

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, November 10, 2008

Chairman D. B. Smit called the Dealer Board meeting to order at 12:48 p.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. The roll was called and there were 12 Board members present. Present were members Jonathan Blank, Lynn Hooper, Henry Jones, David Lacy, Wanda Lewark, Hugh McCreight, Pat Patrick, Kevin Reilly, Joe Tate, Jimmy Whitten and Tommy Woodson. (Absent: Frank Pohanka, Todd Haymore, Chip Lindsay, Thomas Moorehead, Vince Sheehy, Larry Shelor and Robert Woodall). Executive Director Bruce Gould, Peggy Bailey and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office. Alice Weedon acted as Recording Secretary.

PUBLIC COMMENT

Mr. Akbary spoke again on his own behalf referencing the decision to revoke his license.

The September 8, 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.

- **Ayman J. Awadallah and A & M Auto Sales, LLC.** Chairman Hugh McCreight summarized for the board the discussion held in the committee meeting regarding Ayman J. Awadallah and A & M Auto Sales, LLC. 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 Ayman J. Awadallah and A & M Auto Sales, LLC for alleged violations of VA Code Sections 46.2-1529 (related to record keeping), 46.2-1530 (not completing buyers order), 46.2-1550 (use of dealer's license plates), 46.2-1575(1) (material misstatement) and (2) (failure to comply subsequent to receipt of a written warning from the Board or any willful failure to comply with the Dealer laws) and 46.2-1575(9) (having been convicted of any criminal act involving the business of selling vehicles). Based on due consideration, the Board believes a civil penalty should be assessed against Mr. Ayman J. Awadallah and A & M Auto Sales, LLC. The Board hereby assesses a \$5,000 civil penalty against Mr. Ayman J. Awadallah and A & M Auto Sales, LLC; and based on due consideration, the Board believes that A & M Auto Sales should be re-inspected. The Board hereby directs that a Motor Vehicle Dealer Board field representative to re-inspect A & M Auto Sales within 30 days. If the inspection is not satisfactory, all licenses issued by the Board to Mr. Ayman J. Awadallah be suspended until what time as a satisfactory inspection is completed and based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Ayman J. Awadallah in running his dealership. The Board mandates that Mr. Ayman J. Awadallah successfully complete the dealer-operator course by May, 10, 2009. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Mr. Ayman J. Awadallah by the Board until what time Mr. Ayman J. Awadallah has successfully completed the course.

Mr. Awadallah spoke on his own behalf again.

Jimmy Whitten seconded. The motion carried unanimously.

- **Mohammad S. Nakbeen and A & S Imports.** Chairman Hugh McCreight summarized for the board the discussion held in the committee meeting regarding Mohammad S. Nakbeen and A & S Imports. 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 Mohammad S. Nakbeen and A & S Imports for alleged violations of VA Code Section 46.2-1533 (failure to maintain posted business hours). Based on due consideration, the Board believes no action should be taken against Mohammad S. Nakbeen and A & S Imports. The Board hereby takes no further action civil penalty against Mohammad S. Nakbeen and A & S Imports.

Kevin Reilly seconded. The motion carried unanimously.

- **Douglas E. Aust and Aust Enterprises.** It was the request of Mr. Aust, through his legal representatives, to table this issue until the January Committee/Board meetings. Motion was made by Hugh McCreight to table this issue until the January meeting.

Kevin Reilly seconded. The motion carried unanimously.

- **Variance Request: American Classics and William Myers.** Chairman Hugh McCreight summarized for the board the discussion in the committee meeting regarding American Classics and William Myers. Based on that discussion, Mr. McCreight made the following motion: VA Code Section 46.2-1533 grants authority to the Board to modify the minimum hours requirements as set-out in § 46.2-1533, “for good cause” and the Board has determined that “good cause” has not been established. Mr. Myers, owner of American Classics has requested that his dealership be opened on an “appointment only” basis. The Board denies the variance request of Mr. Myers t/a American Classics (Dealer Numbers 312 and 5673) to be opened on and appointment only basis.

Lynn Hooper seconded. The motion carried unanimously.

Licensing Committee

Vice-Chairman Lynn Hooper summarized discussions held and actions that were taken during the Committee Meeting.

- **Update: Education Proposals:**

(1) Dealer-Operator Continuing Education and (2) Internet Initial Dealer-Operator Training: (1) Bruce Gould indicated that the first public comment period for the independent dealer-operator recertification regulations initiative has closed. No other comments were received. The next step is to draft the actual regulations. Bruce reviewed continuing education requirements for other professions in developing the broad outline that was attached in the member’s books. The outline is intended as a “thought starter” and a means to open a dialogue as to the various components that will be required of the regulations. For some of the components he has included more than one option. The outline is divided into two distinct sections: Regulations that address the requirements for the dealer-operators and regulations for course providers. He will use the updated outline to gain feedback and build consensus in a public hearing that has been scheduled for November 21 at 10:00 a.m. At the conclusion of the Public Hearing, he will draft the actual regulations. The first draft of the regulations will then be published in order to receive further comments.

(2) Internet Initial Dealer-Operator Training: Bruce indicated that Compass Systems would like to provide for the Dealer Board an on-line system for dealers who would like to take the Dealer-Operator course on-line, rather than taking the course through a community college. The company feels that because of their 24 years experience, they qualified to develop and provide initial and continuing education to Virginia's independent dealers.

Motion was made by Lynn Hooper to have Bruce resume looking at continuing education (Issue 1) and take no further action regarding the dealer-operator course on the internet (Issue 2). Tommy Woodson seconded. The motion carried unanimously.

- **Wafi S. Akbary.** Vice-Chairman Lynn Hooper summarized for the board the discussion held in the committee meeting regarding Wafi S. Akbary. Based on that discussion, Mr. Hooper 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 Wafi S. Akbary for alleged violations of VA Code Sections 46.2-1575(2) (failure to comply subsequent to receipt of a written warning from the Board or any willful failure to comply with the Dealer laws), 46.2-1575(4) (defrauding any retail buyer, to the buyer's damage, or any other person in the conduct of the licensee's or registrant's business and 46.2-1575(6) (having used deceptive acts or practices). Based on due consideration, the Board believes a civil penalty should be assessed against Mr. Wafi S. Akbary. The Board hereby assesses a \$1,000 civil penalty against Mr. Wafi S. Akbary and based on due consideration, the Board believes that all licenses and certificates issued by the Board to Mr. Wafi S. Akbary should be revoked. The Board hereby revokes all licenses and certificates issued by the Board to Mr. Wafi S. Akbary.

Jimmy Whitten seconded. The motion carried unanimously.

Advertising Committee

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

- **James D. Pridgen and Haley Ford.** Chairman Lynn Hooper summarized for the board the discussion held in the committee meeting regarding James D. Pridgen and Haley Ford. Based on that discussion, Mr. Hooper 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. Pridgen and Haley Ford for alleged violations of VA Code Sections 46.2-1581.4 and 46.2-1575.7, knowingly advertising a statement of fact which is untrue or misleading and alleged violations of Virginia Administrative Code, 24 VAC 22-30-30.J, paying the customer with a dealer check, which is considered to be a form of a dealer rebate. Based on due consideration, the Board believes no action should be taken against James D. Pridgen and Haley Ford. The Board hereby takes no further action penalty against James D. Pridgen and Haley Ford.

Kevin Reilly seconded. The motion carried unanimously.

Transaction Recovery Fund Committee:

Vice-Chairman Henry Jones summarized discussions held and actions that were taken during the Committee Meeting.

- **Joan G. Stallings and Mobile Wholesalers, Inc., Silvia Garcia & Jorge Reyes and International Motors LLC and Luis Constantino and Auto Express of Manassas, Inc.** Vice-Chairman Henry Jones summarized for the Board the discussion held in the Committee meeting regarding Joan G. Stallings and Mobile Wholesalers, Inc., Mark & Cheryl Largent and Motor Point, Inc., Silvia Garcia & Jorge Reyes and International Motors LLC and Luis Constantino and Auto Express of Manassas, Inc. 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 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:

Joan G. Stallings and Mobile Wholesalers, Inc.	\$8,792.00
Mark & Cheryl Largent and Motor Point, Inc.	\$1,554.24
Silvia Garcia & Jorge Reyes and International Motors, LLC	\$5,000.00
Luis Constantino and Auto Express of Manassas, Inc.	\$20,000.00

Jimmy Whitten seconded. The motion carried unanimously.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

- **Resolution: Affidavit of Repossession.** Joe Tate made the following motion: Many states require a finance company to provide the buyer of a repossessed vehicle a title with the lien released, and an affidavit of repossession attesting to the lawful repossession of the vehicle, and the Commonwealth of Virginia refuses to accept the above documents for retitling in Virginia, and the Virginia Department of Motor Vehicles requires the lienholder to first title the vehicle prior to assigning ownership to a Virginia dealer, and this causes Virginia dealers, purchasing repossessed vehicles at auctions in another state, additional time and expense, up to \$120 per vehicle, for the lienholder to comply with the interpretation of § 46.2-633 of the Code of Virginia by the Department. The Virginia Motor Vehicle Dealer Board, in an effort to facilitate cross state border commerce, supports an effort to amend the Code of Virginia allowing the Department of Motor Vehicles to accept a title and affidavit of repossession from a foreign state for the purpose of titling a vehicle in Virginia. Bill Lehner spoke in support of this resolution.

Jimmy Whitten seconded. The motion carried unanimously.

NEW BUSINESS FROM THE FLOOR

No new business from the floor.

- **Executive Director's Report.** Bruce Gould indicated that there has been some decrease in our revenue, but spending is carefully being observed. Bruce announced Jeff Brown as Terry Guill's replacement and gave a brief background on Mr. Brown. There is a new feature on the Dealer Board's website. Not only can one search by dealer name and dealer number; now one can search by zip code and city. Bruce will keep the members informed on the upcoming legislation.

The next meeting will be scheduled for January 12, 2009.

There being no further business to come before the Motor Vehicle Dealer Board, Chairman Smit adjourned the meeting at 1:14 p.m.

Meeting Summary
Dealer Practices Committee
Monday, November 10, 2008

Chairman Hugh McCreight called the Dealer Practices Committee meeting to order at 8:38 a.m. in Room 702 of the DMV Headquarters Building at 2300 W. Broad Street in Richmond. Present were Committee members Jonathan Blank, Wanda Lewark, David Lacy, Chip Lindsay, Kevin Reilly, Larry Shelor and Tommy Woodson. (Absent: Thomas Moorehead, Vince Sheehy and Robert Woodall). Other Board members present: Joe Tate, Pat Patrick, D.B. Smit, Lynn Hooper, Henry Jones. Executive Director Bruce Gould, Peggy Bailey and Frank McCormick represented the Dealer Board. Eric Fiske from the Attorney General's Office.

The September 8, 2008 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

Update: September Actions. Peggy Bailey reported on the actions taken at the Dealer Practices Committee meeting on September 8, 2008.

OLD BUSINESS FROM THE FLOOR

NEW BUSINESS

Review and Action: Informal Fact-Finding Conference:

- **Ayman J. Awadallah and A & M Auto Sales, LLC.** On September 2, 2008, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Sections 46.2-1529 (not having the required records, failure to keep records, failure to keep record of temporary tag issuance, etc), 46.2-1530 (not completing buyers order), 46.2-1550 (use of dealer's license plates, generally), 46.2-1575(1) (material misstatement) and (2) (failure to comply subsequent to receipt of a written warning from the Board or any willful failure to comply with the Dealer laws) and 46.2-1575(9) (having been convicted of any criminal act involving the business of selling vehicles). Based on the information provided at the conference, the hearing officer recommended that Mr. Awadallah's license be revoked and assess a civil penalty of \$1,000.00.

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

Motion was made by Wanda Lewark to suspend his license for 30 days and assess a civil penalty of \$1,000. Jonathan Blank seconded. General discussion followed.

Substitute motion was made by Hugh McCreight to assess a civil penalty of \$5,000, inspection of the dealership within 30 days and to successfully complete the Dealer-Operator course. If the inspection is not satisfactory, then his license will be suspended until it is satisfactory. Jonathan Blank seconded. The motion carried unanimously.

- **Mohammad S. Nakbeen and A & S Imports.** On August 12, 2008, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Section 46.2-1533 (failure to maintain posted business hours). Based on the information provided at the conference, the hearing officer recommended that, while A & S Imports was in violation, a civil penalty should not be assessed in this particular case.

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

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. 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.

Motion was made by Larry Shelor to table this issue until the January Dealer Practices/Board meetings as requested by Mr. Aust through his attorney. Jonathan Blank seconded. The motion carried unanimously.

- **Variance Request: American Classics and William Myers.** Mr. Myers indicated in his request that he is not in the business to sell automobiles for transportation, but rather to sell antique, classic and specialty cars. He is requesting a permanent variance to normal business hours, because of the type of vehicle he sells, he would like to be there on an "appointment only" basis.

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

Motion was made by David Lacy to deny Mr. Myers' variance request in hours. Larry Shelor seconded. The motion carried. All in favor: 7 (McCreight, Reilly, Blank, Lewark, Lacy, Shelor, Woodson). Opposed: 1 (Lindsay). The motion carried.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for January 12, 2009.

The meeting adjourned at 10:01 a.m.

Meeting Summary
Dealer Licensing Committee
Monday, November 10, 2008

Chairman Chip Lindsay called the Dealer Licensing Committee meeting to order at 10:13 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, Joe Tate and Jimmy Whitten. (Absent: Frank Pohanka and Robert Woodall) Other Board members present: David Lacy, Larry Shelor, D.B. Smit, Wanda Lewark, Kevin Reilly, Jonathan Blank 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 September 8, 2008 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

Update: September Actions. Peggy Bailey reported on the actions taken at the Dealer Licensing Committee meeting on September 8, 2008.

Update: Education Proposal: (1) Dealer-Operator Continuing Education and (2) Internet Initial Dealer-Operator Training: (1) Bruce Gould indicated that the first public comment period for the independent dealer-operator recertification regulations initiative has closed. No other comments were received. The next step is to draft the actual regulations. Bruce reviewed continuing education requirements for other professions in developing the broad outline that was attached in the member's books. The outline is intended as a "thought starter" and a means to open a dialogue as to the various components that will be required of the regulations. For some of the components he has included more than one option. The outline is divided into two distinct sections: Regulations that address the requirements for the dealer-operators and regulations for course providers. He will use the updated outline to gain feedback and build consensus in a public hearing that has been scheduled for November 21 at 10:00 a.m. At the conclusion of the Public Hearing, he will draft the actual regulations. The first draft of the regulations will then be published in order to receive further comments.

Mr. Jeff Smelly was in attendance and presented the following via a PowerPoint presentation.

(2) Internet Initial Dealer-Operator Training: Bruce indicated that Compass Systems would like to provide for the Dealer Board an on-line system for dealers who would like to take the Dealer-Operator course on-line, rather than taking the course through a community college. The company feels that because of their 24 years of experience, they are qualified to develop and provide initial and continuing education to Virginia's independent dealers.

It was recommended by Jimmy Whitten to look further into Mr. Smelly's suggestions. David Boling spoke on the negative aspects of Mr. Smelly's ideas.

Motion was made by Joe Tate to take no further action regarding internet initial dealer-operator training. Hugh McCreight 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:

- **Wafi S. Akbary.** On September 9, 2008, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Sections 46.2-1575(2) (failure to comply subsequent to receipt of a written warning from the Board or any willful failure to comply with the Dealer laws), 46.2-1575(4) (defrauding any retail buyer, to the buyer's damage, or any other person in the conduct of the licensee's or registrant's business) and 46.2-1575(6) (having used deceptive acts or practices). Based on the information provided at the conference, the hearing officer recommended that Mr. Akbary be denied a license until such time as all the criminal and civil cases have been completed and before any license is then issued, he should be assessed a civil penalty of \$1,000.00. The Board recognized that the hearing officer indicated Mr. Akbary be "denied" a license; however, Mr. Akbary is currently licensed. General discussion followed.

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

Motion was made by Jimmy Whitten to accept the hearing officer's recommendation with the exception of revoking his license rather than a suspension. 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 January 12, 2009

The meeting adjourned at 12:19 p.m.

Meeting Summary
Advertising Committee
Monday, November 10, 2008

Chairman Lynn Hooper called the Advertising Committee meeting to order at 12:25 p.m. in Room 702, at DMV Headquarters, 2300 West Broad Street, Richmond, Virginia. Present were Committee members Jonathan Blank, Kevin Reilly, Joe Tate, Jimmy Whitten and Thomas Woodson (Absent: Larry Shelor, Todd Haymore and Vince Sheehy) Other Board members present: Pat Patrick, David Lacy, Hugh McCreight, D.B. Smit, Wanda Lewark and Henry Jones. Executive Director Bruce Gould, Peggy Bailey and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office.

The September 8, 2008 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

- **James D. Pridgen and Haley Ford.** On August 19, 2008, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Section 46.2-1581.4 and 46.2-1575.7 (knowingly advertising a statement of fact which is untrue or misleading) and Regulation 24 VAC 22-30-30.1 (paying the customer with a dealer check is considered to be a form of a dealer rebate). Based on the information provided at the conference, the hearing officer recommended that no civil penalty be assessed due to if there was wrong doing in this case, it is not egregious or intended.

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

The next meeting was scheduled for January 12, 2009.

NEW BUSINESS FROM THE FLOOR

Advertising Disclaimer Contradiction: Bruce Gould indicated that recently the staff had received "consumer complaints" concerning dealer's internet inventory listings where there is a disclaimer on the WEB site that states something to the effect that the description/picture/list of features may not be accurate.

Here is an example of what happens:

A consumer goes to a dealer's WEB site and clicks on "new vehicle inventory". A list of cars pops-up and the customer clicks on one for the vehicles on the list.

A picture of the car with a VIN and/or a stock number and a price is displayed. Also displayed is a list of features for that car.

Somewhere there is a disclaimer that states the list of features may not be accurate or that this car may not have all of the listed features or the actual car may not have the same features as pictured.

If in fact the list of features includes items that are not on this car and/or the picture shows a feature that is not on this particular car, is this a “violation” of the following Advertising Regulation:

“When terms, conditions or disclaimers are used, they shall always be stated clearly and conspicuously. An asterisk or other reference symbol may be used to point to a disclaimer or other information; but, **the disclaimer shall not be used as a means of contradicting or changing the meaning of an advertised statement.** In addition, they must meet the Federal Trade Commission Truth in Lending Act Requirements 15 USC §§ 1601 et seq., 12 CFR Part 226 (Regulation Z) or the Federal Trade Commission Truth in Leasing Act Requirements, as applicable.”

General discussion followed. Consensus of the Committee was to look at each one on a case by case basis, look at how it is used and determine if there is a big difference when it claims to be inaccurate.

There was no other new business from the floor.

The meeting adjourned at 12:36 p.m.

Meeting Summary
Transaction Recovery Fund Committee
Monday, November 10, 2008

Vice-Chairman Henry Jones called the Transaction Recovery Fund Committee meeting to order at 12:37 p.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members: Jonathan Blank, David Lacy, Wanda Lewark and Pat Patrick. (Absent: Larry Shelor, Todd Haymore and Frank Pohanka). 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 September 8, 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:

- **Joan Stallings and Mobile Wholesalers, Inc.** In December of 2004, Mrs. Stallings called Mr. El Ghazi and indicated that she was interested in purchasing a Lexus SC 430 model between one or two years old with low mileage. Mr. El Ghazi indicated it would cost between \$49,000 and \$53,000 in which Mrs. Stallings agreed.

On January 1, 2005, Mr. El Ghazi contacted Mrs. Stallings and indicated that he would be bidding on a vehicle that fitted her description, but he would need a \$2,000 down payment. Mrs. Stallings agreed and wrote a check payable to Mobile Wholesalers, Inc. in the amount of \$2,000. On January 13, 2005, Mr. El Ghazi was successful in obtaining a vehicle that met Mrs. Stallings requirements and informed her that she could complete the deal the following day at Mobile Wholesalers, Inc. On January 14, 2005, Joan & Larry Stallings delivered a check in the amount of \$50,775.50 for the purchase of the 2003 Lexus SC 430. Mr. Stallings had made the check payable to Mobile Wholesalers, Inc. but was told to re-write the check payable to Ouais Abdelkader because the vehicle had to be paid for that day with funds. At the time of the purchase, the Stallings were informed that the vehicle had been purchased by El Ghazi and that he had legal title. It was then represented that the title would be transferred into Joan Stallings name and that they could pick up the title and permanent plates within the month for the Lexus. Mr. El Ghazi then completed the Buyer's Order from Mobile Wholesalers Inc. for Joan Stallings showing the purchase of the 2003 Lexus in the amount of \$52,775.50 and reflecting that the vehicle had been paid in full.

On February 7, 2005, Mrs. Stallings contacted Mr. El Ghazi and inquired on the status of the title and plates. She was informed that there was an administrative holdup and that the title and plates would be available very soon. On February 11, 2005, Mrs. Stallings contact Mr. El Ghazi again regarding the status of her title and was told to come in to Mobile Wholesalers and they would issue a second set of temporary tags while the administrative holdup was cleared. On March 6, 2005, Mrs. Stallings had driven the Lexus to work and upon leaving work, the Lexus was no where to be found. She immediately contacted the police. Officer Hatcher noted that the dispatcher had reported that some men had presented paperwork to tow the Lexus to a car dealership in Virginia Beach known as Eastern Auto Imports. Officer Hatcher then escorted Mr. & Mrs. Stallings to Eastern Auto Import to recover the vehicle. However, the dealership was locked up and the Lexus was no where to be seen. It was later discovered that Mr. El Ghazi never paid for the Lexus and did not have title to the vehicle at the time he sold it to Mrs. Stallings. She then sought legal counsel in order to file a civil suit against Mobile Wholesalers, Inc. for fraud in connection with the purchase of the 2003 Lexus.

On August 12, 2005, the Circuit Court for the City of Virginia Beach awarded Joan Stallings a default judgment against Mobile Wholesalers, Inc. in the amount of \$152,775.50 (\$52,775.50 actual damages + \$100,000.00 punitive damages). On August 17, 2005, P. Todd Sartwell, Esquire, submitted to the Dealer Board on behalf of his client, Mrs. Stallings, a judgment claim request form, an affidavit of facts of the fraud, an attested copy of the judgment order and a copy of the original pleadings regarding the case for consideration of payment from the Motor Vehicle Transaction Recovery Fund. On August 22, 2005, after carefully reviewing the claim, staff sent a letter to counsel advising him that his client's claim is one in which would be liable through the dealer's surety bonding company. On February 28, 2008, Mr. Sartwell submitted a letter to the Dealer Board indicating that after much frustration with the surety bonding company sorting out which victims would receive what amount, they finally had received payment from the bond. Therefore, counsel on behalf of Mrs. Stallings wishes to proceed with payment from the Fund.

On March 7, 2008, the Dealer Board staff acknowledged receipt of counsel's client claim against the Fund and requested additional documentation for the review process in order to proceed against the Fund. On August 5, 2008, Mr. Sartwell submitted to the Dealer Board staff via facsimile and by mail the requested documentation. Also included was a copy of the draft to Joan Stallings from the surety bonding company in the amount of \$11,208.00.

After carefully reviewing all the documentation, it is requested that the Recovery Fund Committee and Full Board approve Mrs. Stallings claim in the amount of \$8,792.00. This amount is based on the \$20,000.00 maximum allowed by law minus \$11,208.00 received from the surety bond, which equals a balance of \$8,792.00. On September 15, 2008, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that Mrs. Stallings be paid the \$8,792.00 from the Fund.

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

- **Mark & Cheryl Largent and Motor Point, Inc.** On June 29, 2007, Mark & Cheryl Largent purchased a 2004 Ford F-350 from Motor Point, Inc. for a purchase price of \$23,200.00. As part of the transaction, the dealer collected a processing of \$99.00, a title fee of \$42.50, sales tax fee of \$698.97, a dealer business fee of \$23.30 and a warranty contract fee of \$764.77, making the total purchase price of \$24,063.77.

The Largent's obtain a loan with Virginia Savings Bank and provided a cashier's check payable to Motor Point, Inc. for the full purchase price of the vehicle. Towards the end of July 2007, the Largent's contacted the dealership and inquired on the status of their title and permanent plates for the vehicle. The dealer indicated that they did not have the title and plates yet, there was some problem and for them to stop by and they would provide them with a second set of 30-day tags. At the end of August, the Largent's had the same conversation with the dealer and was given a third set of 30-day tags. By the end September, they attempted to call again and left a message inquiring the status of their title and plates. The next day, they received a call from the secretary and she indicated that the owner of the dealership was filing for bankruptcy and she then gave them the name of the attorney (David Mahdavi) and were told that they would have to contact him in order to be issued another set of 30-day tags. However, after leaving numerous messages for Mr. Mahdavi to contact them regarding the title to the 2004 Ford, he never returned their calls. On October 26, 2007, the Largent's filed a written complaint against Motor Point, Inc. with the Motor Vehicle Dealer Board.

On November 7, 2007, upon reviewing the Largent's complaint, the Dealer Board consumer complaint analyst advised them that the complaint would be forwarded to the DMV Investigative Services Unit for further review. Shortly, thereafter they received a letter from Senior Special Agent M. Tharp with the DMV requesting additional information regarding the purchase of the vehicle. On January 24, 2008, the Largent's received a letter from Senior Special Agent Tharp indicating that if they went to the DMV and re-paid the title, tax and license fees they would be able to obtain a title and registration to the vehicle. On January 25, 2008, they went to DMV, paid all the required fees and the title was mailed to their lienholder (Virginia Savings Bank).

On January 31, 2008, the Largent's filed a Warrant in Debt against Muhammad Ahsan & Motor Point, Inc. for breach of contract, which were the fees they had paid the dealer and then had to re-pay those fees to DMV in order to register and title the vehicle plus for a Warranty they never received. On March 7, 2008, the General District Court of Warren County awarded Mark Largent judgment against Muhammad Ahsan & Motor Point, Inc. in the amount of \$1,666.58 plus \$48.00 in costs. On May 30, 2008, the Largent's submitted to the Dealer Board for consideration of payment from the Motor Vehicle Transaction Recovery Fund the required documentation for reimbursement.

After carefully reviewing all the documentation, it is requested that the Recovery Fund Committee and Full Board approve \$1,554.24 on the Largent's claim. This amount is based on the DMV fees they had to repay (\$42.50), a Warranty Contract (\$764.77) they never received and the costs of court (\$48.00). On September 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 Largent's claim of \$1,554.24.

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

- **Silvia Garcia & Jorge Reyes and International Motors, LLC.** Between May 19, 2007 and June 23, 2007, Silvia Garcia and Jorge Reyes gave Fredy Quiroz, the owner of International Motors, LLC, the sum of \$7,500.00 to be applied to the purchase of a BMW which Mr. Quiroz indicated he would procure for them. Ms. Garcia and Mr. Reyes provided Mr. Quiroz the amount in three different payments.

Mr. Quiroz never procured a vehicle for them to purchase, even though Ms. Garcia and Mr. Reyes believed Mr. Quiroz that a vehicle was available to him. When they requested the return of their money, Mr. Quiroz refused. Mr. Garcia and Mr. Reyes then obtained legal counsel in order to pursue Mr. Quiroz and International Motors, LLC civilly in court for the return of their monies paid to the dealership for the purchase of a vehicle they never received.

On February 19, 2008, T. Louis Gifford, Attorney on behalf of Ms. Garcia and Mr. Reyes submitted to the Dealer Board a Warrant in Debt that had been filed with the Chesterfield General District Court against Mr. Quiroz and International Motors, LLC. On February 21, the Dealer Board acknowledged Mr. Gifford's letter and indicated to him that his client's claim would be liable through the dealer's surety bonding company and provided him with a copy of the dealer's bond information. On May 22, 2008, the Chesterfield County District Court awarded Ms. Garcia and Mr. Reyes judgment against Fredy Quiroz and International Motors, Inc. in the amount of \$15,000.00 with interest of 6% from date of 3/20/08 until paid, \$150 in court costs and \$6,000 for attorney fees.

On August 17, 2008, Craig Erdmann, attorney for the same law firm as Mr. Gifford, submitted a letter to the Dealer Board advising that on behalf of his clients, he had made a claim against the dealer's bond and payment of \$15,000.00 had been received. Counsel now wished to proceed with payment from the Motor Vehicle Transaction Recovery Fund for the remaining balance of the judgment. On August 21, 2008, the Dealer Board staff contacted counsel and requested verification of the dealer's surety bonding company payment of \$15,000.00 on his client's claim. Counsel sent said requested documents via FAX to the Dealer Board. As of October 31, 2008, the judgment balance due his client's is \$21,704.62 (\$150.00 courts cost, plus \$6,000.00 in attorney fees, plus \$15,000.00 principals plus \$554.62 of interest at \$2.456 daily interest times 225 days.

After carefully reviewing all the documentation, it is requested that the Recovery Fund Committee and Full Board approve Ms. Garcia and Mr. Reyes claim in the amount of \$5,000.00. This amount is based on the \$20,000.00 maximum allowed by law minus the \$15,000.00 that was paid by the dealer's surety bond, which equals a balance of \$5,000.00. On October 8 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. Garcia's and Mr. Reyes' claim of \$5,000.00.

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

- **Luis F. Constantino and Auto Express of Manassas, Inc.** On January 28, 2007, Mr. Constantino purchased a 2003 Range Rover from Auto Express of Manassas, Inc. The base price of the vehicle was \$40,785.00, plus \$2,468.24 for state and local taxes, \$146.00 for title/registration fee and \$349.00 for processing fee, which made the total purchase price of \$43,748.04. Mr. Constantino made a down payment of \$1,000.00 making the balance owed upon delivery \$42,748.04.

Prior to and at the time of the transaction, there was no Buyers Guide warning sticker displayed on the vehicle and on the date of purchase. Nathan Davison, a licensed salesperson for Auto Express, indicated that the vehicle was in great condition. Also, at no time did Auto Express or its agents advise Mr. Constantino that the dealership did not possess a lien-free title; and that it had not paid off the existing lien on the vehicle. After the sale of the vehicle, Auto Express issued Mr. Constantino four consecutive temporary certificates of ownership concealing the fact that they had not paid the existing lien nor had they registered the vehicle in the District of Columbia as promised.

On May 4, 2007, Mr. Constantino obtained legal counsel (Mr. Stephen Swann) and by express mail sent a letter notifying Auto Express of Mr. Constantino's rescission of the vehicle purchase transaction. On May 7, 2007, Auto Express satisfied the existing lien on the vehicle and obtained a lien-free title reflecting the name of the prior owner.

After the purchase, Mr. Constantino discovered that the vehicle had multiple defects and malfunctions, evidenced consisting of erratic alarm warnings, failed DC inspection due to severely worn tires, engine oil leak and engine starting failures and check engine light illuminations, damaged windshield and contaminated cooling system. Mr. Constantino then discovered that Auto Express, without authority, prepared a second retail loan agreement for submission to the lending bank HSBC Auto Finance and forged his name on the signature line of the document. Mr. Constantino has incurred substantial expenses for the repairs to the vehicle, as well as the value of the vehicle due to the numerous defects and malfunctions that had been concealed from Auto Express to him at the time of the transaction.

On September 17, 2007, Stephen Swann serviced notice to the Motor Vehicle Dealer Board on behalf of his client, a complaint which had been filed in the Circuit Court of Fairfax County against Auto Express of Manassas, Inc. The complaint was based on deceit and fraud, violation of the Virginia Consumer Protection Act, breach of warranties and breach of contract. On September 25, 2007, the Dealer Board acknowledged receipt of his client's possible claim and requested additional documentation in order to complete the review process of the claim. On June 24, 2008, Mr. Swann provided the requested additional documentation.

On July 18, 2008, the Circuit Court for Fairfax County awarded Luis Constantino judgment in the amount of \$24,639.45 against Auto Express of Manassas, Inc. Breakdown of judgment amount is for \$8,850.00 actual damages, \$15,303.45 for attorney fees, \$395.00 expert witness fee and \$91.00 court costs. On August 21, 2008, Mr. Swann submitted additional documents as a result of the judgment. On September 27, 2008, the Dealer Board staff spoke with Mr. Swann and inquired on how the court arrived at the \$8,850.00 actual damages, the location of the vehicle/title and requested a copy of the retail installment contract. Mr. Swann indicated that the Circuit Court based the actual damages on the numerous repairs that were incurred by Mr. Constantino. Further, Mr. Swann indicated that currently Mr. Constantino has possession of the vehicle and has finally received the title in order to properly register/title in the District of Columbia. On September 29, 2008, Mr. Swann submitted a copy of the retail installment contract to the Dealer Board as requested.

After carefully reviewing all the documentation, it is requested that the Recovery Fund Committee and Full Board approve \$20,000.00, which is based on the maximum recovery from the Fund. On October 20, 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. Constantino's claim of \$20,000.00.

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

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for January 12, 2009

The meeting adjourned at 12:46 p.m.