

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

~ FINAL ~

Meeting Summary
Motor Vehicle Dealer Board
Monday, January 10, 2005

Chairman D.B. Smit 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 15 Board members present. Present were members Bobby Joe Dotson, Steve Farmer, Todd Hyman, Clyde King, David Lacy, Hugh McCreight, Pat Patrick, Max Pearson, Frank Pohanka, Ted Robertson, Chris Schroeder, Vince Sheehy, Larry Shelor and Robert Woodall. (Absent: Carlton Courter, Rick Hunt and James Mitchell). Bruce Gould, Peggy Bailey, Katherine Idrissi and Debbie Allison represented the Dealer Board. Don Bosewell represented DMV. Rick Walton represented the Attorney General's Office. Alice Weedon acted as Recording Secretary.

The November 8, 2004 meeting summary was approved.

D.B. Smit and Bruce Gould presented a resolution to Leo Trenor's widow Helen, his son Mike and Helen's sister Virginia.

PUBLIC COMMENT

There was no public comment.

STATUTORY COMMITTEE REPORTS:

Dealer Practices Committee:

- **Brown's Alexandria Mazda.** Chairman Todd Hyman summarized for the Board the discussion held in the Committee meeting regarding Brown's Alexandria Mazda. Based on that discussion, Mr. Hyman made the following motion: "The following shall be the policy of the Motor Vehicle Dealer Board ("Board") for sending educational and warning letters to licensees on matters other than advertising and not maintaining business hours.
 - A. Educational and warning letters to licensees are important tools in educating and advising licensees about the laws that apply to them;
 - B. The Board has a procedure for staff issuance of letters for apparent advertising violations and not maintaining business hours; and
 - C. The Board wishes to have a procedure for staff issuance of educational and warning letters for matters that do not involve advertising and not maintaining business hours where knowledge and understanding the facts involved may be disputed.

The Board adopts the following procedure concerning issuance by the staff of educational and warning letters to licensees:

1. The staff has full authority to send educational letters to a licensee provided that the educational letter must contain no findings of fact concerning the alleged actions of the licensee.
2. The staff may issue a warning letter to a licensee, provided that the warning letter is based upon facts and agreed to by the licensee in writing, and the facts justify a warning to the licensee.
3. If the licensee does not agree to facts justifying a warning letter, than an informal fact finding conference shall be convened.
4. Nothing contained in this resolution shall be used to interfere with an investigation by or on behalf of the staff leading to or designed to lead to a charge that will be the subject of an informal fact finding conference or a formal hearing."

Frank Pohanka seconded. The motion carried unanimously.

- Also, Todd made the following motion rescinding the educational letter to Brown's Alexandria Mazda: Upon consideration of the matter of Brown's Alexandria Mazda in light of the principles embodied in the resolution considered by the Dealer Board to establish a procedure for issuing warning letters, the Board hereby determines that the letters issued by the Dealer Board to Brown's Alexandria Mazda dated March 30, 2004 and April 22, 2004, and any other correspondence, communications or documents (including without limitation any factual findings, warnings or statements of policy) sent or made by the Dealer Board relating to the matter of Eugene and Victoria Brown of should be and hereby are rescinded in their entirety, shall not be relied upon in any respect, and shall be of no force or effect. A copy of this motion will be placed in the Dealer Board files concerning this dealer.

Pat Patrick seconded. The motion carried unanimously.

- **Lewis Bagwell, Jr.** Per Mr. Bagwell's request, this issue was tabled until the March meeting.

Licensing Committee:

Chairman Bobby Joe Dotson summarized discussions held and actions that were taken during the Committee Meeting.

- **Timothy W. Milloy, Salesperson License.** Chairman Bobby Joe Dotson summarized for the Board the discussion held in the Committee meeting regarding Timothy W. Milloy. Based on that discussion and the recommendation in the case, Mr. Dotson made the following motion: The executive director, under the authority granted by the Motor Vehicle Dealer Board, denied the original salesperson license application submitted by Mr. Milloy for alleged violations of Va. Code §46.2-1575(8), having been convicted of any fraudulent act in connection with the business of selling vehicles and §46.2-1575(13) having been convicted of a felony and Mr. Milloy appealed that decision. 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. Timothy L. Milloy for alleged violations of Va. Code §46.2-1575(8), having been convicted of any fraudulent act in connection with the business of selling vehicles and §46.2-1575(13) having been convicted of a felony. Based on due consideration, and the recommendation of the hearing officer, the Board believes that Mr. Milloy's application for a salesperson's should be approved. The Board hereby approves the salesperson's application of Mr. Timothy L. Milloy

Pat Patrick seconded. All in favor: 12 (Dotson, Hyman, Lacy, McCreight, Patrick, Pearson, Pohanka, Robertson, Sheehy, Shelor, Woodall, Smit). Oppose: 3 (Farmer, King, Schroeder). The motion carried.

- **Donald R. Frick, Salesperson License Denial.** Chairman Bobby Joe Dotson summarized for the Board the discussion held in the Committee meeting regarding Donald R. Frick. Based on that discussion and the recommendation in the case, Mr. Dotson made the following motion: The executive director, under the authority granted by the Motor Vehicle Dealer Board, denied the original salesperson license application submitted by Mr. Frick for alleged violations of Va. Code §46.2-1575(13) having been convicted of a felony and; Mr. Frick appealed that decision and an informal fact finding conference was convened. Based on due consideration, the executive director, under the authority granted by the Motor Vehicle Dealer Board, denied the salesperson's license application submitted by Mr. Frick and Mr. Frick appealed that decision and requested a formal hearing. The Board has reviewed and considered the facts and evidence and the report of a formal hearing as prepared by the hearing officer concerning Mr. Donald R. Frick and based on due consideration, the Board believes that Mr. Frick's application for a motor vehicle salesperson's license should be denied. The Board hereby denies Mr. Frick's application for a salesperson's license.

Steve Farmer seconded. All in favor: 13 (Dotson, Farmer, King, Lacy, McCreight, Patrick, Pohanka, Robertson, Schroeder Sheehy, Shelor, Woodall, Smit). Todd Hyman and Max Pearson abstained for having a past business relationship with the dealer. The motion carried.

Advertising Committee:

Chairman Vince Sheehy summarized discussions that were held during the Committee Meeting.

Transaction Recovery Fund Committee:

Chairman Steve Farmer summarized discussions held and actions that were taken during the Committee Meeting.

- **Loucindia A. Bembury and AutoSource, Laura Tiller, Administrator for Daniel Flowers and Auto Rama, Thomas Kuryla and Premier Auto.** Chairman Steve Farmer summarized for the Board the discussion held in the Committee meeting regarding Loucindia A. Bembury and AutoSource, Laura Tiller, Administrator for Daniel Flowers and Auto Rama, Thomas Kuryla and Premier Auto. Based on that discussion and the recommendation in the case, Mr. Farmer made the following motions: Pursuant to §46.2-1527.1 et seq. of the Code of Virginia, which is known as the Motor Vehicle Transaction Recovery Fund ("Fund"), the Board has reviewed and considered claims submitted for payment from the Fund on the claims and based on due consideration and recommendation of the staff representative, the Board believes the following claims should be payable from the Fund. The Board hereby approves and reaffirms the following claims and payment amounts subject to compliance by the claimant with statutory requirements:

Loucindia A. Bembury and AutoSource. \$4,465.00
Seconded by Clyde King. The motion carried unanimously.

Laura Tiller, Administrator for Daniel Flowers and Auto Rama. \$3,252.23
Seconded by Clyde King. The motion carried unanimously.

Thomas Kuryla and Premier Auto \$11,394.84
Seconded by Frank Pohanka. The motion carried unanimously.

OLD BUSINESS FROM THE FLOOR

- **Curbstoning Report.** Don Bosewell, new Chief of Investigations, gave a brief update on ISO investigations relating to curbstoning.
- **2005 General Assembly.** Bruce Gould presented a list of bills that are of interest to the dealers, most do not have a direct impact on the Dealer Board. No guidance is needed at this time.

There was no other old business from the floor.

NEW BUSINESS

The next meeting will be scheduled for March 14, 2005

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

- **Executive Director's Report.** Bruce Gould indicated that a few members have not completed the Conflicts of Interest training and to please do so and return the DVDs that were mailed to them. Bruce also discussed Administrative Dispute Resolution (ADR Act) and the role the Dealer Board may have. This is a service that would bring in a third party, to the Dealer Board, in the handling and resolution of consumer disputes/complaints. The consensus of the Board was that other third party mediation options are currently available and therefore, there is no need to further pursue this initiative at this time.

There being no further business to come before the Motor Vehicle Dealer Board, Chairman Smit adjourned the meeting at 12:08 p.m.

Meeting Summary
Dealer Practices Committee
Monday, January 10, 2005

Chairman Todd Hyman called the Dealer Practices Committee meeting to order at 8:32 a.m. in Room 702 of the DMV Headquarters Building at 2300 W. Broad Street in Richmond. Present were Committee members Bobby Joe Dotson, Clyde King, Hugh McCreight, Pat Patrick, Frank Pohanka, Ted Robertson, Chris Schroeder, Vince Sheehy and Robert Woodall. (Absent: James Mitchell) Other Board members present: D.B. Smit, Max Pearson, David Lacy, Steve Farmer and Larry Shelor. Executive Director Bruce Gould, Peggy Bailey, Katherine Idrissi and Debbie Allison represented the Dealer Board. Rick Walton was present from the Attorney General's Office.

The November 8, 2004 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

- **Update: November Actions.** Peggy Bailey reported on the actions taken at the Dealer Practices Committee meeting on November 10, 2004.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

- **Brown's Alexandria Mazda.** Brown's Alexandria Mazda took exception to an educational/ warning letter which it received on March 30, 2004 concerning the issue of possibly misleading customers that a demonstrator ("demo") is a new motor vehicle. Brown's disputed the facts on which the letter was bad since the dealer was not given an opportunity to present facts at an informal fact-finding conference or hearing.

Mike Charapp, attorney for the VADA, suggested that educational letters be sent that do not show findings of fact unless the dealer agrees with the findings. If they don't agree with the findings of fact, then an informal fact-finding conference or formal hearing should be conducted. Bruce Gould read the following resolution, proposed by Todd Hyman:

The following shall be the policy of the Motor Vehicle Dealer Board ("Board") for sending educational and warning letters to licensees on matters other than advertising and not maintaining business hours:

- A. Educational and warning letters to licensees are important tools in educating and advising licensees about the laws that apply to them;
- B. The Board has a procedure for staff issuance of letters for apparent advertising violations and not maintaining business hours; and

- C. The Board wishes to have a procedure for staff issuance of educational and warning letters for matters that do not involve advertising and not maintaining business hours where knowledge and understanding the facts involved may be disputed.

The Board adopts the following procedure concerning issuance by the staff of educational and warning letters to licensees:

1. The staff has full authority to send educational letters to a licensee provided that the educational letter must contain no findings of fact concerning the alleged actions of the licensee.
- 2.. The staff may issue a warning letter to a licensee, provided that the warning letter is based upon facts and agreed to by the licensee in writing, and the facts justify a warning to the licensee.
3. If the licensee does not agree to facts justifying a warning letter, than an informal fact finding conference shall be convened.
4. Nothing contained in this resolution shall be used to interfere with an investigation by or on behalf of the staff leading to or designed to lead to a charge that will be the subject of an informal fact finding conference or a formal hearing.

After some discussion and review of the information provided to the Committee in their notebooks, a motion was made by Todd Hyman to accept the resolution. Pat Patrick seconded. The motion carried unanimously.

Motion was made by Todd Hyman to rescind the warning letters to Brown's Mazda and place a copy of this motion in the dealer's file. Frank Pohanka seconded. The motion carried unanimously.

- **Lewis G. Bagwell, Jr.** Mr. Bagwell could not attend this January meeting, so he requested that this issue be heard at the next meeting. This issue was tabled until the March meeting.
- **Report on Variance Requests (Dealer Hours and Storage of Dealer Records).** Bruce Gould indicated that there were two requests to store records at an off sight centralized location and that there was one request for on-line dealer variances. All requests were granted.

NEW BUSINESS FROM THE FLOOR

The next meeting was scheduled for March 14, 2005.

The meeting adjourned at 9:15 a.m.

Meeting Summary
Dealer Licensing Committee
Monday, January 10, 2005

Chairman Bobby Joe Dotson called the Dealer Licensing Committee meeting to order at 9:16 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members Frank Pohanka, Steve Farmer, Todd Hyman, David Lacy, Larry Shelor and Robert Woodall. (Absent: Rick Hunt and James Mitchell) Other Board members present: D.B. Smit, Ted Robertson, Vince Sheehy, Pat Patrick, Clyde King, Chris Schroeder, Max Pearson, Hugh McCreight. Executive Director Bruce Gould, Peggy Bailey, Katherine Idrissi and Debbie Allison represented the Dealer Board. DMV. Rick Walton represented the Attorney General's Office.

The November 8, 2004 meeting summary was approved.

PUBLIC COMMENT:

There was no public comment.

OLD BUSINESS

- **Update: Dealer-Operator Test Task Force Committee Meeting.** Bruce Gould indicated that a list of topics were developed that should be included on the test. The Task Force divided itself into two groups, each taking half of the topics to review questions that are in the existing test as well as to begin the process of writing new questions. Results will be presented at the March meeting.

Frank Pohanka suggested that the licensing of F&I people should be included in the Task Force. Don Hall suggested that since the Ad Hoc Committee is in place, that the Committee look at topics to cover and study the concept of potentially licensing sales managers, F&I managers and general sales managers. It was the consensus of the Licensing Committee to go forward with this concept and to assign responsibility to the Task Force to report back.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conference:

- **Timothy W. Milloy, Salesperson License.** An informal fact-finding conference was conducted on September 16, 2004, to address the alleged violations of §36.2-1575(8) (Conviction of any fraudulent act in connection with the business of selling vehicles or any consumer-related fraud) and of §46.2-1575(13) (Having been convicted of a felony) in order to determine whether Mr. Milloy should be licensed as a salesperson. Based on the information provided at the conference, the hearing officer recommended that Mr. Milloy's application for licensure be granted.

Bill Lehner, council for Mr. Milloy, spoke on Mr. Milloy's behalf. He indicated that he's served his time, made all his restitution and should be licensed. Further, Mr. Milloy wants only to be a salesperson and does not intend on opening a dealership.

After some discussion and review of the information provided to the Committee in their notebooks, a motion was made by Larry Shelor to accept the hearing officer's recommendation. Robert Woodall seconded. The motion carried unanimously.

Review and Action: Formal Hearing:

- **Donald R. Frick, Salesperson License.** An informal fact-finding conference was conducted on February 26, 2004 to address the alleged violations of §46.2-1575(13) (Having been convicted of a felony) in order to determine whether Mr. Frick should be licensed as a salesperson. The hearing officer recommended that Mr. Frick be licensed, however, the Executive Director disagreed and he denied a salesperson license to Mr. Frick. Mr. Frick appealed that decision and requested a formal hearing. On August 4, 2004, a formal hearing was conducted. Based on the information provided at the hearing, the hearing officer recommended that Mr. Frick's application for licensure be granted.

Mr. Reilly Marchant, attorney for Mr. Frick, spoke on his behalf. He indicated that Mr. Frick had served his time and he requested that the Committee adopt the hearing officer's recommendation. Although Mr. Hyman stated he would abstain as a member of the Committee/Board from voting on the motion, as a dealer he reminded the Committee that people were harmed by Mr. Frick's actions and resulted in three payments from the Transaction Recovery Fund totaling \$39,000. Mr. Frick has not repaid the Fund. Rick Walton indicated that the Transaction Recovery Fund was not an issue for the Committee to review. The issue before the Committee only deals with his criminal convictions.

After some discussion and review of the information provided to the Committee in their notebooks, motion was made by Steve Farmer to reject the hearing officer's recommendation because Mr. Frick's felony convictions were serious and the convictions were directly related to the automobile business and involved the failure to comply with the IRS cash reporting requirements. The Board further considered the second felony conviction dated December 21, 2000, which came within less than 2 years of the first conviction, for knowingly and fraudulently concealing or attempting to conceal from the U. S. Bankruptcy Court and the U. S. Trustee, interest in property that belonged to Mr. Frick. Larry Shelor seconded. The motion carried unanimously with Todd Hyman abstaining.

The next meeting was scheduled for March 14, 2005.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The meeting adjourned at 10:01 a.m.

Meeting Summary
Advertising Committee
Monday, January 10, 2005

Chairman Vince Sheehy called the Advertising Committee meeting to order at 10:11 a.m. in Room 702, at DMV Headquarters, 2300 West Broad Street, Richmond, Virginia. Present were Committee members Steve Farmer, Hugh McCreight, Pat Patrick, Max Pearson, Ted Robertson, Chris Schroeder and Larry Shelor. (Absent: Rick Hunt). Other Board members present: D.B. Smit, Bobby Joe Dotson, Robert Woodall, Todd Hyman, Frank Pohanka, Clyde King and David Lacy. Executive Director Bruce Gould, Peggy Bailey, Katherine Idrissi, Debbie Allison and Jim Anderson represented the Dealer Board. Rick Walton represented the Attorney General's Office.

The September 13, 2004 and November 8, 2004 meeting summaries were 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

- **Free and "Included with" Advertising.** Bruce Gould indicated that staff clarification is needed in advertising these two issues. Bruce brought up four issues of advertising for discussion. 1). Installation of products, such as bedliners, if a car is purchased; 2). Products given away such as toasters, televisions, trips, if a car is purchased; 3). Coupons and gift certificates that can be used like cash at merchants such as department stores and gas stations, if a car is purchased; and 4). Dealers pay for something, such as your first three loan payments, insurance payments or personal property tax, if a car is purchased, if the dealer makes the payment directly and not to the consumer. On advertisements that indicate a trade-in value "up to" same amount, the consensus was that so long as the consumer was not left with the impression that there was a guaranteed amount, that this was ok. General discussion followed.

The next meeting will be March 14, 2005.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The meeting adjourned at 9:51 a.m.

Meeting Summary
Transaction Recovery Fund Committee
Monday, January 10, 2005

Chairman Steve Farmer called the Transaction Recovery Fund Committee meeting to order at 10:36 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members: Bobby Joe Dotson, Clyde King, David Lacy, Chris Schroeder and Larry Shelor. Other Board members present: D.B. Smit, Ted Robertson, Vince Sheehy, Todd Hyman, Robert Woodall, Frank Pohanka, Pat Patrick, Max Pearson and Hugh McCreight. Executive Director Bruce Gould, Peggy Bailey, Katherine Idrissi and Debbie Allison represented the Dealer Board. Rick Walton represented the Attorney General's Office.

The November 8, 2004 summary was approved.

PUBLIC COMMENT:

There was no public comment.

OLD BUSINESS

- **Update: November Actions:** Bruce Gould reported on the actions taken at the Dealer Practices Committee meeting on November 8, 2004.

Review and Action: Informal Fact-Finding Conference Results:

- **Loucindia A. Bembury and AutoSource.** On December 4, 2001, Ms. Bembury purchased a 1995 Mitsubishi Eclipse for \$8,149.00. She made a down payment of \$3,500 and the remaining \$5,046.27 was financed with TranSouth Financial Corp. After 30 days from the date of the sale, AutoSource still had not produced the registration and title to Ms. Bembury. She returned the vehicle to AutoSource and requested they rescind the contract and reimburse her down payment and to pay off the loan. The refused both and as a result, TranSouth repossessed the vehicle on April 9, 2002 and held Ms. Bembury liable for the loan.

On December 9, 2003, Mr. Leonard Bennett, attorney for Ms. Bembury, submitted a Notice of Motion for Judgment that had filed against AutoSource, which was scheduled for December 22, 2003. On December 10, 2003, Wanda Neely, Transaction Recovery Fun Analyst, spoke with Mr. Bennett and requested that he send a copy of the Bill of Particulars involving the facts of the claim and Ms. Bembury's bill of sale and receipts attesting to payment.

On March 23, 2004, Ms. Bembury was awarded judgment against Auto Source for actual damages of \$8,400.00, attorney fees of \$1,000.00 and court costs of \$65.00 and on May 17, 2004, Mr. Bennett submitted to the Dealer Board the certified copy of the Judgment Order and a copy of the installment loan contract in connection with the purchase. On May 21, 2004, the Dealer Board acknowledged Ms. Bembury's claim against the Fund and requested additional documentation. Also requested a breakdown of how the Court arrived at Ms. Bembury's actual damages in the amount of \$8,400.00. On July 13, 2004, Mr. Bennett submitted to the Dealer Board a letter regarding the Court's award of actual damages and enclosed the judgment claim request form, a receipt for the \$3,400.00 down payment and a copy of the installment contract with TranSouth Financial.

On August 17, 2004, Mr. Bennett submitted to the Dealer Board a letter regarding the additional documentation on Ms. Bembury's claim. He indicated that he did not have anything further. On August 20, 2004, Ms. Neely spoke with Mr. Bennett and referred him to her May 21, 2004 letter requesting the additional documentation. He indicated that he would send the requested documentation. On November 5, 2004, Mr. Bennett submitted to the Dealer Board the Buyer's Order along with the Settlement Agreement with TranSouth Financial indicating the loan balance as being forgiven.

After carefully reviewing all the documentation and the final judgment order, Board staff recommended that the Recovery Fund Committee and Board approve payment from the Fund of \$4,465.00, which is based on the \$3,400.00 down payment, \$1,000.00 in attorney fees and \$65 in court costs. On November 14, 2004, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer/board staff representative agrees with the Board staff's claim approval and recommended that the Board approve payment to Ms. Bembury in the amount of \$4,465.00. The actual damages in this case was the \$3,400 down payment, which is less than the \$8,400 awarded by the Court. The Fund may not pay more than actual damages, court costs and attorney fees.

After further discussion and review of the information provided to the Committee in their notebooks, a motion was made by Steve Farmer to approve payment from the Fund in the amount of \$4,465.00. Clyde King seconded. The motion carried unanimously.

- **Laura Tiller, Administrator for the Estate of Daniel Flowers and Auto Rama.** On October 7, 2003, Mr. Flowers purchased a 1993 Ford Escort from Richie Thacker doing business as Auto Rama. The vehicle advertised as having low mileage (95,000) and Mr. Thacker indicated that the vehicle actually had 96,000 miles. Mr. Flowers paid the full price of \$1,295.00 in cash that same day. Mr. Thacker indicated that he would have the title to the vehicle within seven to ten days. On October 13, Mr. Flowers began experiencing problems with the car. The problems with the car needed to be fixed in order for the car to pass inspection. Mr. Flowers paid \$472.23 in repairs in order to pass the inspection. The last inspection of the vehicle was in July of 2003 and Mr. Thacker had not provided Mr. Flowers with the 2003 receipt of the last inspection. By October 23, 2003, Mr. Flowers had not received the title as indicated by Mr. Thacker. On October 30, 2004, Mr. Thacker provided the title to Mr. Flowers but Mr. Flowers noticed that on the dealer reassignment, the odometer reading had been left blank and that Auto Rama had purchased the vehicle on September 4, 2003, which would imply that Mr. Thacker did not have the vehicle inspected before he sold it.

On November 5, 2003, Mr. Flowers went to DMV to have the vehicle titled and registered in his name and discovered that the actual mileage of 97,847 was in excess of mechanical limits and on November 7 he paid to have a CarFax report done on the vehicle. Carfax stated that the vehicle had odometer problems reported to DMV under the Federal Truth in Mileage Act.

In January of 2004, Mr. Flowers sought legal counsel in order to rescind the contract and recover the money he had paid in connection with the purchase. On February 10, 2004, Mr. S. M. Timmers, attorney for Mr. Flowers, submitted to the Dealer Board a Motion for Judgment as prior notification. Also attached was an affidavit by Mr. Flowers, copy of the Buyer's Order, copy of the title with assignments and the receipts for repair. On April 8, 2004, Mr. Flowers was awarded judgment against Auto Rama in the amount of \$4,196.69 for odometer fraud and failure to have the safety inspection. On August 10, 2004, Mr. Timmers submitted to the Dealer Board on behalf of Laura Tiller, Administrator for the Estate of Daniel Flowers the Judgment Claim Request for, the attested copy of the Judgment Order, copies of all pleadings plus attachments, Daniel Flowers affidavit, Answers to

Debtor interrogatories, a copy of the death certificate for Daniel Flowers and certificate of Qualification for Laura Ann Tiller-Hartwell.

After carefully reviewing all the documentation and the final judgment order, Board staff recommended that the Recovery Fund Committee and Board approve payment from the Fund to Mr. Flowers in the amount of \$3,252.33, which is based on the \$1,295.00 purchase price, \$472.23 for the repairs in order to pass the safety inspection and \$1,485.00 in attorney fees. On November 30, 2004, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer/board staff representative agrees with the Board staff's claim approval and recommended that the Board approve payment to Mr. Flowers' in the amount of \$3,252.23. This amount reflects actual loss and is less than the judgment that included punitive damages, which may not be paid from the Fund.

After further discussion and review of the information provided to the Committee in their notebooks, a motion was made by Steve Farmer to approve payment from the Fund in the amount of \$3,252.23. Pat Patrick seconded. The motion carried unanimously.

- **Thomas Kuryla and Edward F. Mayo and Premier Auto.** On March 17, 2003, Mr. Kuryla purchased a 2000 Chevrolet Blazer via the Internet for \$9,051.00, with additional fees such as a \$195 Processing Fee, a \$100 Transport Fee and a \$2.00 30-day temporary tag fee, making the total purchase price \$9,348.00. On March 17, 2003, per the instructions of Mr. Mayo, Mr. Kuryla wired the total payment of \$9,348.00 to Mr. Mayo and on March 18, Mr. Mayo sent Mr. Kuryla a receipt for funds received for the purchase and indicated that the vehicle would be delivered ASAP. On March 28, the vehicle was delivered to Mr. Kuryla and was advised that the title would arrive within 2-3 weeks prior to the expiration date of the temporary tags. After numerous calls and numerous sets of temporary tags, Mr. Kuryla still had not received the title and was unable to register his vehicle in his home state of North Carolina. On April 19, 2004, Mr. Gregory K. Pugh, attorney for Mr. Kuryla, submitted to the Dealer Board a Warrant in Debt for Breach of Contract/Fraud. On April 22, 2004, the Dealer Board acknowledged Mr. Pugh's letter and then requested additional documentation in order to complete the review process. In July of 2004, Mr. Kuryla contacted the Dealer Board and filed a written complaint against Premier Auto. Mr. Kuryla was informed that there had been numerous complaints filed against Mr. Mayo and that the titles to some of the consumers were being held by Steve's Wholesalers in Virginia Beach, Virginia, because Premier had not released the funds from selling the vehicles.

On September 17, 2004, judgment was awarded to Mr. Kuryla against Mr. Mayo and Premier Auto in the amount of \$9,348.00, plus \$3,084.84 in attorney fees and \$30 in court costs. On October 7, 2004, Mr. Pugh submitted to the Dealer Board the Judgment Claim Request form, final judgment order, confession of the judgment note between Thomas Kuryla and Stephen Bilenky, order appointing Guardian Ad Litem for Mayo, copies title, bill of sales for the purchase, emails, Warrant in Debt and copy of bill of sale from NC dealer that has now taken the vehicle in on trade. On October 8, 2004, Mr. Pugh submitted a letter to the Dealer Board with a copy of the Guardian Ad Litem's fee of \$525.00 to represent Mr. Mayo.

After carefully reviewing all the documentation and the final judgment order, Board staff recommended that the Recovery Fund Committee and Board approve payment from the Fund to Mr. Kuryla in the amount of \$11,384.84, which is based on the \$8,270.00 Confession of Judgment, \$3,084.84 in attorney fees and \$30.00 in court costs. However, being the Guardian Ad Litem fee of \$525.00 was not part of the Judgment Order, it was felt that would not be compensable for payment from the Fund. On December 16, 2004, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer/board staff representative agrees

with the Board staff's claim approval and recommended that the Board approve payment from the Fund to Mr. Kuryla in the amount of \$11,384.84.

After further discussion and review of the information provided to the Committee in their notebooks, a motion was made by Steve Farmer to approve payment from the Fund in the amount of \$11,384.84. Pat Patrick seconded. The motion carried unanimously.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for March 14, 2005.

The meeting adjourned at 11:55 a.m.