

Meeting Summary  
**Motor Vehicle Dealer Board**  
Monday, November 14, 2011

Chairman Rick Holcomb called the Dealer Board meeting to order at 10:56 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. The roll was called and there were 17 Board members present. Present were members Andy Alvarez, Roy Boswell, Lynn Hooper, Art Hudgins, Brian Hutchens, Ronald Kody, Wanda Lewark, Chip Lindsay, Matt McQueen, Thomas Moorehead, George Pelton, Kevin Reilly, Joe Tate, Jimmy Whitten, Rodney Williams and Tommy Woodson. (Absent: Ted Bailey and Sally Woodson). Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Ann Majors, Rachel Kerns, Wanda Neely and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office. Alice Weedon was the recording secretary.

**PUBLIC COMMENT**

There was no public comment. Rick Holcomb recognized 3 former Board members, T.K. Hughes, David Lacy and Pat Patrick for their contribution to the Motor Vehicle Dealer Board. He also recognized Board member Thomas Moorehead who was selected as the 2012 Dealer of the Year on the Urban Wheel Award, which is a national recognition.

The September 12, 2011 meeting summary was approved.

**STATUTORY COMMITTEE REPORTS**

**Dealer Practices Committee:**

Chairman Tommy Woodson summarized discussions held and actions that were taken during the Committee Meeting.

- **BVM Group, Inc. and Khanh P. Nguyen.** Chairman Tommy Woodson summarized for the Board the discussion held in the committee meeting regarding BVM Group, Inc. and Khanh P. Nguyen. Based on that discussion, Mr. Woodson 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 Khanh P. Nguyen and BVM Group, Inc. for alleged violations of VA Code Section(s) 46.2-1515 (failure to display dealer certificate), 46.2-1518 (failure to list current salespersons), 46.2-1529 (failure to maintain all dealer records on the premises of the licensed location), 46.2-1530 (failing to maintain buyer's orders), 46.2-1532 (odometer disclosure), 46.2-1537 (failure to license and employ all salespersons), 46.2-1550 (failure to keep W-2's for permanent employees) and 46.2-1575 (2) (failure to comply subsequent to receipt of a written warning/willful failure to comply). Based on due consideration, the Board believes a civil penalty should be assessed against Khanh P. Nguyen and BVM Group, Inc. The Board hereby assesses a \$3,000 civil penalty against Khanh P. Nguyen and BVM Group, Inc. and based on due consideration, the Board believes that Mr. Nguyen's dealership should be re-inspected and that the inspection must be satisfactory. The

Board hereby mandates that a Motor Vehicle Dealer Board field representative re-inspect Mr. Nguyen's dealership and if the inspection is not satisfactory the Board suspends all licenses issued by the Board to Mr. Nguyen until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative; and based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Nguyen in running his dealership. The Board mandates that Mr. Nguyen successfully complete the dealer-operator course by January 13, 2012. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Mr. Nguyen by the Board until such time Mr. Nguyen has successfully completed the course.

Jimmy Whitten seconded. The motion carried unanimously.

- **Richmond Auto Sales and Earmias Y. Getahun.** Chairman Tommy Woodson summarized for the Board the discussion held in the committee meeting regarding Richmond Auto Sales and Earmias Y. Getahun. Based on that discussion, Mr. Woodson 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 July 2011 meeting the Motor Vehicle Dealer Board, assessed a \$6,000 civil penalty and suspended all licenses issued to Mr. Getahun until such time as Mr. Getahun had a satisfactory inspection and successfully completed the Dealer-Operator course. Mr. Getahun appealed the Board's decision and requested a formal hearing that was conducted on October 6, 2011; 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 Richmond Auto Sales and Earmias Y. Getahun for alleged violations of VA Code Section(s) 46.2-1529 (failure to maintain all dealer records on the premises of the licensed location), 46.2-1532 (odometer disclosure), 46.2-1537 (failure to have salespersons properly licensed), 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/willful failure to comply). Based on due consideration, the Board believes a civil penalty should be assessed against Richmond Auto Sales and Earmias Y. Getahun. The Board hereby assesses a \$3,000 civil penalty against Richmond Auto Sales and Earmias Y. Getahun; and based on due consideration, the Board believes that Mr. Getahun's dealership should be re-inspected and that the inspection must be satisfactory. The Board hereby mandates that a Motor Vehicle Dealer Board field representative re-inspect Mr. Getahun's dealership and suspends all licenses issued by the Board to Mr. Getahun until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative. Based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Getahun in running his dealership. The Board mandates that Mr. Getahun successfully complete the dealer-operator course by January 13, 2012. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Mr. Getahun by the Board until such time Mr. Getahun has successfully completed the course.

Bineyam Tesfaye, Dealer-Operator, Richmond Auto Sales was present and spoke on behalf of Mr. Getahun.

Lynn Hooper seconded. The motion carried unanimously.

### **Licensing Committee**

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

- **Mark L. Steward, Salesperson.** Chairman Jimmy Whitten summarized for the Board the discussion held in the committee meeting regarding Mark L. Steward. Based on that discussion, Mr. Whitten made the following motion: Under the authority granted by the Motor Vehicle Dealer Board, the executive director denied the application for a salesperson's license as submitted by Mr. Mark L. Steward for alleged violations of Virginia Code Sections 46.2-1575(13) (having been convicted of a felony). Mr. Steward appealed the denial and requested an informal fact finding conference; and 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. Steward and based on due consideration, the Board believes that Mr. Steward's application for a motor vehicle salesperson's license should be denied. The Board hereby denies the application for a motor vehicle salespersons license as submitted by Mr. Mark L. Steward.

Roy Boswell seconded. The motion carried unanimously.

- **Gerald Kazambe, Salesperson.** Chairman Jimmy Whitten summarized for the Board the discussion held in the committee meeting regarding Gerald Kazambe. Based on that discussion, Mr. Whitten 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. Gerald Kazambe and based on due consideration, the Board believes that Mr. Kazambe's application to transfer his motor vehicle salesperson's license should be denied. Mr. Kazambe's application to transfer his motor vehicle salesperson's license is denied; and based on due consideration, the Board believes that Mr. Kazambe's certificate of qualification should be revoked. Mr. Kazambe's certificate of qualification is revoked.

Joe Tate seconded. The motion carried unanimously.

### **Advertising Committee**

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

**Transaction Recovery Fund Committee:**

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

- **Christopher T. Griffin and Rivera Motors, LLC and Dontrell E. Green and Automix, Inc.** Chairman Lynn Hooper summarized for the Board the discussion held in the committee meeting regarding Christopher T. Griffin and Rivera Motors, LLC and Dontrell E. Green and Automix, Inc.. Based on that discussion and the recommendations in these cases, Mr. Hooper made the following motion: Pursuant to VA Code Section 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 the claims 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:

<b>Christopher T. Griffin and Rivera Motors, LLC</b>	<b>\$20,000.00</b>
<b>Dontrell E. Green and Automix, Inc.</b>	<b>\$9,092.00</b>

Kevin Reilly seconded. The motion carried unanimously.

**OLD BUSINESS FROM THE FLOOR**

There was no old business from the floor.

**NEW BUSINESS**

**Record Retention.** Prin Cowan presented to the members that staff has been scanning documents since 2005 and the documents have been placed in Dealer Net. After consulting with the Library of Virginia and Rachel Kerns, she recommended that the MVDB maintain electronic copies of records for 10 years. Also, that in the future, staff would scan documents and recycle. Paper documents would not be maintained.

Motion was made by Kevin Reilly to approve a 10 year retention cycle for electronic records and in the future “scan and toss” documents. Art Hudgins seconded. Matt McQueen abstained due to working at Northrup Gruman. The motion carried.

**NEW BUSINESS FROM THE FLOOR**

There was no new business from the floor.

**Executive Director’s Report.** Bruce Gould indicated that the General Assembly will convene in January and as the bills come in that relate to the Dealer Board, he will keep the members notified.

The next meeting will be scheduled for January 9, 2012.

There being no further business to come before the Motor Vehicle Dealer Board, Chairman Holcomb adjourned the meeting at 11:39 a.m.

**OLD BUSINESS (Executive Session)**

Motion was made by Kevin Reilly to go into Executive Session to consult with legal counsel on the matters of David Barton and Jaime Weinberg and their Transaction Recovery Fund decisions. Lynn Hooper seconded. The motion carried unanimously.

Executive session began at 11:41 a.m. for a discussion of appeal of the Transaction Recovery Fund decisions of David Barton and Jaime Weinberg.

Executive session ended at 12:01 p.m.

Upon ending the executive session, all Board members certified that to the best of their knowledge (i) only public matters lawfully exempted from the open meeting requirements under Code Section 2.2-3712(D) and (ii) only such business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting.

Motion was made by Kevin Reilly to authorize an appeal of David Barton and no appeal for Jaime Weinberg. Lynn Hooper seconded. The motion carried unanimously.

Meeting Summary  
**Dealer Practices Committee**  
Monday, November 14, 2011

Chairman Tommy Woodson called the Dealer Practices Committee meeting to order at 9:00 a.m. in Room 702 of the DMV Headquarters Building at 2300 W. Broad Street in Richmond. Present were Committee members Ronald Kody, Chip Lindsay, Matt McQueen, Thomas Moorehead, Kevin Reilly, Joe Tate, Jimmy Whitten and Rodney Williams. (Absent: Sally Woodson and Ted Bailey). Other Board members present: Art Hudgins, Andy Alvarez, Brian Hutchens, Roy Boswell, Rick Holcomb, Lynn Hooper, Wanda Lewark, George Pelton. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Ann Majors, Rachel Kerns, Frank McCormick and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The September 12, 2011 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**

**Review and Action: Informal Fact-Finding Conferences:**

- **BVM Group, Inc. and Khanh P. Nguyen.** On August 25, 2011, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1515 (failure to display dealer certificate), 46.2-1518 (failure to list current salespersons), 46.2-1529 (failure to maintain all dealer records on the premises of the licensed location), 46.2-1530 (failing to maintain buyer's orders), 46.2-1532 (odometer disclosure), 46.2-1537 (failure to license and employ all salespersons), 46.2-1550 (failure to keep W-2's for permanent employees) and 46.2-1575 (2) (failure to comply subsequent to receipt of a written warning/willful failure to comply). Based on the information provided at the conference, the hearing officer recommended assessing a civil penalty of \$3,000.00. It was further recommended that a full investigation by MVDB to made into his export business to ascertain his level of compliance with Virginia law. In addition, Mr. Nguyen should be required to successfully complete the Dealer Operator course and lastly, Mr. Nguyen should hand over his tags and his license be suspended until such time he is able to demonstrate that he can conduct his business in a proper and lawful manner from his location as verified by the Board.

Motion was made by Kevin Reilly to assess a civil penalty of \$3,000, must have a satisfactory inspection and if the inspection is not satisfactory, then a suspension until it is satisfactory and must successfully complete the Dealer-Operator Course within 60 days. Thomas Moorehead seconded. The motion carried unanimously.

**Review and Action: Formal Hearing:**

- **Richmond Auto Sales and Earmias Y. Getahun.** Historical overview leading up to the formal hearing: On May 13, 2011, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1529 (failure to maintain all dealer records on the premises of the licensed location), 46.2-1532 (odometer disclosure), 46.2-1537 (failure to have salespersons properly licensed), 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/willful failure to comply). The hearing officer found Richmond Auto Sales and Earmias Y. Getahun in violation and recommended assessing a civil penalty of \$2,000 for the violations of 1537 and a civil penalty of \$1,250 for violating 1575(2) for a total civil penalty of \$3,250. Also recommended was for Mr. Getahun to take and pass the Dealer-Operator course. During the July 11, 2011 Committee and Full Board meeting, due to the severity of the violations, the members recommended assessing a \$6,000 civil penalty, suspend all licenses until Mr. Getahun has a satisfactory inspection and successfully takes the Dealer-Operator course. On August 12, 2011, Mr. BNi Tesfaye, Dealer-Operator of Richmond Auto Sales, appealed and requested a formal hearing. On October 6, 2011, 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 assessing a civil penalty of \$3,000 and successfully completes the Dealer-Operator course.

Bineyam Tesfaye, Dealer-Operator, Richmond Auto Sales was present and spoke on behalf of Mr. Getahun.

Motion was made by Joe Tate to assess a civil penalty of \$3,000, have a satisfactory inspection and if the inspection is not successful, then a suspension until it is satisfactory and must successfully complete the Dealer-Operator Course within 60 days. Thomas Moorehead 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 9, 2012.

The meeting adjourned at 9:26 a.m.

Meeting Summary  
**Dealer Licensing Committee**  
Monday, November 14, 2011

Chairman Jimmy Whitten called the Dealer Licensing Committee meeting to order in Room 702 at 9:27 a.m., DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members Andy Alvarez, Roy Boswell, Art Hudgins, Brian Hutchens, Wanda Lewark, George Pelton, Joe Tate. (Absent: Sally Woodson). Other Board members present Lynn Hooper, Ronald Kody, Chip Lindsay, Matt McQueen, Thomas Moorehead, Kevin Reilly, Rodney Williams, Thomas Woodson and Rick Holcomb. Executive Director Bruce Gould, Peggy Bailey, Frank McCormick, Prin Cowan, Ann Majors, Rachel Kerns and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The September 12, 2011 meeting summary was approved.

**PUBLIC COMMENT**

There was no public comment.

**OLD BUSINESS**

**Update: Independent Dealer-Operator (IDO) Recertification Program.** Ann Majors indicated that of the 1,145 Independent Dealer Operators (YTD 2011), 91% have recertified, 40% recertified within 5 days of the deadline; and 31% recertified within 30 days of the deadline. The IDO Recertification Program has processed 976 IDO's since the last Board meeting.

**OLD BUSINESS FROM THE FLOOR:**

There was no old business from the floor.

**NEW BUSINESS**

**Review and Action: Informal Fact-Finding Conferences:**

- **Mark L. Steward, Salesperson.** On September 27, 2011, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1575 (13) (having been convicted of a felony). Based on the information provided at the conference, the hearing officer recommended that he be issued a salespersons license once he has paid his \$1,398.69 fine.

Motion was made by Brian Hutchens to accept hearing officer's recommendation. The motion failed due to lack of second.



Motion was made by George Pelton to deny the salesperson license. Art Hudgins seconded. The motion carried unanimously.

- **Gerald Kazambe, Salesperson.** On September 6, 2011, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1544 (failing to obtain a certificate of title or an assignment or reassignment of a certificate of title), 46.2-1575(1) (material misstatements) 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 revocation of all licenses.

Motion was made by Andy Alvarez to accept the hearing officer's recommendation. Brian Hutchens 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 9, 2012.

The meeting adjourned at 9:44 a.m.

Meeting Summary  
**Advertising Committee**  
Monday, November 14, 2011

Chairman Kevin Reilly called the Advertising Committee meeting to order in Room 702 at 9:45 a.m., DMV Headquarters, 2300 West Broad Street, Richmond, Virginia. Present were Committee members Tommy Woodson, Andy Alvarez, Ronald Kody, Chip Lindsay, Matt McQueen, George Pelton and Rodney Williams. (Absent: Sally Woodson). Other Board members present: Art Hudgins, Brian Hutchens, Roy Boswell, Lynn Hooper, Jimmy Whitten, Joe Tate, Wanda Lewark. Executive Director Bruce Gould, Peggy Bailey, Frank McCormick, Prin Cowan, Ann Majors, Rachel Kerns and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The September 12, 2011 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 January 9, 2012.

**NEW BUSINESS FROM THE FLOOR**

There was no new business from the floor.

The meeting adjourned at 9: 45 a.m.

Meeting Summary  
**Transaction Recovery Fund Committee**  
Monday, November 14, 2011

Chairman Lynn Hooper called the Transaction Recovery Fund Committee meeting to order at 9:46 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members: Andy Alvarez, Roy Boswell, Brian Hutchens, Matt McQueen, Thomas Moorehead and Kevin Reilly. (Absent: Ted Bailey). Other Board members present: Rodney Williams, Tommy Woodson, Rick Holcomb, Jimmy Whitten, Chip Lindsay, Joe Tate, Wanda Lewark, George Pelton, Ronald Kody. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Frank McCormick, Ann Majors, Rachel Kerns and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The September 12, 2011 summary was approved.

**PUBLIC COMMENT**

There was no public comment.

**OLD BUSINESS**

**Update: Legislative Study Committee.** Bruce Gould indicated that the following recommendations were suggested during the Legislative Study: (1) Raise the single maximum transaction recovery fund claim from \$20,000 to \$25,000 and the current maximum total claim of \$100,000 per dealership should stay the same. (2) Starting in 2013 the single claim maximum would be adjusted per the consumer price index and the maximum claim per dealership would be 4 times the amount for a single claim. (3) Allow attorney fees to be paid from the Bond. (4) Eliminate or lower the \$250,000 balance that must be maintained in the Fund. (5) Make floor planners responsible for their actions against a consumer and allow the judge to make a decision to require the floor planner to surrender the title and to also pay attorney fees. It was also discussed about assessing fees to the dealers and salespersons to build the fund back up to keep it from going below the \$250,000 balance. No action is required at this time.

**OLD BUSINESS FROM THE FLOOR**

There was no old business from the floor.

**NEW BUSINESS**

**Review and Action: Informal Fact-Finding Conference Results:**

- **Christopher T. Griffin and Rivera Motors, LLC.** On December 23, 2008, Mr. Griffin went to Rivera Motors seeking to purchase a used vehicle with a warranty. He indicated he wanted to use his 2002 Cadillac Escalade as a trade-in but he had an outstanding loan balance with Navy Federal Credit Union (NFCU). After Rivera had obtained the pay off information from Navy

Federal, he completed a Buyer's Order to Mr. Griffin for the purchase of a 2002 BMW 745. The Buyer's Order reflected the base price of the purchase of \$24,757.98, plus \$295.00 processing fee, making the total of \$25,052.98. Rivera Motors reflected a trade-in gross allowance of \$14,990.00 with a net trade-in price of \$3,010.00 and included a license fee of \$4.00; title fee of \$10.00; sales tax of \$841.89; the dealer's business tax of \$56.13; the on line fee of \$25.00 making the total selling price of the BMW of \$29,000.00.

After taking possession of the BMW, Mr. Griffin later learned that Rivera had not paid off his loan on the Cadillac, instead Rivera had made three payments towards the loan totaling \$2,150.00. Mr. Griffin contacted Rivera Motors and insisted that the loan on his trade-in be paid off as required in the agreement. Rivera Motors sold the Cadillac and now refuses to pay off Mr. Griffin's previous loan. As a result, NFCU has held Mr. Griffin liable for the remaining balance of the loan with interest. Upon returning from overseas, Mr. Griffin obtain legal counsel, John Barrett, Esquire to pursue Rivera Motors civilly in court for reimbursement of the monies owed to the lien holder for the 2002 Cadillac.

On May 5, 2010, Mr. Griffin, by counsel, filed a "Complaint" in the Circuit Court of the City of Norfolk against Rivera Motors, LLC and Jose Rivera for Breach of Contract, Fraud, Breach of Express Warranty, conversion and Violation of the Virginia Consumer Protection Act. On July 19, 2011, Mr. Barrett submitted to the Dealer Board documentation for consideration of his client's possible claim against the Motor Vehicle Transaction Recovery Fund. On August 5, 2011, the Circuit Court of the City of Norfolk awarded Christopher Griffin a default judgment against Rivera Motors, LLC. The Court awarded Mr. Griffin \$16,590.73 actual damages, \$33,181.46 treble damages, \$25,000.00 punitive damages, \$8,055.00 attorney fees and \$329.00 in court costs for a total judgment amount of \$83,156.19. On August 9, 2011, Mr. Barrett submitted to the Dealer Board documentation for consideration of payment for the maximum recovery of \$20,000.00 from the Fund. Staff concluded that Mr. Griffin's claim met the requirement for consideration of payment from the Fund.

On October 12, 2011, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that the Board should consider Mr. Griffin's request for payment from the Fund for the maximum allowed of \$20,000.00. **Please note that the Fund has paid on five claims against Rivera Motors, LLC totaling \$54,135.50. Limitation of Recovery from the Fund is \$100,000.00. \$54,135.50 taken from the \$100,000 leaves \$45,864.41 and Mr. Griffin's \$20,000.00 would leave a balance of \$25,864.41.**

Motion was made by Andy Alvarez to accept the hearing officer's recommendation. Art Hudgins seconded. The motion carried unanimously.

- **Dontrell E. Green and Automix, Inc.** On April 20, 2009, Mr. Green went to Automix, Inc. in hopes of purchasing a vehicle. He found a 2004 BMW 7-series that he liked and entered into a contractual agreement with Automix to purchase. He signed a Buyer's Order with a total purchase price of \$31,232.00. Mr. Green made a down payment of \$8,232.00 for the vehicle, with a remaining balance of \$23,000.00 to be due on May 20, 2009. On that same day, Gerald Kazembe, another salesperson indicated to Mr. Green that there was a problem with the

vehicle, but assured Mr. Green that he would have it repaired in time for him to pick up the vehicle when he returned in May with a check from the credit union for the balance of the purchase price.

On May 14, 2009, Mr. Green returned to Automix with a certified check from the Navy Federal Credit Union (NFCU) in the amount of \$23,000.00, the remaining balance and to take possession of the vehicle. At that time, Mr. Kazembe informed Mr. Green that he had sold the 2004 BMW he had purchased, but he would be able to obtain another BMW for him at the auction. Mr. Kazembe retained his \$8,232.00 down payment and indicated that he would need the \$23,000.00 check to purchase a substitute vehicle. Mr. Kazembe never provided Mr. Green with an alternative vehicle as promised and continued to retain the entire sales proceeds from the vehicle he had sold to someone else. Mr. Green was being charged interest on the \$23,000.00 loan to NFCU for a vehicle he never received. Mr. Green demanded the refund of his money, but Mr. Kazembe refused. Mr. Green had no other choice but to retain legal counsel. Eventually Mr. Kazembe did refund the money from NFCU for the \$23,000.00, but he continued to retain the down payment of \$8,232.00.

On December 2, 2010 Mr. Green's attorney, Thomas Christiano, Esquire, submitted to the Dealer Board, the "Complaint" that was filed in the Circuit Court for the County of Arlington against Automix, Inc. and Gerald Kazembe. The Complaint included violations of the Virginia Consumer Protection Act, Actual fraud and Breach of Contract. On January 12, 2011, the Board acknowledged receipt of Mr. Green's possible claim against the Transaction Recovery Fund. However, after a careful preliminary review of the Complaint, staff referred and provided Mr. Green's legal counsel with the dealer's surety bonding company.

On April 1, 2011, the Circuit Court for the County of Arlington awarded Mr. Green a default judgment against Automix, Inc. in the amount of \$7,918.40 compensatory damages, \$23,000.00 for treble damages for willful violation of the Virginia Consumer Protection Act, \$8,774.00 attorney fees and \$318 in court costs. On June 16, 2011, counsel for Merchants Bonding Company for Automix, Inc. sent a letter advising the Dealer Board notice of received claims that have been submitted against the bond and on June 20, 2011 Merchants for Automix, Inc. submitted a letter to Mr. Green's counsel acknowledging that Mr. Green had a valid claim against the bond in the amount of \$7,918.40; however, his attorney fees were denied.

On June 23, 2011, Mr. Christiano submitted documentation for consideration of payment of the attorney fees in the amount of \$8,774.00. On August 24, 2011, Mr. Christiano submitted to the Dealer Board a letter and a copy of the check in the amount of \$7,918.40 paid by the bonding company for the actual damages. Counsel then requested the Board to move forward with consideration of payment of the attorney fees from the Fund. After carefully reviewing all the documentation, it appeared to staff that Mr. Green's claim meets the criteria payment from the Fund. Further, Merchants Bonding Company has notified the Dealer Board that they have now exhausted their \$50,000.00 liability of claims.

On October 31, 2011, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that the Board should consider Mr. Green's request for payment from the Fund for \$9,092.00 (\$8,774.00 attorney fees and \$318.00 court costs).

Motion was made by Matt McQueen to accept the hearing officer's recommendation. Andy Alvarez seconded. The motion carried unanimously.

**NEW BUSINESS FROM THE FLOOR**

The next meeting was scheduled for January 9, 2012.

The meeting adjourned at 10:42 a.m.