach the automobile purchase process with a higher level of understanding of the vehicles in which they are interested as well as the process. Fees are collected before any advice or guidance is provided, with the understanding that the client is hiring Agentti for the purpose of professional advice on vehicle and feature selection, and these fees are not in any way connected to or contingent upon the purchase of a vehicle. After much discussion, the Board members indicated that they are not in a position to make a decision or approve their consulting business and advised Mr. Pelfrey and Mr. Churchwell that if they decided to proceed, they must abide by the Virginia laws and regulations.

NEW BUSINESS FROM THE FLOOR

The next meeting was scheduled for March 8, 2010.

The meeting adjourned at 10:09 a.m.

Meeting Summary
Dealer Licensing Committee
Monday, January 11, 2010

Chairman Chip Lindsay called the Dealer Licensing Committee meeting to order at 10:10 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members Lynn Hooper, T.K. Hughes, Henry Jones, Pat Patrick, Frank Pohanka, Joe Tate, Jimmy Whitten and Robert Woodall. Other Board members present: David Lacy, Kevin Reilly, Matthew Queen, 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.

The November 9, 2009 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 Licensing Committee meeting on November 9, 2009.
- **Update: Dealer-Operator Continuing Education.** Bruce Gould indicated the process is moving along. The regulations were been published in the VA Register of Regulations about two weeks ago. As part of the public comment period/process, a public hearing is scheduled for January 27. The 60 day public comment period will end on February 19. Comments may be posted on the Virginia Town Hall or submitted directly to the Board. Once the public comment period is over there is a required 15 day period in order to put together the public comments and make revisions based on those comments. This will take us to March 7, at which time we can submit the package to VA Town Hall to begin the final leg of this process. By March 10, Bruce should be able to forward the package to Department of Planning and Budget; they have 14 days to comment, which would be March 24. It can then be sent to the Secretary of Transportation, in which they have 7 days to review and March 31 on to the Governor's Office and they do not have a deadline. Hopefully by May 10 the final regulations can be published in the VA Register of Regulations. The regulations would take 30 days to become effective.

OLD BUSINESS FROM THE FLOOR:

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conferences:

- **Diane M. Acree, Salesperson.** On November 18, 2009, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Sections 46.2-1575 (4) defrauding any other person in the conduct of the licensee's business; (6) having used deceptive acts or practices; (8) having been convicted any fraudulent act in connection with the business of selling vehicles and (13) having been convicted of a felony. Based on the information provided at the conference, the hearing officer recommended that Ms. Acree's license be suspended for 90 days

for the violation of (13), having been convicted of a felony. He also indicated that he sees no need for any civil penalty as Ms. Acree has paid enough in penalties.

Ms. Acree was present and spoke on her own behalf as well as Eugene L. Helmick, Michael W. Helmick and Eugene B. Helmick.

- **Mr. Eugene L. Helmick, Salesperson.** On November 18, 2009, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Sections 46.2-1575 (4) defrauding any other person in the conduct of the licensee's business; (6) having used deceptive acts or practices; (8) having been convicted any fraudulent act in connection with the business of selling vehicles and (13) having been convicted of a felony. Based on the information provided at the conference, the hearing officer recommended that Mr. Helmick's license be suspended for 90 days for the violation of (13), having been convicted of a felony. He also indicated that he sees no need for any civil penalty as Mr. Helmick has paid enough in penalties.
- **Mr. Michael W. Helmick, Salesperson.** On November 19, 2009, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Sections 46.2-1575 (4) defrauding any other person in the conduct of the licensee's business; (6) having used deceptive acts or practices; (8) having been convicted any fraudulent act in connection with the business of selling vehicles and (13) having been convicted of a felony. Based on the information provided at the conference, the hearing officer recommended that Mr. Helmick's license be suspended for 90 days for the violation of (13), having been convicted of a felony. He also indicated that there is no civil penalty in this case and further recommended that any other suspensions of members of his family be not served at the same time.
- **Mr. Eugene B. Helmick, Salesperson.** On December 3, 2009, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Sections 46.2-1575 (4) defrauding any other person in the conduct of the licensee's business; (6) having used deceptive acts or practices; (8) having been convicted any fraudulent act in connection with the business of selling vehicles and (13) having been convicted of a felony. Based on the information provided at the conference, the hearing officer recommended that Mr. Helmick's license be suspended for 90 days for the violation of (13), having been convicted of a felony. He also indicated that there is no civil penalty in this case and further recommended that any other suspensions of members of his family be not served at the same time.

Motion was made by Pat Patrick to take no further action against Diane M. Acree, Eugene L. Helmick, Michael W. Helmick and Eugene B. Helmick. Henry Jones 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 8, 2010.

The meeting adjourned at 10:32 a.m.

Meeting Summary
Advertising Committee
Monday, January 11, 2010

Chairman Lynn Hooper called the Advertising Committee meeting to order at 10:33 a.m. in Room 702, at DMV Headquarters, 2300 West Broad Street, Richmond, Virginia. Present were Committee members Frank Pohanka, Matt Queen, Kevin Reilly, Joe Tate, Jimmy Whitten and Tommy Woodson (Absent: Larry Shelor, Todd Haymore, Sally Woodson). Other Board members present: T.K. Hughes, Henry Jones, David Lacy, Pat Patrick, Frank Pohanka, Chip Lindsay, Robert Woodall. 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 9, 2009 meeting 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

The next meeting was scheduled for March 8, 2010.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The meeting adjourned at 10:35 a.m.

Meeting Summary
Transaction Recovery Fund Committee
Monday, January 11, 2010

Vice-Chairman Henry Jones called the Transaction Recovery Fund Committee meeting to order at 10:35 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, Pat Patrick, Frank Pohanka, Matt Queen and Joe Tate. (Absent: Larry Shelor, Todd Haymore, Wanda Lewark). Other Board members present: T.K. Hughes, Kevin Reilly, Chip Lindsay, Jimmy Whitten, Robert Woodall, Tommy 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 9, 2009 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:

- **David Barton and Terry L. Timmerman and TLT Export.** In May of 2006, Mr. Barton met Mr. Timmerman, and expressed an interest in purchasing a vehicle from Mr. Timmerman. After a successful transaction of the purchase of a 2007 Toyota Camry, Mr. Barton asked if Mr. Timmerman could locate a 2001-2004 Porsche 911 Cabriolet. After a few weeks, Mr. Timmerman indicated that he had purchased a 2001 Porsche 911 with 20,000 miles for \$41,600.00. The week of October 16, 2006, Mr. Timmerman went to Mr. Barton's office and picked up two checks. One being from his personal Bank of America check for \$3,600 and one check from Capital One for \$38,000.00. Mr. Timmerman indicated that he would be going to Florida in a few weeks to inspect the vehicle and complete the necessary paper work in order to obtain titles for the vehicle. On October 26, Mr. Barton contacted Mr. Timmerman in regards to the status of the Porsche and he indicated he was in Florida and that he had a bad feeling about the Porsche and he suspected it to be a flood damaged vehicle and he wasn't going to take the vehicle. Mr. Barton then sent Mr. Timmerman an e-mail and asked him to contact Capital One and have the loan cancelled.

On November 18, 2006, Mr. Timmerman called Mr. Barton and indicated he had purchased a 2002 Porsche 911 with 16,000 miles. From December 6, 2006 through March 2007, Mr. Barton continued to have contact with Mr. Timmerman and each time he would give him one excuse after the other regarding delivery of the vehicle. On June 6, 2007, Mr. Barton learned that the FBI had raided Mr. Timmerman's home.

On December 3, 2008, Jeanne Laurer, Esquire on behalf of Mr. Barton, submitted to the Dealer Board, as prior notification, a "Complaint" that had been filed with the Circuit Court of the City of Virginia Beach against Terry L. Timmerman t/a TLT Export Auto Broker and Capital One Auto Finance. On January 6, 2009, the Dealer Board staff acknowledged receipt of the possible claim against the Motor Transaction Recovery Fund (Fund). However, upon a careful review of the Complaint, the Dealer Board staff referred Ms. Laurer's client's claim to the dealer's surety bond.

On May 29, 2009, the Circuit Court of the City of Virginia Beach awarded David Barton a default judgment against Terry L. Timmerman t/a TLT Export Auto Broker for fraud and dishonest conduct in the amount of \$41,600.00 actual damages, \$5,500.00 in attorney fees and \$131.00 court costs. On July 7, 2009, Mr. Laurer submitted a letter with attachments to the Dealer Board and noted that they have received payment from the dealer's surety bond in the amount of \$2,190.00. Counsel has now requested consideration of payment from the Fund for her client for the maximum amount of \$20,000.00. On July 9, 2009, the Dealer Board staff sent a letter to counsel acknowledging receipt of her client's claim and requested additional information in order to complete the review process.

A review of all the documentation shows that on October 18, 2006, Mr. Barton paid \$38,000 to TLT Export for the purchase of a vehicle. According to the Dealer Board records, Terry L. Timmerman t/a TLT Export was not established as a licensed dealer with the Board until January 31, 2007. On November 18, 2009, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer concluded that there is no jurisdiction provided by Code to allow payment in this case.

Motion was made by Joe Tate to accept the hearing officer's recommendation and reject the claim. Frank Pohanka seconded. The motion carried unanimously.

- **Jeffrey W. Timby and Rivera Motors, LLC.** On December 26, 2008, Mr. Timby entered into a contract to purchase a 2005 BMW from Rivera Motors, LLC for a total purchase price of \$34,399.44. Mr. Timby presented payment in the form of a pre-approved loan from Navy Federal Credit Union (NFCU) for the purchase. In addition, Mr. Timby traded in a 2003 Infiniti and was given an allowance of \$15,003.00 with an estimated balance of owed \$15,003.00 making the net trade in balance of \$0. Mr. Rivera ensured him that he would pay off the existing loan to NFCU on the 2003 Infiniti. From January through June 2009, Mr. Timby's wife noticed that the 2003 Infiniti still remained on their NFCU monthly statements. There were three payments of \$1,000 each recorded on the statements for January, February and April 2009.

On June 24, Mr. Timby made a payment of \$319.02 on the Infiniti in order to avoid adverse credit action against him. Mr. Timby spoke with a loan officer from NFCU, whom confirmed that the Infiniti's loan had never been paid off and they still held legal title to the vehicle. He also confirmed that Rivera Motors LLC had made 3 payments of \$1,000 each on the Infiniti and that NFCU had received title to the BMW that Mr. Timby had purchased from Rivera. After that, Mr. Timby contacted Mr. Rivera and he indicated that Rivera Motors, LLC had gone out of business in April 2009. Mr. Rivera apologized for not paying off the vehicle prior to the business closing and provided Mr. Timby with the name of his attorney to initiate the legal process to seek reimbursement. He also indicated that the Infiniti had been sold to a third party.

Mr. Timby acquired legal representation from Stricker C. Stanford, IV, Esquire. Mr. Timby has continued to make payments on the Infiniti to NFCU in order to avoid credit action against him until this matter is resolved. On July 15, 2009 Mr. Sanford submitted to the Dealer the Warrant in Debt that had been filed in the Norfolk General District Court against Rivera Motors, LLC. On August 13, 2009, the Norfolk General District Court awarded Jeffrey Timby judgment against Rivera Motors, LLC in the amount of \$12,163.19 with 6% interest from date of 5/3/09 until paid and \$41.00 in costs.

On November 18, 2009, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended payment from the Fund to Mr. Timby the amount of \$12,002.05.

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

- **Joshua L. King and Tylors Blue Ridge Auto Sales.** On April 19, 2009 Mr. King saw an advertisement on "Craig's List" posted by Anthony "Michael" Tedesco regarding a 1998 Cadillac Deville for sale that was in excellent running condition. On April 21, Mr. King met with Mr. Tedesco at Tylors Blue Ridge Auto Sales and entered into an agreement to purchase the Cadillac for a total purchase price of \$3,800.45. Mr. King purchased the vehicle "As Is" and "AS IS-NO WARRANTY".

Mr. King drove the vehicle 10.24 miles from the dealer's lot and the vehicle's engine overheated, shut down and could not be driven. He called Mr. Tedesco and indicated that he didn't want the vehicle as it broke down shortly driving it off the lot. Mr. Tedesco refused to give Mr. King his money back and insisted that he could fix the vehicle. Mr. King then paid to have the vehicle towed back to the dealership.

On April 24, Mr. Tedesco called Mr. King and indicated that the vehicle had been repaired. Mr. King, that same day, picked the vehicle up. Mr. King left the dealership and approximately 10.31 miles the vehicle overheated again. He called Mr. Tedesco and told him about the vehicle breaking down and his response was "It's your problem now". Mr. King had the vehicle towed to his home and had a mechanic look it. The diagnostic test showed that the vehicles head gaskets were blown and it needed an engine. On April 27 Mr. King towed the vehicle to the dealership and left it on the lot in their custody and control.

On May 20, 2009, Mr. King filed a Warrant in Debt in the Prince William General District Court against Tylors Blue Ridge Auto Sales in the amount of \$4,050.00 for the total cost of vehicle, towing fees and retribution for cost of rental car. On July 30, 2009, the Prince William General District Court awarded Mr. King a default judgment against Tylor's Blue Ridge Auto Sales in the amount of \$4,050.00 plus costs in the amount of \$53.00. On August 31, 2009, Mr. King submitted to the Dealer Board documentation for consideration of payment from the Motor Vehicle Transaction Recovery Fund (Fund).

After carefully reviewing all the documentation, Mr. King believes that Mr. Tedesco falsely misrepresented the vehicle as being in excellent running condition, as advertised on Craig's List, as well as his verbal statement to him at the time of purchase, Mr. King did sign the Buyer's Order and the Buyer's Guide which clearly disclosed that the vehicle was being sold "As Is". On November 18, 2009 an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that Mr. King should not receive a payment from the Fund.

Motion was made by Frank Pohanka to accept the hearing officer's recommendation. David Lacy seconded. All in favor: 4 (Jones, Lacy, Pohanka, Queen). Opposed: 2 (Tate and Patrick). The motion carried.

- **Wendy G. Zelaya and Auto Express of Manassas, Inc.** On April 5, 2007, Ms. Zelaya went to Auto Express of Manassas in hopes of purchasing a vehicle with the dealership arranging the financing. They presented her with a Buyer's Order and Retail Installment Contract for a 2006 Ford F-150 for a sales price of \$43,200.00. Ms. Zelaya signed the documents and made a down payment of \$1,500.00.

After Ms. Zelaya took possession of the vehicle; numerous lenders had declined to approve the retail installment contract for the purchase. On April 6, 2007, Ms. Zelaya received a credit denial letter from Capital One Auto Finance and they had turned down her credit on the purchase of the 2006 Ford F-150. On April 7, 2007, she returned to Auto Express and demanded recession of the contract and the return of her \$1,500.00 down payment. Auto Express refused to allow Ms. Zelaya to rescind the contract, indicating she had no basis to rescind the transaction. David Moncayo, the finance manager for Auto Express then represented to Capital One that Ms. Zelaya's income was \$6,900 per month which was more than three times her stated income. She indicated that she only made \$12.50 a hour, but Mr. Moncayo informed her that if anyone from the bank called her, to tell them she made \$6,900.00. She indicated that she did not want to do that and simply wanted to return the vehicle.

Based on Auto Express' statement of income, they were able to get the loan reevaluated and funded by Capital One Auto Finance. Auto Express had misrepresented her income so that it could complete the sale. Ms. Zelaya made approximately 4 payments and knew she could not continue to do so. In an effort to rid herself of the vehicle, she took the truck to Carmax, but they only offered her \$16,500 which was only a fraction of what she owed. She stopped making payments and voluntarily surrendered the truck back to Capital One. Capital One sold the truck at auction as part of the repossession process and then notified Ms. Zelaya that she still owed over \$30,000 related to the default of the loan. Ms. Zelaya then sought legal counsel in order to pursue Auto Express for the fraudulent misrepresentations that were made to her in connection with the purchase.

On March 30, 2009, Thomas B. Christiano, attorney for Ms. Zelaya, submitted to the Dealer Board a "Complaint" that was filed in the Circuit Court for Fairfax County against Auto Express of Manassas, Inc. On June 19, 2009, the Circuit Court of Fairfax County awarded Ms. Zelaya a default judgment against Auto Express of Manassas, Inc. in the amount of \$38,606.53 in compensatory damages, \$115,815.59 in treble damages; \$8,297.00 in attorney fees and \$216.00 in court costs.

On November 30, 2009, an informal fact-finding conference was conducted and based on the information provided at the conference; the hearing officer recommended that Ms. Zelaya should be awarded the full amount of \$20,000.00, which is the maximum the Fund can provide by Code.

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

NEW BUSINESS FROM THE FLOOR

- Joe Tate brought up an issue regarding the General Assembly transferring money from the Transaction Recovery Fund to the General Fund. Bruce Gould indicated that this past year, more money came out of the Fund than what was collected. General discussion followed.

Motion was made by Joe Tate to have Bruce Gould draft a resolution to present to the General Assembly expressing concerns with funds being transferred from the Transaction Recovery Fund. Pat Patrick seconded. The motion carried unanimously.

The next meeting was scheduled for March 8, 2010.

The meeting adjourned at 11:22 a.m.