

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, July 9, 2012

Chairman Rick Holcomb called the Dealer Board meeting to order at 11:27 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 Andy Alvarez, Ted Bailey, Roy Boswell, Lynn Hooper, Art Hudgins, Ronald Kody, Chip Lindsay, Matt McQueen, Thomas Moorehead, George Pelton, Joe Tate and Jimmy Whitten. (Absent: Brian Hutchens, Wanda Lewark, Kevin Reilly, Rodney Williams, Sally Woodson and Tommy Woodson). Executive Director Bruce Gould, Prin Cowan, Ann Majors, 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.

The May 14, 2012 meeting summary was approved.

STATUTORY COMMITTEE REPORTS

Dealer Practices Committee:

Committee Member Ronald Kody summarized discussions held and actions that were taken during the Committee Meeting.

- **Variance in Hours: Jerry's Automotive and Jerry Farmer.**

seconded. The motion carried unanimously.

- **Acars, Inc. and William Cairns.**

seconded. The motion carried unanimously.

- **Boyd Honda of South Hill and Charles H. Boyd.** This issue was tabled until the September 10, 2012 meeting.
- **Diamond Auto Sales, LLC and Avneet Singh.** .

seconded. The motion carried unanimously.

- **Jason Farneth Auto Sales and Terry Farneth.**

seconded. The motion carried unanimously.

Amended motion made by Joe Tate to assess a \$2,500 an if she fails the Dealer Operator course, an additional \$500 civil penalty will be assessed against her. Ted Bailey seconded. The motion carried unanimously.

Licensing Committee

Chairman Jimmy Whitten summarized discussions held and actions that were taken during the Committee Meeting.

- **TrueCar.** The Board has reviewed and considered the pricing/fee model proposed by TrueCar and has determined that the proposal is not consistent with Virginia law.

Brian Hutchens seconded. All in favor: 16 (Holcomb, Hooper, Reilly, Alvarez, Bailey, Boswell, Hudgins, Hutchens, Lewark, Lindsay, McQueen, Moorehead, Tate, Whitten, Williams, T. Woodson). Opposed: 2 (Kody and S. Woodson). The motion carried.

- **Mark Smoot, Auto Center.** 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 Mark T. Smoot for alleged violations of Va. Code Sections 46.2-1575 subsections (1) and (9). Based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Smoot in running his dealership. The Board mandates that Mr. Smoot successfully complete the dealer-operator course by November 14, 2012. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Mr. Smoot by the Board until what time Mr. Smoot has successfully completed the course.

Tommy Woodson seconded. The motion carried unanimously.

- **David L. Goad, David's Auto Sales.** 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 David L. Goad for alleged violations of Va. Code Sections 46.2-1550; and 46.2-1575 subsections (1) and (9). Based on due consideration, the Board believes no action should be taken against David L. Goad. The Board hereby takes no further action civil penalty against David L. Goad.

Art Hudgins seconded. The motion carried unanimously.

- **Earnest W. Harrison, Auto World of Chester.** 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 Earnest W. Harrison for alleged violations of Va. Code Section 46.2-1575.13. Based on due consideration, the Board believes a civil penalty should be assessed against Earnest W. Harrison. The Board hereby takes assesses a \$1,000 civil penalty against Earnest W. Harrison; and based on due consideration, the Board believes Mr. Harrison's dealer-operator certificate of qualification should be revoked. The Board hereby revokes Mr. Harrison's dealer-operator certificate of qualification and that he be allowed to retain his salespersons certificate of qualification and license.

Matt McQueen seconded. The motion carried unanimously.

- **Oliver C. Lawrence, Chamberlayne Auto Sales & Repairs.** 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 Oliver C. Lawrence for alleged violations of Va. Code Sections 46.2-1575 subsections (6) and (9). Based on due consideration, the Board believes a civil penalty should be assessed against Oliver C. Lawrence. The Board hereby assesses a \$1,000 civil penalty against Oliver C. Lawrence; and based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Oliver C. Lawrence and Kim B. Lawrence. The Board mandates that Mr. Lawrence successfully complete the dealer-operator course by October 14, 2012 and urges Ms. Lawrence to complete the course as well. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Mr. Lawrence by the Board until such time Mr.

Lawrence has successfully completed the course. If both Mr. and Ms Lawrence successfully completes the course by October 14, 2012, the civil penalty will be reduced to \$500.

Joe Tate seconded. The motion carried unanimously.

- **Gerald Kazembe.** Based on the evidence and a report of an informal fact finding conference as prepared by a hearing officer, the Motor Vehicle Dealer Board, revoked Mr. Gerald Kazembe's salesperson certificate of qualification; and Mr. Kazembe appealed the Board's decision and requested a formal hearing that was conducted on March 8, 2012. 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 Gerald Kazembe for alleged violations of Va. Code Sections 46.2-1542(B); 46.2-1544; and 46.2-1575 subsections (1), (2), (4), (6) and (9). Based on due consideration, the Board believes a civil penalty should be assessed against Gerald Kazembe. The Board hereby assesses a \$48,000 civil penalty against Gerald Kazembe; and based on due consideration, the Board believes that all licenses and certificates issued by the Board to Mr. Kazembe should be revoked. The Board hereby revokes all licenses and certificates issued by the Board to Mr. Kazembe.

Thomas Moorehead seconded. The motion carried unanimously.

- **Richard W. DeBolt.** No action needed. Mr. DeBolt withdrew his application.
- **Mark L. Steward.** Based on the evidence and a report of an informal fact finding conference as prepared by a hearing officer, the Motor Vehicle Dealer Board, denied Mr. Mark L. Steward's application for a salesperson license; and Mr. Steward appealed the Board's decision and requested a formal hearing that was conducted on January 19, 2012. 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 Mark L. Steward for alleged violations of Va. Code Section 46.2-1575 (13). Based on due consideration, the Board believes Mr. Steward's application should be denied. The Board denies Mr. Steward's application for a salesperson license

Roy Boswell 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.

- **Pennelton Cochran, III and Showcase Select Imports and Michael & Sharon Russ and Absher Sales.** Chairman Lynn Hooper summarized for the Board the discussion held in the committee meeting regarding Pennelton Cochran, III and Showcase Select Imports and Michael & Sharon Russ and Absher Sales. 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:

Pennelton Cochran, III and Showcase Select Imports	\$20,000.00
Michael & Sharon Russ and Absher Sales	
\$20,000.00	

Sally Woodson seconded. The motion carried unanimously.

OLD BUSINESS

There was no old business

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

NEW BUSINESS FROM THE FLOOR

General Assembly Update: Bruce Gould indicated that the legislation impacting forms and the Transaction Recovery Fund are on track for implementation on July 1, 2012. Rick Holcomb indicated that DMV is upgrading print-on-demand 30-day temporary tags with a durable paper that no longer requires a plastic sleeve to affix to the vehicle. The new weather-resistant tags will be issued exclusively through the Print-on-Demand (PoD) temporary tag program, beginning July 1, 2012. DMV will supply the paper at no charge and distribution will take place in mid-June. Over the course of the next year, bond paper with plastic sleeves and red cardboard tags will be phased out.

Executive Director’s Report. Bruce Gould indicated we have hired a new field representative to work out of Lebanon. The employee is a former law enforcement officer and is currently teaching law enforcement in a public school. He also indicated that staff is looking into providing the board meeting books electronically. If anyone is interested in receiving the books electronically, to let him know.

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

There being no further business to come before the Motor Vehicle Dealer Board, Chairman Holcomb adjourned the meeting at 1:24 p.m.

Meeting Summary
Dealer Practices Committee
Monday, July 9, 2012

Committee Member Ronald Kody called the Dealer Practices Committee meeting to order at 9:01 am. in Room 702 of the DMV Headquarters Building at 2300 W. Broad Street in Richmond. Absent: Tommy Woodson, Kevin Reilly, Sally Woodson and Rodney Williams). Present were Committee members Ted Bailey, Chip Lindsay, Matt McQueen, Thomas Moorehead, Joe Tate and Jimmy Whitten. Other Board members present: Art Hudgins, Brian Hutchens, Roy Boswell, Rick Holcomb, Lynn Hooper and George Pelton. Executive Director Bruce Gould, Prin Cowan, Ann Majors, Frank McCormick and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The May 14, 2012 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

- **Variance Request in Hours: Jerry Farmer and Jerry's Automotive Service.** Bruce Gould reported that for the past 14 years, Jerry Farmer has requested a variance in hours for his dealership, Jerry's Automotive Sales and Service, because of his teaching schedule.

Motion was made by Joe Tate to grant Mr. Farmer his variance request in hours. Matt McQueen seconded. The motion carried unanimously.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conferences:

- **Acars, Inc. and William Cairns.** On May 30, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s), 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 civil penalty of \$750 be assessed and a suspension of all licenses until a satisfactory inspection of all records by staff.

Motion was made by Joe Tate to assess a civil penalty of \$500 and to pass a satisfactory inspection after the 30 day waiting period and if he fails, all licenses will be suspended and

the civil penalty will increase by \$250. Matt McQueen seconded. The motion carried unanimously.

- **Boyd Honda of South Hill and Charles H. Boyd.** On May 18, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1547 (failure to maintain liability insurance), 46.2-1548 (dealer plate records required), 46.2-1559 (violation of record keeping for temporary tags), 46.2-1575(18). Based on the information provided at the conference, the hearing officer recommended that both of Mr. Boyd's locations be re-inspected, with no civil penalties assessed at this time.

Motion was made by Joe Tate to assess a civil penalty of \$500 for both dealerships for total civil penalty of \$1,000. The motion failed due to a lack of a second.

Motion was made by Matt McQueen to table this issue to the September meeting so that the dealer and his insurance company can attend the meeting. Thomas Moorehead seconded. The motion carried unanimously.

- **Diamond Auto Sales, LLC and Avneet Singh.** On April 30, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1529 (failure to maintain all dealer records on the premises of the licensed location), 46.2-1531 (Consignment vehicles; contract), 46.2-1533 (failing to maintain business hours) 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), 46.2-1575 (2) (failure to comply with a written warning). Based on the information provided at the conference, the hearing officer recommended assessing a civil penalty of \$4,000 and suspension of all licenses until a satisfactory inspection of all records by staff.

Motion was made by Joe Tate to assess a civil penalty of \$4,000 and to successfully pass a satisfactory inspection after the 30 day waiting period. If he fails the inspection, then all licenses will be suspended and the penalty will increase to \$4,500. Thomas Moorehead seconded. The motion carried unanimously.

- **Jason Farneth Auto Sales and Terry Farneth.** On March 21, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1547 (insurance required) and 46.2-1575 (1) (material misstatement or omission, (2) (failure to comply with a written warning), (9) (having been convicted of any criminal act) and (18) (failure to maintain automobile liability insurance). Based on the information provided at the conference, the hearing officer recommended assessing a civil penalty of \$6,000 and to successfully complete the Dealer-Operator course.

Terry Farneth was present and spoke on her own behalf.

Motion was made by Joe Tate to assess a civil penalty of \$3,000 and successfully complete the Dealer Operator Course. Ted Bailey seconded.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for September 10, 2012.

The meeting adjourned at 9:44 a.m.

Meeting Summary
Dealer Licensing Committee
Monday, July 9, 2012

Chairman Jimmy Whitten called the Dealer Licensing Committee meeting to order in Room 702 at 9:44 a.m., DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members Andy Alvarez, Roy Boswell, Art Hudgins, Brian Hutchens, George Pelton and Joe Tate. (Absent: Wanda Lewark and Sally Woodson) Other Board members present: Matt McQueen, Rick Holcomb, Lynn Hooper, Chip Lindsay, Joe Tate, Ted Bailey and Ron Kody. Executive Director Bruce Gould, Frank McCormick, Prin Cowan, Ann Majors and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The May 14, 2012 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

- **Update: TrueCars.** The Virginia Motor Vehicle Dealer Board is in agreement with TruCar's model that presented a flat fee based on dealership's location and the type of vehicle they are selling and that the fee is locked in for at least 6 months.

Motion was made by Joe Tate to accept True Car's proposed Virginia billing model. Brian Hutchens 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 Conferences:

- **Christopher B. Bower and General Imports of Salem, LLC.** On April 18, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1575(1) (having made a material misstatement on an application) and (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 assessing a civil penalty of \$100.00.

Motion was made by Brian Hutchens to accept the hearing officer's recommendation. George Pelton seconded. The motion carried unanimously.

- **Michael L. Schmidt and Speedtrap Motors, LLC.** On March 14, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1550 (improper use of or permitting the improper use of dealer's license plates), 46.2-1575(1) (having made a material misstatement on an application) 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 assessing a civil penalty of \$100.00.

Motion was made by Jimmy Whitten to accept the hearing officer's recommendation. George Pelton seconded. The motion carried unanimously.

- **Robert C. Bailey and Bailey's Auto Sales.** On March 29, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1550 (improper use of or permitting the improper use of dealer's license plates) 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 assessing a civil penalty of \$1,000.00 and to successfully complete the Dealer-Operator course.

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

- **Cynthia O'Neal Akerson, Salesperson.** On April 30, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1561 (misuse of dealer license plates), 46.2-1575 (1) (having made a material misstatement on an application) 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 the MVDB proceed with approving Ms. Akerson's application to renew her salespersons' license.

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

Review and Action: Formal Hearing:

- **Robert Hillmer, Salesperson.** Historical overview leading up to the formal hearing: On January 18, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1575 (1) (having made a material misstatement on an application) and (13) (having been convicted of a felony). At the March 12, 2012 Licensing Committee and Full Board meeting, the members passed a resolution denying Mr. Hillmer's application for a motor vehicle salesperson's license.

On March 29, 2012, Mr. Hillmer appealed and requested a formal hearing. On April 26, 2012, a formal hearing was conducted to address the alleged violations as mentioned above. Based on the information provided at the hearing, the hearing officer recommended that Mr. Hillmer be assessed a civil penalty of \$250.00 and approving his application to renew his salespersons' license.

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

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

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for September 10, 2012.

The meeting adjourned at 10:32 a.m.

Meeting Summary
Advertising Committee
Monday, July 9, 2012

Committee member Chip Lindsay called the Advertising Committee meeting to order in Room 702 at 10:33 a.m., DMV Headquarters, 2300 West Broad Street, Richmond, Virginia. Present were Committee members Andy Alvarez, Ronald Kody, Matt McQueen, George Pelton. (Absent: Kevin Reilly, Tommy Woodson, Sally Woodson and Rodney Williams). Other Board members present: Art Hudgins, Brian Hutchens, Roy Boswell, Rick Holcomb, Lynn Hooper, Jimmy Whitten, Joe Tate, Ted Bailey. Executive Director Bruce Gould, Frank McCormick, Prin Cowan, Ann Majors and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The May 14, 2012 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 September 10, 2012.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The meeting adjourned at 10:34 a.m.

Meeting Summary
Transaction Recovery Fund Committee
Monday, July 9, 2012

Chairman Lynn Hooper 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: Andy Alvarez, Ted Bailey, Roy Boswell, Brian Hutchens, Matt McQueen and Thomas Moorehead. (Absent: Kevin Reilly). Other Board members present: Rick Holcomb, Chip Lindsay, Jimmy Whitten, Joe Tate, George Pelton and Ron Kody. Executive Director Bruce Gould, Prin Cowan, Frank McCormick, Ann Majors and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The May 14, 2012 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:

Gertonia Mergerson and Auto Depot, Inc. On March 13, 2010, Gertonia Mergerson and her husband entered into a contract with Auto Depot for the purchase of a 2004 Chevrolet Impala, for a total cash price of \$12,803.72. In conjunction with the purchase, Mr. & Mrs. Mergerson traded-in a 2003 Dodge Ram and was given a trade-in allowance of \$11,000.00 minus the amount owed of \$13,800.00 leaving a negative balance of \$2,800.00 making the unpaid cash balance due in the amount of \$15,603.72. Auto Depot represented that the vehicle was inspected under a "96 POINT CHECK UP" and that the vehicle was also under a warranty. Due to the representations of the dealer, the Mergersons' obtained a secured loan from Navy Federal Credit Union (NFCU) in the amount of \$16,087.47. After the Mergersons' took delivery of the vehicle it became apparent that the vehicle was not in working order and was returned to the dealer for repairs. After the 2004 Chevrolet Impala was returned multiple times to Auto Depot for repairs it was determined that it was irreparable. Auto Depot presented the Mergersons' with a 2004 Dodge Stratus, as an alternate vehicle. However, because the alternate vehicle was so much lower in value than the 2004 Chevrolet Impala that was contracted for, the lender (Navy Federal Credit Union)

rejected the vehicle as not suitable to secure the loan. Once this was presented to the dealer, no other vehicle was presented as a replacement and the Mergersons' are obligated to make monthly payments for a car loan without the vehicle.

Auto Depot contracted to sell a vehicle to the Mergersons' which included a limited warranty. When the vehicle was determined to be unfixable by Auto Depot, they refused to refund their money or replace the vehicle therefore not performing under the obligations of the contract. Mrs. Gertonia Mergerson then sought legal counsel (B. Clayborne Chick, Esquire) in order to pursue (Auto Depot-name changed to Redline Auto Sales, Inc.) civilly in court in order to seek monetary relief in connection with the purchase, the Mergersons' do not have a vehicle and they are being held liable to Navy Federal Credit Union for the loan with interest.

On July 12, 2011, Mr. Chick filed a Notice of Motion for Judgment in the Norfolk General District Court against Auto Depot Aka/dba Red Line Auto Sales, Inc. for breach of contract and fraud. On August 10, 2011, via facsimile Mr. Chick submitted to the Dealer Board documentation for consideration of his client's possible claim against the Motor Vehicle Transaction Recovery Fund (Fund). On October 12, 2011, the Norfolk General District Court awarded Gastonia Mergerson judgment against Auto Depot & Red Line Auto Sales, Inc. for fraudulent acts in connection with the purchase in the amount of \$15,887.47 and \$2,000.00 in attorney fees. On October 20, 2011, Mr. Chick submitted the attested copy of the final judgment order requesting reimbursement from the Fund. On January 6, 2011, via email Mr. Chick submitted to the Dealer Board a copy of the check from NFCU in the amount of \$16,087.47 payable to Gastonia Mergerson and Auto Depot, Inc. [The back of check shows Auto Depot deposited the funds]. On February 6, 2012, Counsel was unable to provide a copy of the Buyer's Order only the Retail Installment in connection with the purchase.

After a careful preliminary review, Mrs. Mergerson's claim meets the requirement of the Va. Code §46.2-1527.3, judgment was awarded in the Commonwealth of Virginia. Therefore, due to the statutes governing the Fund the Dealer Board staff is requesting the Recovery Fund Committee and full Board to approve Mrs. Mergerson's claim in the amount of \$17,887.47, which is based on the judgment amount \$15,887.47 + \$2,000.00 attorney fees.

On May 21, 2012, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended the amount of \$15,887.47, attorney fees of \$2,000.00 for a total of \$17,887.47 be paid from the Fund.

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

Debora White and Q B Auto Sales. On June 7, 2011, Debora White entered into a contract to purchase a 1996 Toyota, Avalon from Q B Auto Sales. The base price of the vehicle was \$1,600.00, a dealer financing fee of \$400.00 and a processing fee of \$85.00 making a total purchase price of \$2,085.00. Ms. White made a deposit of \$575.00 towards the purchase,

leaving a balance to finance in the amount of \$1,510.00. Q B Auto Sales completed a Buyer's Order and typed up a finance agreement in connection with the purchase. The finance agreement indicated Ms. White would pay a sum of \$400.00 per month for an approximate period of four (4) months starting July 19, 2011 and ending approximately October 19, 2011, Ms White signed the contract and took possession of the vehicle.

Q B Auto Sales indicated they would hold the title to the 1996 Toyota Avalon until she paid for the vehicle in full. Ms. White paid \$300.00 on July 19, 2011, \$200.00 on August 16, 2011, and \$400.00 on August 31, 2011. This paid the July 19th payment of \$400, the August 19th payment of \$400, and \$100 towards the September 19th payment of \$400. On September 23, 2011, Q B Auto Sales repossessed the vehicle from Debora White.

On September 27, 2011, Debora White filed a Warrant in Debt against Q B Auto Sales in the City of Richmond General District Court, asserted that her vehicle was repossessed illegally and asked for damages in the amount of \$1,500.00, which was the balance to be financed. On October 12, 2011, Debora White, by counsel, filed an Amended Complaint in the City of Richmond General District Court against Q B Auto Sales for additional damages due to violations of the Uniform Commercial Code (UCC), Virginia Consumer Protection Act (VCPA) and the federal Truth in Lending Act (TILA). On November 30, 2011, Ms. White, by counsel filed a Motion for Summary Judgment against Q B Auto Sales. On December 14, 2011, the City of Richmond General District Court awarded Debora White a Final Order and Judgment against Q B Auto Sales for the following amounts: UCC and VCPA actual damages of \$1,475.00, UCC statutory damages of \$511.00, TILA statutory damages of \$800.00, and attorney's fees of \$1,802.75 and court costs of \$56.00.

On January 23, 2012 via facsimile Martin Wegbreit, Esquire on behalf of Ms. Debora White submitted to the Dealer Board documentation for consideration of his client's possible claim against the Motor Vehicle Transaction Recovery Fund (Fund). Upon receipt of the documentation submitted via facsimile and even though the Dealer Board was not given any prior notification pursuant to §46.2-1527.4, the Dealer Board staff acknowledged receipt of counsel's client (Debora White) possible claim against the Motor Vehicle Transaction Recovery Fund (Fund).

After a careful preliminary review, Ms. Debora White's claim meets the requirement of the Va. Code §46.2-1527.3, judgment was awarded in the Commonwealth of Virginia. On June 7, 2011, Therefore, due to the statutes governing the Fund, the Dealer Board staff is requesting that the Recovery Fund Committee and full Board to approve Ms. White's claim in the amount of \$3,333.75, which is based of \$1,475.00 actual damages; \$1,802.75 attorney fees and \$56.00 in court costs.

On May 21, 2012, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that Ms. McCormick satisfy the judgment of \$3,333.75, if she does not, it is recommended to make the payment from the Fund. It was also recommended that Ms. McCormick should successfully complete the Dealer-Operator Course.

Motion was made by Andy Alvarez to approve payment of \$3,333.75 from the Fund to Ms. White. Thomas Moorehead seconded. The motion carried unanimously.

Brandon D. Thesenvitz and 7 Cities Autobrokers, LLC. On February 18, 2011, Brandon Thesenvitz entered into a contract to purchase a 2004 Chevrolet Trailblazer, from 7 Cities Autobrokers, LLC. The sales price of the vehicle was \$12,849.69. In addition, 7 Cities Autobrokers collected \$295 processing fee; \$189.49 state sales tax; \$6.32 dealer's business tax; \$10 online system filing fee and \$49.50 title and registration fee making the total purchase price due in the amount of \$13,400.00. In connection with the purchase, Mr. Thesenvitz traded-in a 2001 Volkswagen Passat and was given a trade-in allowance of \$6,828.28 which was the balanced owed to pay-off his lien holder, Baxter Credit Union (BCU). The sales representative of 7 Cities Autobrokers promised Mr. Thesenvitz that they would pay-off his loan on his traded in. Mr. Thesenvitz relied on the dealerships representations, paid a \$500.00 down payment, financed the balance of \$12,900.00 for the purchase and took possession of the 2004 Chevrolet Trailblazer.

After purchasing the 2004 Chevrolet Trailblazer, Mr. Thesenvitz stopped making payments on the 2001 Volkswagen Passat and left the vehicle with the keys as a trade in with the dealership expecting that they would pay off the existing loan to BCU. In August, 2011 BCU notified Brandon Thesenvitz that he was in default of his loan on the Volkswagen Passat. Mr. Thesenvitz had to borrowed money from his family in order to make the loan payments on the Passat loan. Baxter Credit Union (BCU) reported late payments to various credit reporting agencies, which damaged his credit reputation and BCU is holding him liable for the loan balance. As a result of the dealer's false representations, Mr. Thesenvitz obtained legal counsel in order to pursue the dealership civilly in court for his monetary relief.

On September 12, 2011, counsel (John Cole Gayle, Jr.) filed on behalf of Brandon Thesenvitz a Warrant in Debt against 7 Cities Autobrokers, LLC in the Norfolk General District Court for fraud and violations of the Virginia Consumer Protection Act for failure to pay off the loan on his trade-in. [Hearing Date was set for October 28, 2011]

On October 28, 2011, the Norfolk General District Court awarded Mr. Thesenvitz default judgment against 7 Cities Autobrokers, LLC in the amount of \$12,000 for actual damages, \$3,000 in attorney fees and \$122 in court costs. On October 28, 2011, John Cole Gayle, Jr., Esquire on behalf of Mr. Thesenvitz submitted to the Dealer Board the judgment that was entered on October 28, 2011. **Pursuant to §46.2-1527.4, the Board was not given an Opportunity to Intervene.**

On October 31, 2011, pursuant to §46.2-1527.2 the Dealer Board staff (via facsimile) provided counsel with copies of the dealers surety bonding company (CNA Surety). On November 8, 2011, CNA Surety (Western Surety Co.) for 7 Cities Autobrokers, LLC sent a letter advising the Dealer Board notice of received claims that have been submitted against the bond. CNA Surety has paid Mr. Thesenvitz claim for the actual damages in the amount

of \$6,828.28, which stems from the failure of the dealership to pay-off the loan on the trade-in. [Claim was paid February 21, 2012]

On February 14, 2012, Mr. Gayle, on behalf of his client, submitted to the Dealer Board documentation for consideration of payment from the Fund for the remaining portion of the judgment (\$12,000 actual damages - \$6,828.28 paid by surety); \$3,000 in attorney fees; and \$122 court costs.

On February 28, 2012, Mr. Gayle, on behalf of his client, submitted to the Dealer Board a copy of the check representing a bond payment by Western Surety in the amount of \$6,828.28.

After carefully reviewing all the documentation, Mr. Thesenvitz's claim meets the criteria for payment from the Fund, pursuant to Virginia Code §46.2-1527.3. Counsel is now requesting consideration of reimbursement on his client's claim from the Fund in the amount of \$8,293.72 which is for the remaining balance of (\$12,000 actual damages - \$6,828.28 surety bond paid = balance of \$5,171.72), attorney fees of (\$3,000.00) and court costs of (\$122.00).

Historically, the Board's staff would make a recommendation prior to an Informal Fact-Finding Conference. However, in order to determine the amount compensable for payment from the Fund, it is unclear on the face of the judgment how the Court arrived at \$12,000.00 in actual damages. On the BCU statement, it reflects there was a balance owed \$6,828.28 on the date of the transaction and there were (2) payments afterwards dated 5/31/11 of \$712 and on 7/13/11 of \$244.68 totaling \$956.68. The Dealer Board staff is requesting the expertise of Recovery Fund Committee and full Board in determining whether to approve or deny Mr. Thesenvitz's claim against the Fund.

On June 19, 2012, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that Mr. Thesenvitz be considered for payment of \$4,078.00 from the Fund.

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

Jorge A. Pimentel and Showcase Select Imports. On July 1, 2008, Jorge Pimentel entered into a contract to purchase a 2005 Cadillac Escalade from Showcase Exclusive Imports, Inc. t/a Showcase Select Imports (Showcase) with a sales price of \$33,680.00. In connection with the purchase, Mr. Pimentel traded-in a 2005 BMW which had an existing loan to Capital One in excess of \$47,000.00. In which, Showcase indicated to Mr. Pimentel that they would pay-off the existing loan in full.

Showcase completed a Buyer's Order for the purchase of the 2005 Cadillac Escalade and reflected the 2005 BMW as a trade-in with an allowance and balance owed of \$47,000.00. Mr. Pimentel trusted the representations made by Showcase and took possession of the

vehicle, provided Showcase with a deposit of \$1,500.00 and arranged financing for the balance owed in the amount of \$33,650.61.

Instead of Showcase paying the 2005 BMW off, Showcase instead made monthly payments even after they had sold the vehicle to a third party in September, 2009. In January, 2011 Showcase stopped making payments. The payoff at the time of the trade-in was approximately \$47,000.00, which Showcase had paid down to \$27,876.65. Ultimately, Mr. Pimentel's lien holder (Capital One) notified him his account was delinquent. Upon notice, Mr. Pimentel contacted Showcase and he was advised that the dealership was closed. All payments made after January 14, 2011 were paid by Mr. Pimentel in attempts to appease the lien holder (Capital One). Unfortunately, Mr. Pimentel is still being held liable for the loan balance to Capital One with interest.

Mr. Pimentel obtained legal counsel (Jennifer Sherwood, Esquire) in order to pursue Showcase civilly in court in connection with the purchase and the vehicle he traded-in which had an existing loan that was never paid off. On November 16, 2011, Ms. Sherwood, on behalf of Mr. Pimentel, filed a Warrant in Debt in the Newport News General District Court against Showcase for Breach of Contract/ Warranty, Fraud, and multiple violations of the Va. Consumer Protection Act. After this period, if the aggregate of claims against Showcase exceeds the \$100,000, a total of \$100,000 shall be prorated among the claimant's and paid from the Fund in proportion to the amounts of their unpaid judgments. The Dealer Board staff also enclosed the Judgment Claim Request form (MVDB-13) to be returned 30 days after the award of judgment.

On December 21, 2011, the General District Court for Newport News awarded Jorge Pimentel a default judgment against Showcase Exclusive Imports, Inc. t/a Showcase Select Imports on the basis of misrepresentation & fraud. The judgment amount was awarded as follows, (a) \$25,000.00 compensatory damages; (b) \$1,500.00 attorney fees; (c) \$76.00 court costs; and (d) interest at 6% from date of judgment until fully paid. On February 22, 2012, Ms. Sherwood submitted to the Dealer Board documentation for consideration of the maximum payment of \$20,000.00 from the Fund.

After a careful preliminary review, Jorge Pimentel's claim meets the requirements of Va. Code §46.2-1527.3, judgment was awarded in a court of competent jurisdiction of the Commonwealth of Virginia. Further, claims against the Fund are based in part, on the criteria set forth in §46.2-1527.3 of the Code of Va. Under that provision, a claimant may submit a final judgment from a court of competent jurisdiction in Virginia entered against a licensed dealer or salesperson which is based on fraud in conjunction with the purchase of a motor vehicle or a violation of the dealer licensing laws. In July, 2008, Jorge Pimentel purchased a 2005 Cadillac Escalade and in connection with the purchase traded-in a 2005 BMW, in which had an existing lien. Showcase had represented they would pay-off the loan on the trade-in; instead they made monthly payments on the loan. In January, 2011 Showcase stop making payments leaving a payoff balance in excess of \$25,000. Ultimately, the lien holder is holding Mr. Pimentel liable for the balance of the loan in the amount of \$27,351.65. On December 21, 2011, the General District Court for Newport News awarded Mr. Pimentel judgment against Showcase on the basis of Misrepresentation and Fraud, in

the amount of \$25,000.00 compensatory damages, \$1,500.00 attorney fees, and \$76.00 in court costs.

Given the above facts and code sections governing the Fund, if the aggregate of claims does not exceed the \$100,000, the Dealer Board's staff is requesting the Recovery Fund Committee and full Board approve Jorge Pimentel's claim in the amount of \$20,000.00, which is the maximum amount allowed pursuant to §46.2-1527.5. Further, payment from the Fund would not be issued until the end of the relevant license or registration period [April 30, 2012].

On June 25, 2012, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that Mr. Pimentel be considered for payment of \$20,000.00 from the Fund.

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

Creasasio D. Herbert and Showcase Select Imports. On March 6, 2010, Creasasio D. Herbert entered into a contract to purchase a 2008 Dodge Charger from Showcase Exclusive Imports, Inc. t/a Showcase Select Imports (Showcase) with a sales price of \$16,696.13. In connection with the purchase, Mr. Herbert traded-in a 2008 Nissan Titan with an existing loan. In which, Showcase indicated they would pay-off the loan. In addition, Showcase included in the purchase price for the Dodge Charger a separate fee of \$500.00 for Gap insurance.

Showcase completed the Buyer's Order for the purchase of the 2008 Dodge Charger and reflected the trade-in allowance of \$13,280.00 on the 2008 Nissan with a balance owed of \$15,280.00. In addition, Showcase collected a processing fee of \$320.00, state sales tax of \$510.48, dealer's business tax of \$33.39, a service contract of \$1805.08 and title/registration fee of \$59.50 making the total due of \$21,424.58. Mr. Herbert made a deposit of \$2,000.00 leaving an unpaid balance owed of \$18,924.58 the purchase.

Mr. Herbert took possession of the 2008 Dodge Charger and believed Showcase would pay off the loan on his trade-in. Despite Showcase's promise to do so, Showcase did not pay off the loan nor obtained the Gap insurance for the vehicle he purchased. Instead Showcase made sporadic monthly payments and in November, 2010 sold his trade-in to a third party. In order to protect his credit Mr. Herbert paid a total of \$3,980.96 directly to his lien holder. Mr. Herbert then sought legal counsel in order to pursue Showcase civilly in court for his monetary loss in connection with the purchase and the vehicle he traded-in; that the dealer failed to pay-off.

On November 16, 2011, Jennifer Sherwood, Esquire on behalf of Creasasio Herbert filed a Warrant in Debt in the Newport News General District Court against Showcase for Breach of Contract/Warranty, fraud and multiple violations of the Va. Consumer Protection Act. On January 9, 2012, Ms. Sherwood submitted to the Dealer Board documentation as a possible claim against the Fund. Staff advised counsel that the Dealer Board had been made aware of

numerous claims against Showcase and that pursuant to §46.2-1527.5 payment may not be made until the end of the requisite license period (April 30, 2012). After this period, if the aggregate of claims against Showcase exceeds the \$100,000, a total of \$100,000 shall be prorated among the claimant's and paid from the Fund in proportion to the amounts of their unpaid judgments. The Dealer Board staff also enclosed the Judgment Claim Request form (MVDB-13) to be returned 30 days after the award of judgment.

On January 11, 2012, the General District Court for Newport News awarded Mr. Herbert a default judgment against Showcase Exclusive Imports, Inc. t/a Showcase Select Imports on the basis of misrepresentation & fraud. The judgment amount was awarded as follows, (a) \$4,480.96 compensatory damages; (b) \$1,000.00 attorney fees; (c) \$76.00 court costs; and (d) interest at 6% from date of judgment until fully paid.

On February 22, 2012, Ms. Sherwood submitted to the Dealer Board documentation for consideration of reimbursement from the Fund. After a careful preliminary review, Mr. Herbert's claim meets the requirements of Va. Code §46.2-1527.3, judgment was awarded in a court of competent jurisdiction of the Commonwealth of Virginia. Given the above facts and code sections governing the Fund, if the aggregate of claims does not exceed the \$100,000, the Dealer Board's staff is requesting the Recovery Fund Committee and full Board approve Mr. Herbert's claim in the amount of \$5,556.96, which is based on judgment amounts of \$4,480.96 compensatory damages, \$1,000.00 attorney fees and \$76.00 court costs. Further, payment from the Fund would not be issued until the end of the relevant license or registration period [April 30, 2012].

On June 25, 2012, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that Mr. Herbert be considered for payment of \$5,556.96 from the Fund.

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

NEW BUSINESS FROM THE FLOOR

The next meeting was scheduled for September 10, 2012.

The meeting adjourned at 11:10 a.m.

Meeting Summary
Transaction Recovery Fund Committee
Monday, July 9, 2012

Chairman Lynn Hooper 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: Andy Alvarez, Ted Bailey, Roy Boswell, Brian Hutchens, Matt McQueen and Thomas Moorehead. (Absent: Kevin Reilly). Other Board members present: Rick Holcomb, Chip Lindsay, Jimmy Whitten, Joe Tate, George Pelton and Ron Kody. Executive Director Bruce Gould, Prin Cowan, Frank McCormick, Ann Majors and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The May 14, 2012 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:

Gertonia Mergerson and Auto Depot, Inc. On March 13, 2010, Gertonia Mergerson and her husband entered into a contract with Auto Depot for the purchase of a 2004 Chevrolet Impala, for a total cash price of \$12,803.72. In conjunction with the purchase, Mr. & Mrs. Mergerson traded-in a 2003 Dodge Ram and was given a trade-in allowance of \$11,000.00 minus the amount owed of \$13,800.00 leaving a negative balance of \$2,800.00 making the unpaid cash balance due in the amount of \$15,603.72. Auto Depot represented that the vehicle was inspected under a "96 POINT CHECK UP" and that the vehicle was also under a warranty. Due to the representations of the dealer, the Mergersons' obtained a secured loan from Navy Federal Credit Union (NFCU) in the amount of \$16,087.47. After the Mergersons' took delivery of the vehicle it became apparent that the vehicle was not in working order and was returned to the dealer for repairs. After the 2004 Chevrolet Impala was returned multiple times to Auto Depot for repairs it was determined that it was irreparable. Auto Depot presented the Mergersons' with a 2004 Dodge Stratus, as an alternate vehicle. However, because the alternate vehicle was so much lower in value than the 2004 Chevrolet Impala that was contracted for, the lender (Navy Federal Credit Union)

rejected the vehicle as not suitable to secure the loan. Once this was presented to the dealer, no other vehicle was presented as a replacement and the Mergersons' are obligated to make monthly payments for a car loan without the vehicle.

Auto Depot contracted to sell a vehicle to the Mergersons' which included a limited warranty. When the vehicle was determined to be unfixable by Auto Depot, they refused to refund their money or replace the vehicle therefore not performing under the obligations of the contract. Mrs. Gertonia Mergerson then sought legal counsel (B. Clayborne Chick, Esquire) in order to pursue (Auto Depot-name changed to Redline Auto Sales, Inc.) civilly in court in order to seek monetary relief in connection with the purchase, the Mergersons' do not have a vehicle and they are being held liable to Navy Federal Credit Union for the loan with interest.

On July 12, 2011, Mr. Chick filed a Notice of Motion for Judgment in the Norfolk General District Court against Auto Depot Aka/dba Red Line Auto Sales, Inc. for breach of contract and fraud. On August 10, 2011, via facsimile Mr. Chick submitted to the Dealer Board documentation for consideration of his client's possible claim against the Motor Vehicle Transaction Recovery Fund (Fund). On October 12, 2011, the Norfolk General District Court awarded Gastonia Mergerson judgment against Auto Depot & Red Line Auto Sales, Inc. for fraudulent acts in connection with the purchase in the amount of \$15,887.47 and \$2,000.00 in attorney fees. On October 20, 2011, Mr. Chick submitted the attested copy of the final judgment order requesting reimbursement from the Fund. On January 6, 2011, via email Mr. Chick submitted to the Dealer Board a copy of the check from NFCU in the amount of \$16,087.47 payable to Gastonia Mergerson and Auto Depot, Inc. [The back of check shows Auto Depot deposited the funds]. On February 6, 2012, Counsel was unable to provide a copy of the Buyer's Order only the Retail Installment in connection with the purchase.

After a careful preliminary review, Mrs. Mergerson's claim meets the requirement of the Va. Code §46.2-1527.3, judgment was awarded in the Commonwealth of Virginia. Therefore, due to the statutes governing the Fund the Dealer Board staff is requesting the Recovery Fund Committee and full Board to approve Mrs. Mergerson's claim in the amount of \$17,887.47, which is based on the judgment amount \$15,887.47 + \$2,000.00 attorney fees.

On May 21, 2012, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended the amount of \$15,887.47, attorney fees of \$2,000.00 for a total of \$17,887.47 be paid from the Fund.

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

Debora White and Q B Auto Sales. On June 7, 2011, Debora White entered into a contract to purchase a 1996 Toyota, Avalon from Q B Auto Sales. The base price of the vehicle was \$1,600.00, a dealer financing fee of \$400.00 and a processing fee of \$85.00 making a total purchase price of \$2,085.00. Ms. White made a deposit of \$575.00 towards the purchase,

leaving a balance to finance in the amount of \$1,510.00. Q B Auto Sales completed a Buyer's Order and typed up a finance agreement in connection with the purchase. The finance agreement indicated Ms. White would pay a sum of \$400.00 per month for an approximate period of four (4) months starting July 19, 2011 and ending approximately October 19, 2011, Ms White signed the contract and took possession of the vehicle.

Q B Auto Sales indicated they would hold the title to the 1996 Toyota Avalon until she paid for the vehicle in full. Ms. White paid \$300.00 on July 19, 2011, \$200.00 on August 16, 2011, and \$400.00 on August 31, 2011. This paid the July 19th payment of \$400, the August 19th payment of \$400, and \$100 towards the September 19th payment of \$400. On September 23, 2011, Q B Auto Sales repossessed the vehicle from Debora White.

On September 27, 2011, Debora White filed a Warrant in Debt against Q B Auto Sales in the City of Richmond General District Court, asserted that her vehicle was repossessed illegally and asked for damages in the amount of \$1,500.00, which was the balance to be financed. On October 12, 2011, Debora White, by counsel, filed an Amended Complaint in the City of Richmond General District Court against Q B Auto Sales for additional damages due to violations of the Uniform Commercial Code (UCC), Virginia Consumer Protection Act (VCPA) and the federal Truth in Lending Act (TILA). On November 30, 2011, Ms. White, by counsel filed a Motion for Summary Judgment against Q B Auto Sales. On December 14, 2011, the City of Richmond General District Court awarded Debora White a Final Order and Judgment against Q B Auto Sales for the following amounts: UCC and VCPA actual damages of \$1,475.00, UCC statutory damages of \$511.00, TILA statutory damages of \$800.00, and attorney's fees of \$1,802.75 and court costs of \$56.00.

On January 23, 2012 via facsimile Martin Wegbreit, Esquire on behalf of Ms. Debora White submitted to the Dealer Board documentation for consideration of his client's possible claim against the Motor Vehicle Transaction Recovery Fund (Fund). Upon receipt of the documentation submitted via facsimile and even though the Dealer Board was not given any prior notification pursuant to §46.2-1527.4, the Dealer Board staff acknowledged receipt of counsel's client (Debora White) possible claim against the Motor Vehicle Transaction Recovery Fund (Fund).

After a careful preliminary review, Ms. Debora White's claim meets the requirement of the Va. Code §46.2-1527.3, judgment was awarded in the Commonwealth of Virginia. On June 7, 2011, Therefore, due to the statutes governing the Fund, the Dealer Board staff is requesting that the Recovery Fund Committee and full Board to approve Ms. White's claim in the amount of \$3,333.75, which is based of \$1,475.00 actual damages; \$1,802.75 attorney fees and \$56.00 in court costs.

On May 21, 2012, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that Ms. McCormick satisfy the judgment of \$3,333.75, if she does not, it is recommended to make the payment from the Fund. It was also recommended that Ms. McCormick should successfully complete the Dealer-Operator Course.

Motion was made by Andy Alvarez to approve payment of \$3,333.75 from the Fund to Ms. White. Thomas Moorehead seconded. The motion carried unanimously.

Brandon D. Thesenvitz and 7 Cities Autobrokers, LLC. On February 18, 2011, Brandon Thesenvitz entered into a contract to purchase a 2004 Chevrolet Trailblazer, from 7 Cities Autobrokers, LLC. The sales price of the vehicle was \$12,849.69. In addition, 7 Cities Autobrokers collected \$295 processing fee; \$189.49 state sales tax; \$6.32 dealer's business tax; \$10 online system filing fee and \$49.50 title and registration fee making the total purchase price due in the amount of \$13,400.00. In connection with the purchase, Mr. Thesenvitz traded-in a 2001 Volkswagen Passat and was given a trade-in allowance of \$6,828.28 which was the balanced owed to pay-off his lien holder, Baxter Credit Union (BCU). The sales representative of 7 Cities Autobrokers promised Mr. Thesenvitz that they would pay-off his loan on his traded in. Mr. Thesenvitz relied on the dealerships representations, paid a \$500.00 down payment, financed the balance of \$12,900.00 for the purchase and took possession of the 2004 Chevrolet Trailblazer.

After purchasing the 2004 Chevrolet Trailblazer, Mr. Thesenvitz stopped making payments on the 2001 Volkswagen Passat and left the vehicle with the keys as a trade in with the dealership expecting that they would pay off the existing loan to BCU. In August, 2011 BCU notified Brandon Thesenvitz that he was in default of his loan on the Volkswagen Passat. Mr. Thesenvitz had to borrowed money from his family in order to make the loan payments on the Passat loan. Baxter Credit Union (BCU) reported late payments to various credit reporting agencies, which damaged his credit reputation and BCU is holding him liable for the loan balance. As a result of the dealer's false representations, Mr. Thesenvitz obtained legal counsel in order to pursue the dealership civilly in court for his monetary relief.

On September 12, 2011, counsel (John Cole Gayle, Jr.) filed on behalf of Brandon Thesenvitz a Warrant in Debt against 7 Cities Autobrokers, LLC in the Norfolk General District Court for fraud and violations of the Virginia Consumer Protection Act for failure to pay off the loan on his trade-in. [Hearing Date was set for October 28, 2011]

On October 28, 2011, the Norfolk General District Court awarded Mr. Thesenvitz default judgment against 7 Cities Autobrokers, LLC in the amount of \$12,000 for actual damages, \$3,000 in attorney fees and \$122 in court costs. On October 28, 2011, John Cole Gayle, Jr., Esquire on behalf of Mr. Thesenvitz submitted to the Dealer Board the judgment that was entered on October 28, 2011. **Pursuant to §46.2-1527.4, the Board was not given an Opportunity to Intervene.**

On October 31, 2011, pursuant to §46.2-1527.2 the Dealer Board staff (via facsimile) provided counsel with copies of the dealers surety bonding company (CNA Surety). On November 8, 2011, CNA Surety (Western Surety Co.) for 7 Cities Autobrokers, LLC sent a letter advising the Dealer Board notice of received claims that have been submitted against the bond. CNA Surety has paid Mr. Thesenvitz claim for the actual damages in the amount

of \$6,828.28, which stems from the failure of the dealership to pay-off the loan on the trade-in. [Claim was paid February 21, 2012]

On February 14, 2012, Mr. Gayle, on behalf of his client, submitted to the Dealer Board documentation for consideration of payment from the Fund for the remaining portion of the judgment (\$12,000 actual damages - \$6,828.28 paid by surety); \$3,000 in attorney fees; and \$122 court costs.

On February 28, 2012, Mr. Gayle, on behalf of his client, submitted to the Dealer Board a copy of the check representing a bond payment by Western Surety in the amount of \$6,828.28.

After carefully reviewing all the documentation, Mr. Thesenvitz's claim meets the criteria for payment from the Fund, pursuant to Virginia Code §46.2-1527.3. Counsel is now requesting consideration of reimbursement on his client's claim from the Fund in the amount of \$8,293.72 which is for the remaining balance of (\$12,000 actual damages - \$6,828.28 surety bond paid = balance of \$5,171.72), attorney fees of (\$3,000.00) and court costs of (\$122.00).

Historically, the Board's staff would make a recommendation prior to an Informal Fact-Finding Conference. However, in order to determine the amount compensable for payment from the Fund, it is unclear on the face of the judgment how the Court arrived at \$12,000.00 in actual damages. On the BCU statement, it reflects there was a balance owed \$6,828.28 on the date of the transaction and there were (2) payments afterwards dated 5/31/11 of \$712 and on 7/13/11 of \$244.68 totaling \$956.68. The Dealer Board staff is requesting the expertise of Recovery Fund Committee and full Board in determining whether to approve or deny Mr. Thesenvitz's claim against the Fund.

On June 19, 2012, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that Mr. Thesenvitz be considered for payment of \$4,078.00 from the Fund.

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

Jorge A. Pimentel and Showcase Select Imports. On July 1, 2008, Jorge Pimentel entered into a contract to purchase a 2005 Cadillac Escalade from Showcase Exclusive Imports, Inc. t/a Showcase Select Imports (Showcase) with a sales price of \$33,680.00. In connection with the purchase, Mr. Pimentel traded-in a 2005 BMW which had an existing loan to Capital One in excess of \$47,000.00. In which, Showcase indicated to Mr. Pimentel that they would pay-off the existing loan in full.

Showcase completed a Buyer's Order for the purchase of the 2005 Cadillac Escalade and reflected the 2005 BMW as a trade-in with an allowance and balance owed of \$47,000.00. Mr. Pimentel trusted the representations made by Showcase and took possession of the

vehicle, provided Showcase with a deposit of \$1,500.00 and arranged financing for the balance owed in the amount of \$33,650.61.

Instead of Showcase paying the 2005 BMW off, Showcase instead made monthly payments even after they had sold the vehicle to a third party in September, 2009. In January, 2011 Showcase stopped making payments. The payoff at the time of the trade-in was approximately \$47,000.00, which Showcase had paid down to \$27,876.65. Ultimately, Mr. Pimentel's lien holder (Capital One) notified him his account was delinquent. Upon notice, Mr. Pimentel contacted Showcase and he was advised that the dealership was closed. All payments made after January 14, 2011 were paid by Mr. Pimentel in attempts to appease the lien holder (Capital One). Unfortunately, Mr. Pimentel is still being held liable for the loan balance to Capital One with interest.

Mr. Pimentel obtained legal counsel (Jennifer Sherwood, Esquire) in order to pursue Showcase civilly in court in connection with the purchase and the vehicle he traded-in which had an existing loan that was never paid off. On November 16, 2011, Ms. Sherwood, on behalf of Mr. Pimentel, filed a Warrant in Debt in the Newport News General District Court against Showcase for Breach of Contract/ Warranty, Fraud, and multiple violations of the Va. Consumer Protection Act. After this period, if the aggregate of claims against Showcase exceeds the \$100,000, a total of \$100,000 shall be prorated among the claimant's and paid from the Fund in proportion to the amounts of their unpaid judgments. The Dealer Board staff also enclosed the Judgment Claim Request form (MVDB-13) to be returned 30 days after the award of judgment.

On December 21, 2011, the General District Court for Newport News awarded Jorge Pimentel a default judgment against Showcase Exclusive Imports, Inc. t/a Showcase Select Imports on the basis of misrepresentation & fraud. The judgment amount was awarded as follows, (a) \$25,000.00 compensatory damages; (b) \$1,500.00 attorney fees; (c) \$76.00 court costs; and (d) interest at 6% from date of judgment until fully paid. On February 22, 2012, Ms. Sherwood submitted to the Dealer Board documentation for consideration of the maximum payment of \$20,000.00 from the Fund.

After a careful preliminary review, Jorge Pimentel's claim meets the requirements of Va. Code §46.2-1527.3, judgment was awarded in a court of competent jurisdiction of the Commonwealth of Virginia. Further, claims against the Fund are based in part, on the criteria set forth in §46.2-1527.3 of the Code of Va. Under that provision, a claimant may submit a final judgment from a court of competent jurisdiction in Virginia entered against a licensed dealer or salesperson which is based on fraud in conjunction with the purchase of a motor vehicle or a violation of the dealer licensing laws. In July, 2008, Jorge Pimentel purchased a 2005 Cadillac Escalade and in connection with the purchase traded-in a 2005 BMW, in which had an existing lien. Showcase had represented they would pay-off the loan on the trade-in; instead they made monthly payments on the loan. In January, 2011 Showcase stop making payments leaving a payoff balance in excess of \$25,000. Ultimately, the lien holder is holding Mr. Pimentel liable for the balance of the loan in the amount of \$27,351.65. On December 21, 2011, the General District Court for Newport News awarded Mr. Pimentel judgment against Showcase on the basis of Misrepresentation and Fraud, in

the amount of \$25,000.00 compensatory damages, \$1,500.00 attorney fees, and \$76.00 in court costs.

Given the above facts and code sections governing the Fund, if the aggregate of claims does not exceed the \$100,000, the Dealer Board's staff is requesting the Recovery Fund Committee and full Board approve Jorge Pimentel's claim in the amount of \$20,000.00, which is the maximum amount allowed pursuant to §46.2-1527.5. Further, payment from the Fund would not be issued until the end of the relevant license or registration period [April 30, 2012].

On June 25, 2012, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that Mr. Pimentel be considered for payment of \$20,000.00 from the Fund.

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

Creasasio D. Herbert and Showcase Select Imports. On March 6, 2010, Creasasio D. Herbert entered into a contract to purchase a 2008 Dodge Charger from Showcase Exclusive Imports, Inc. t/a Showcase Select Imports (Showcase) with a sales price of \$16,696.13. In connection with the purchase, Mr. Herbert traded-in a 2008 Nissan Titan with an existing loan. In which, Showcase indicated they would pay-off the loan. In addition, Showcase included in the purchase price for the Dodge Charger a separate fee of \$500.00 for Gap insurance.

Showcase completed the Buyer's Order for the purchase of the 2008 Dodge Charger and reflected the trade-in allowance of \$13,280.00 on the 2008 Nissan with a balance owed of \$15,280.00. In addition, Showcase collected a processing fee of \$320.00, state sales tax of \$510.48, dealer's business tax of \$33.39, a service contract of \$1805.08 and title/registration fee of \$59.50 making the total due of \$21,424.58. Mr. Herbert made a deposit of \$2,000.00 leaving an unpaid balance owed of \$18,924.58 the purchase.

Mr. Herbert took possession of the 2008 Dodge Charger and believed Showcase would pay off the loan on his trade-in. Despite Showcase's promise to do so, Showcase did not pay off the loan nor obtained the Gap insurance for the vehicle he purchased. Instead Showcase made sporadic monthly payments and in November, 2010 sold his trade-in to a third party. In order to protect his credit Mr. Herbert paid a total of \$3,980.96 directly to his lien holder. Mr. Herbert then sought legal counsel in order to pursue Showcase civilly in court for his monetary loss in connection with the purchase and the vehicle he traded-in; that the dealer failed to pay-off.

On November 16, 2011, Jennifer Sherwood, Esquire on behalf of Creasasio Herbert filed a Warrant in Debt in the Newport News General District Court against Showcase for Breach of Contract/Warranty, fraud and multiple violations of the Va. Consumer Protection Act. On January 9, 2012, Ms. Sherwood submitted to the Dealer Board documentation as a possible claim against the Fund. Staff advised counsel that the Dealer Board had been made aware of

numerous claims against Showcase and that pursuant to §46.2-1527.5 payment may not be made until the end of the requisite license period (April 30, 2012). After this period, if the aggregate of claims against Showcase exceeds the \$100,000, a total of \$100,000 shall be prorated among the claimant's and paid from the Fund in proportion to the amounts of their unpaid judgments. The Dealer Board staff also enclosed the Judgment Claim Request form (MVDB-13) to be returned 30 days after the award of judgment.

On January 11, 2012, the General District Court for Newport News awarded Mr. Herbert a default judgment against Showcase Exclusive Imports, Inc. t/a Showcase Select Imports on the basis of misrepresentation & fraud. The judgment amount was awarded as follows, (a) \$4,480.96 compensatory damages; (b) \$1, 0 00.00 attorney fees; (c) \$76.00 court costs; and (d) interest at 6% from date of judgment until fully paid.

On February 22, 2012, Ms. Sherwood submitted to the Dealer Board documentation for consideration of reimbursement from the Fund. After a careful preliminary review, Mr. Herbert's claim meets the requirements of Va. Code §46.2-1527.3, judgment was awarded in a court of competent jurisdiction of the Commonwealth of Virginia. Given the above facts and code sections governing the Fund, if the aggregate of claims does not exceed the \$100,000, the Dealer Board's staff is requesting the Recovery Fund Committee and full Board approve Mr. Herbert's claim in the amount of \$5,556.96, which is based on judgment amounts of \$4,480.96 compensatory damages, \$1,000.00 attorney fees and \$76.00 court costs. Further, payment from the Fund would not be issued until the end of the relevant license or registration period [April 30, 2012].

On June 25, 2012, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that Mr. Herbert be considered for payment of \$5,556.96 from the Fund.

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

NEW BUSINESS FROM THE FLOOR

The next meeting was scheduled for September 10, 2012.

The meeting adjourned at 11:10 a.m.