

Meeting Summary
Motor Vehicle Dealer Board
Monday, January 14, 2013

Vice-Chairman Kevin Reilly called the Dealer Board meeting to order at 11:10 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. The roll was called and there were 16 Board members present. Present were members Andy Alvarez, Ted Bailey, Roy Boswell, Lynn Hooper, Art Hudgins, Ronald Kody, Wanda Lewark, Chip Lindsay, Matt McQueen, George Pelton, Kevin Reilly, Joe Tate, Jimmy Whitten and Tommy Woodson. (Absent: Rick Holcomb, Brian Hutchens, Thomas Moorehead, Sally Woodson and Rodney Williams). Executive Director Bruce Gould, Peggy Bailey, 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 November 5, 2012 meeting summary was approved.

STATUTORY COMMITTEE REPORTS

Dealer Practices Committee:

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

- **M M Banks & Son Auto Sales and Charles M. Banks.** Tommy Woodson made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning M M Banks & Son Auto Sales and Charles M. Banks for alleged violations of VA code Sections 46.2-1533.; Based on due consideration, the Board believes a civil penalty should be assessed against M M Banks & Son Auto Sales and Charles M. Banks. The Board hereby assesses a \$1,000 civil penalty against M M Banks & Son Auto Sales and Charles M. Banks; and based on due consideration, the Board believes that Mr. Banks' dealership should be re-inspected and that the inspection must be satisfactory and that all licenses and certificates issued by the Board to Mr. Banks should be suspended until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative. The Board hereby mandates that a Motor Vehicle Dealer Board field representative re-inspect Mr. Banks' dealership by March 14, 2013 and if the inspection is not satisfactory the Board suspends all licenses and certificates issued by the Board to Mr. Banks until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative and if the inspection is not satisfactory, an additional \$1,000 civil penalty is assessed.

Joe Tate seconded. The motion carried unanimously.

- **Car America and Varaporn G. Martin.** Tommy Woodson made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Car America and Varaporn G. Martin for alleged violations of VA Code Section 46.2-1537. Based on due consideration, the Board believes a civil penalty should be assessed against Car America and Varaporn G. Martin. The Board hereby assesses a \$500 civil penalty against Car America and Varaporn G. Martin; and based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Ms Martin in running her dealership. The Board mandates that Ms Martin successfully complete the dealer-operator course by July 14, 2013. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Ms Martin by the Board until such time Ms Martin has successfully completed the course.

Ted Bailey seconded. Tommy Woodson abstained due to a working relationship with Car America. The motion carried.

- **Funderburk Wholesalers, Inc. and Christopher J. Funderburk.** Tommy Woodson made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Funderburk Wholesalers, Inc. and Christopher Funderburk for alleged violations of Va. Sections 46.2-1542 (B) and 1575 (4), (6) and (9). Based on due consideration, the Board believes a civil penalty should be assessed against Funderburk Wholesalers, Inc. and Christopher Funderburk. The Board hereby assesses a \$2,000 civil penalty against Funderburk Wholesalers, Inc. and Christopher Funderburk; and based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Funderburk in running his dealership. The Board mandates that Mr. Funderburk successfully complete the dealer-operator course by July 14, 2013. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Mr. Funderburk by the Board until such time Mr. Funderburk has successfully completed the course.

George Pelton seconded. The motion carried unanimously.

Cloverhill Motors and Charles H. Thorpe. Tommy Woodson indicated that a motion was made in Committee to table this issue until March, as requested by Mr. Thorpe because of illness.

Licensing Committee

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

- **Hamid R. Mahjor.** Jimmy Whitten made the following motion: Based on the evidence and a report of an informal fact-finding conference as prepared by a hearing officer, the Motor Vehicle Dealer Board, assessed a \$2,000 civil penalty; and revoked all licenses and certificates issued to Mr. Mahjor by the Board; and Mr. Mahjor appealed the Board’s decision and requested a formal hearing that was conducted on November 7, 2012. The Board has reviewed and considered the facts and evidence and the report of a formal hearing as prepared by the hearing officer concerning Hamid Mahjor for alleged violations of VA Code Sections 46.2-1575(1) and 46.2-1575 (9). Based on due consideration, the Board believes a civil penalty should be assessed against Hamid Mahjor. The Board hereby assesses a \$1,000 civil penalty against Hamid Mahjor; and based on due consideration, the Board believes that all licenses and certificates issued by the Board to Mr. Mahjor should be revoked. The Board hereby revokes Mr. Mahjor’s dealer-operator certificate of qualification.

Joe Tate seconded. The motion carried unanimously.

Advertising Committee

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

Transaction Recovery Fund Committee:

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

- **Juan Pablo Orozco and Green Light Automotive Group, Inc., Emma Breibart-White and Elite Motorcars and Eric T. Sykes and American Auto Auction.** Chairman Lynn Hooper summarized for the Board the discussion held in the committee meeting regarding Juan Pablo Orozco and Green Light Automotive Group, Inc., Emma Breibart-White and Elite Motorcars and Eric T. Sykes and American Auto Auction. 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:

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|---|--------------------|
| Juan Pablo Orozco and Green Light Automotive Group, Inc. | \$7,221.00 |
| Emma Breibart-White and Elite Motorcars | \$20,000.00 |
| Eric T. Sykes and American Auto Auction | \$5,446.00 |

Jimmy Whitten 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

There was no new business from the floor.

Executive Director's Report. Bruce Gould indicated that one house bill has been introduced that impacts the agency and is related to auctions. Dealers selling vehicles at retail auctions must now have consignment contract and the vehicle must pass a safety inspection. The bill will allow dealers to consign vehicles that have failed the safety inspection, provided the auction disclose this fact. The bill would eliminate the requirement that to sell at wholesale auction that a consignment contract be completed. Bruce reminded the members to complete their Disclosure forms. Regulation Reform on the agency's advertising regulations is being reviewed to see if any changes are needed. Bruce indicated that he will be traveling to Maryland to speak because they are looking into creating a dealer board. He will keep the board updated on that progress.

The next meeting will be scheduled for March 11, 2013.

There being no further business to come before the Motor Vehicle Dealer Board, Vice-Chairman Reilly adjourned the meeting at 11:44 a.m.

Meeting Summary
Dealer Practices Committee
Monday, January 14, 2013

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

The November 5, 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

- **Variance Request in Hours: Ghana Ross and Lovely Auto Deals.** Ms. Ross had requested that the Board consider a variance in the business hours requirements. Ms. Ross notified Board staff that she is withdrawing her request. No action required at this time.

Review and Action: Informal Fact-Finding Conferences:

- **M M Banks & Son Auto Sales and Charles M. Banks.** On November 14, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section 46.2-1533 (failing to maintain business hours) eight incidents. Based on the information provided at the conference, the hearing officer recommended that Mr. Banks license be suspended for a period of 90 days with the following requirements: 1) Mr. Banks must change his business hours which the staff finds agreeable, 2) Mr. Banks' son has acquired a salesperson license and is working at the business with his father or Mr. Banks hires a person to be present at the business on the day it reopens with the knowledge to assist with any inspection needed, 3) Mr. Banks must pay a \$2,000 civil penalty before he reopens and 4) Another failure to have someone present at the business for an inspection, the business license should be revoked. If Mr. Banks wishes not to comply with these recommendations, then revocation is recommended.

Motion was made by Joe Tate to accept recommendation numbers 3 and 4, to have a successful inspection conducted within 60 days, if not successful, all licenses will be suspended until dealership has a successful inspection. Matt McQueen seconded. The motion carried unanimously.

- **Car America and Varaporn G. Martin.** On December 5, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section 46.2-1537 (failure to have salespersons properly licensed). Based on the information provided at the conference, the hearing officer recommended a written warning and assessing a civil penalty of \$1,000. It is also recommended that if Ms. Martin and Ms. Scott, Director of Operations, complete the two day training course, that the civil penalty be reduced to \$500.

Motion was made by Kevin Reilly to assess a civil penalty of \$500 and to successfully complete the Dealer-Operator course. Ted Bailey seconded. Tommy Woodson opposed. The motion carried.

- **Funderburk Wholesalers, Inc. and Christopher Funderburk.** On October 23, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1542 (B) (Temporary registration) and 1575 (4) (Defrauding any retail buyer), (6) (Having used deceptive acts or practices) 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 that all licenses and qualifications issued to Mr. Funderburk be revoked.

Motion was made by Joe Tate to assess a \$2,000 civil penalty and to successfully complete the Dealer-Operator course. Kevin Reilly seconded. The motion carried unanimously.

- **Cloverhill Motors and Charles H. Thorpe, Jr.** On December 11, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1518 (Display of salesperson's license; notice on termination), 46.2-1530 (Buyer's order), 46.2-1537 (Prohibited solicitation and compensation), 46.2-1559 (Records to be kept by dealers; inspection) and 46.2-1561 (To whom temporary plate shall not be issued; dealer to forward application for current titling and registration; misstatements and false information). Based on the information provided at the conference, the hearing officer recommended assessing a civil penalty of \$7,000.

Due to Mr. Thorpe being ill and his request to delay hearing his case until the March meeting, motion was made by Mat McQueen to table this issue until the March meetings. Kevin Reilly seconded. The motion carried unanimously.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for March 11, 2013

The meeting adjourned at 10:00 a.m.

Meeting Summary
Dealer Licensing Committee
Monday, January 14, 2013

Chairman Jimmy Whitten called the Dealer Licensing Committee meeting to order in Room 702 at 10:00 a.m. , DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members Andy Alvarez, Roy Boswell, Art Hudgins, Brian Hutchens, Wanda Lewark, George Pelton and Joe Tate. (Absent: Brian Hutchens and Sally Woodson). Other Board members present: Matt McQueen, Tommy Woodson, Kevin Reilly, Lynn Hooper, Chip Lindsay, Joe Tate, Ted Baily and Ronald Kody. Executive Director Bruce Gould, Frank McCormick, Peggy Bailey, Prin Cowan, Ann Majors and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The November 5, 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

Review and Action: Formal Hearing:

- **Hamid R. Mahjor.** Historical overview leading up to the formal hearing: On February 14, 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 a renewal 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 Mr. Mahjor Dealer-Operator Certificate of Qualification and his license to sell vehicles in the Commonwealth revoked. It was further recommended that he be assessed a civil penalty of \$2,000. The Committee and Full Board adopted a resolution agreeing with the hearing officer's recommendation. On October 16, 2012, staff received a notarized statement indicating that Mr. Mahjor did not received the March 14, 2012 decision or did he sign the return receipt green card. Given this statement, Bruce Gould decided to allow Mr. Mahjor the opportunity to have a formal hearing. On November 7, 2012 a formal hearing was conducted and based on the information provided at the conference, the hearing officer recommended that Mr. Mahjor be allowed to maintain his dealer licenses, salesperson's license and his certificate of qualification as a dealer-operator and assessing a civil penalty of \$2,000.

Motion was made by Wanda Lewark to allow him to retain his certificate of qualification and assess a civil penalty of \$1,000.00. Andy Alvarez seconded. All in favor: 3 (Alvarez, Lewark and Whitten). Opposed: 4 (Tate, Boswell, Hudgins and Pelton). The motion failed.

Motion was made by Joe Tate to assess a \$1,000.00 civil penalty and maintain the revocation. George Pelton seconded. All in favor: 4 (Tate, Boswell, Hudgins and Pelton). Opposed: 3 (Alvarez, Lewark and Whitten). The motion carried.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for March 11, 2013.

The meeting adjourned at 10:33 a.m.

Meeting Summary
Advertising Committee
Monday, January 14, 2013

Chairman Kevin Reilly 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, Chip Lindsay, Matt McQueen, George Pelton and Tommy Woodson. (Absent: Rodney Williams and Sally Woodson). Other Board members present: Art Hudgins, Roy Boswell, Tommy Woodson, Lynn Hooper, Jimmy Whitten, Joe Tate, Wanda Lewark and Ted Bailey. Executive Director Bruce Gould, Peggy Bailey, Frank McCormick, Prin Cowan, Ann Majors and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The November 5, 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 March 11, 2012.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The meeting adjourned at 10:36 a.m.

Meeting Summary
Transaction Recovery Fund Committee
Monday, January 14, 2013

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

The November 5, 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:

- **Juan Pablo Orozco and Green Light Automotive Group, Inc.** On November 17, 2010 Mr. Orozco entered into a contract to purchase a 2006 Hyundai, Sonata from Green Light Automotive Group, Inc (Green Light) with a sales price of \$6,743.26. In addition, Green Light collected a processing fee of \$249.00; state sales tax of \$419.54; and \$195.00 title & registration fees making the total amount due of \$7,606.80. Mr. Orozco made a deposit of \$5,000.00 and executed a retail installment sale contract with Green Light for the remaining balance of \$2,606.80. At the time of the sale, Green Light failed to display in the vehicle's window or provide to Mr. Orozco for signature on the FTC Buyers Guide.

Green Light provided Mr. Orozco with a temporary registration valid for 30-days after the purchase. In that period Green Light failed to provide the vehicle title. Subsequently, Green Light issued another set of 30-day temporary tags. Title was not produced and Green Light issued Mr. Orozco a 3rd set of 30-day temporary tags. Mr. Orozco repeatedly tried to contact Green Light to obtain title and properly register the vehicle. On February 8, 2011, shortly before the expiration of the 3rd set of temporary tags, Mr. Orozco drove to Green Light's place of business to obtain the title. At which time, Green Light informed him that they did not have the title and proceeded with issuing a 4th set of temporary fraudulently changing the sale date of the vehicle.

When Green Light still failed to procure title, Mr. Orozco informed Green Light that he was revoking his acceptance of the vehicle and demanded a refund of the purchase price and other amounts. Green Light agreed to take the vehicle back and return his money, but stated it would take at least 15 days to process. Mr. Orozco was unable to register the vehicle in his home state, due to the numerous mechanical deficiencies and other repairs that had to be completed in order to pass the Washington, DC inspection, at a total cost of \$844.00. In addition, he had made three installment payments on the vehicle of \$100.00 each to Green Light as required by the installment contract. Subsequently, Mr. Orozco has tried on numerous occasions to contact Green Light, but was unable to do so.

In June, 2011, Mr. Orozco obtained legal counsel in order to pursue Green Light civilly in court in order to obtain his monetary loss in connection with the purchase. On June 23, 2011, Charles Raether, Esquire on behalf of Mr. Orozco, filed a "Complaint" in the Circuit Court for Fairfax County against Green Light Automotive Group, Inc. The "Complaint" is an action for rescission and damages for deceit & fraud; violations of the Virginia Consumer Protection Act; Motor Vehicle Dealer Act; and the Federal Magnuson-Moss Warranty Act. On July 1, 2011, Mr. Raether submitted to the Dealer Board as prior notification pursuant to §46.2-1527.4, the "Complaint" that was filed in the Circuit Court of Fairfax. On July 6, 2011, the Dealer Board staff acknowledged receipt of Juan Orozco's possible claim against the Motor Vehicle Transaction Recovery Fund (Fund). However, after a careful preliminary review and pursuant to §46.2-1527.2 staff referred counsel to the dealer's surety bonding company.

On November 4, 2011, the Circuit Court of Fairfax County awarded Juan Orozco a default judgment against Green Light Automotive Group, Inc. for a total amount of \$34,743.27 (\$9,174.09 for actual damages; \$27,522.27 for treble damages; \$6,985.00 in attorney fees and \$236.00 in costs) by reasons as specifically alleged in the Complaint for fraud, multiple violations of VCPA, implied warranty of merchantability as well as attorney fees and court costs. On March 26, 2012, the dealer's (Green Light) surety bonding company (Washington International Ins. Co.) settled with Mr. Orozco and paid the actual damages in the amount of \$9,174.09. On April 26, 2012, Mr. Raether submitted to the Dealer Board documentation for consideration of payment of the attorney fees and costs from the Fund. Under Va. Code §46.2-1527.5, excluded from the amount of any unpaid final judgment on which a claim against the Fund is based shall be any sums representing (i) interest, (ii) punitive damages, and (iii) exemplary damages. Further, under Va. Code §46.2-1527.5 the maximum claim of one judgment debtor against the Fund involving a single transaction shall be limited to \$20,000.00, regardless of the amount of the unpaid judgment.

Staff believed Mr. Orozco's claim met the requirement of the law. Therefore, the Dealer Board staff recommended that the Recovery Fund Committee and Full Board approve Mr. Orozco's claim against the Fund in the amount of \$7,221.00 in which based on the attorney fees (\$6,985.00) and court costs (\$236.00).

On December 18, 2012, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer agreed with the staff recommendation for the payment of \$7,221.00 from the Fund to Mr. Orozco.

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

- **Emma Breibart-White and Elite Motorcars.** On July 14, 2011, Ms. White entered into a contract to purchase a 2010 Toyota Corolla from Elite Motor Company, Inc. (Elite) for a cash price of \$12,000.00. Upon examining the vehicle, Mrs. White specifically asked Elite's salesperson whether the vehicle had been involved in an accident. The salesperson replied that it had not. Elite provide Ms. White with a Buyer's Order at the time of the transaction, however, the FTC Buyer's Guide was not displayed on the vehicle nor was Ms. White provided with a copy of the Buyer's Guide to sign at the closing for the purchase. On July 21, 2011, Ms. White took the vehicle to get a Maryland inspection. The vehicle failed due to numerous reasons. The inspector told Ms. White that the damage to the vehicle was extensive enough that it was unsafe to drive. Ms. White immediately contacted Elite to inform them of the material defects of the vehicle and requested that they take the vehicle back and refund her money. On July 25, 2011, Ms. White went to the dealership to speak with someone in person. While speaking with the owner of Elite, he conceded that the vehicle had been in an accident but defended his right to sell it. Ms. White continued to demand that the dealer take the vehicle back. Ms. White's revocation of acceptance was not honored by Elite. On September 15, 2011, Ms. White sent a letter of revocation of acceptance of the vehicle to Elite Motorcars requesting a full refund of the purchase price of \$12,000.00 as well as incidental and consequential damages.

On October 24, 2011, Charles Raether, Esquire filed on behalf of Ms. White a "Complaint" in the Circuit Court for Arlington County against Elite Motor Company, LLC t/a Elite Motorcars for multiple violations of (1) fraud and fraud in the inducement; (2) violations of the Virginia Consumer Protection Act; (3) Breach Implied and Express Warranties; and (4) Breach of Contract. On November 3, 2011, the Dealer Board received the "Complaint" that had been filed in the Circuit Court of Arlington County against Elite Motor Company, LLC t/a Elite Motorcars with exhibits of the Buyer's Order, the State of Maryland Inspection report, Invoice of Failed state inspection and Ms. White's letter of rescission of the contract.

On February 3, 2012, the Circuit Court for Arlington County awarded Emma Breibart-White a default judgment against Elite Motor Company, LLC t/a Elite Motorcars for a total amount of \$84,562.95. The Court awarded actual damages in the amount of \$24,103.65; trebled statutory damages in the amount of \$72,310.95, attorney fees in the amount of \$7,092.00; exemplary damages in the amount of \$5,000.00 and costs in the amount of \$160.00.

On April 13, 2012, Charles Raether, Esquire on behalf of Emma Breibart-White submitted to the Dealer Board documentation for consideration of payment from the Fund, for the maximum of \$20,000.00.

On April 18, 2012 the Dealer Board staff sent "Notice of Verified Claim" to the debtor (Elite Motor Company, LLC t/a Elite Motorcars) as well as to the owner (Tariq Mohammad) requesting that the judgment be satisfied within 30-days of receiving this notice.

Staff believed Ms. White's claim met the requirement of the law. The Court specifically awarded actual damages of \$24,103.65; trebled statutory damages of \$72,310.95; attorney fees of \$7,092.00; exemplary damages of \$5,000.00 and costs of \$160.00. Under Va. Code §46.2-1527.5, excluded from the amount of any unpaid final judgment on which a claim against the Fund is based shall be any sums representing (i) interest, (ii) punitive damages, and (iii) exemplary damages. Further, under Va. Code §46.2-1527.5 the maximum claim of one judgment debtor against the Fund involving a single transaction shall be limited to \$20,000.00, regardless of the amount of the unpaid judgment. Therefore, the Dealer Board staff recommended that the Recovery Fund Committee and full Board approve Emma Breibart-White's claim against the Fund in the amount of \$20,000.00, which is the maximum amount involving a single transaction.

Note: Ms. White has been unable to register the vehicle in Maryland due to the numerous mechanical and structural deficiencies. She has not driven or used the vehicle since the inspection. Currently, Ms. White still has possession of the vehicle, and unable to return the vehicle due to the fact that the dealer is out of business.

On December 18, 2012, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended payment of \$20,000.00 from the Fund to Ms. White.

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

- **Eric T. Sykes and American Auto Auction.** On June 11, 2011, Eric Sykes went to American Auto Auction and placed a bid on a 2003 Audi for a sales price of \$6,800.00. Included with the sales price was a buyer's fee of \$690.00 and a processing fee of \$249.00 making the total amount due of \$7,739.00. On that day, Mr. Sykes paid \$890.00 in cash towards the purchase and Mr. Sykes elected to finance the vehicle through the auction. He was then informed that the auction did not have possession of the title at that time. After informing the clerk that he wished to finance the vehicle with the auction, she indicated that he should consult with his bank for financing the vehicle. After consulting with his bank he found that it would be better for him to go through with financing the vehicle at the auction. On June 14, 2011, Mr. Sykes returned to American Auto Auction with \$4,500.00 and expressed that he wished to finance the remaining balance (\$2,349.00) through the auction. One of the employees took the money and issued him a receipt and he was taken into an office to complete the financing process. Mr. Sykes indicated to the finance clerk that he was an army veteran and explained that he was waiting for the wires from his bank accounts and final pay from the army. Mr. Sykes indicated that he would need a little more time in order to pay for the vehicle in full. Instead of allowing Mr. Sykes to finance the vehicle at the auction, the finance clerk (Jeff) decided that due to his circumstances allowed him an additional two weeks to pay for the vehicle.

During the two weeks, Mr. Sykes learned that the wire transfers would take a little more time and that the government was conducting an audit for his final pay which is a standard procedure for all service members leaving the military. After learning this, Mr. Sykes returned to the auction in order to go ahead with financing on the vehicle there. Mr. Sykes was taken back to the finance department, and was informed by the finance employee (Jeff) that the auction was closing. Upon learning this, Mr. Sykes requested the return of his monies. The finance employee then told him that the money was gone and it was now a civil matter. He then provided Mr. Sykes with a number for the DMV law enforcement division and instructed him to give them a call. Mr. Sykes contact the DMV law enforcement division and was instructed to make copies of all documents that he had received from the auction, complete a DMV law enforcement report and to forward the information to the DMV. Mr. Sykes mailed the whole packet that same day. Mr. Sykes never received the vehicle and he was out \$5,390.00 that he had paid for the purchase.

On June 27, 2011, Mr. Sykes filed a "Warrant in Debt" in the Chesapeake General District Court against American Auto Auction for the money paid for the purchase of the vehicle he never received. On July 28, 2011, the Chesapeake General District Court awarded Eric Sykes a default Judgment against American Auto Auction in the amount of \$5,390.00 plus \$56.00 in court costs.

For nearly a year, the owner (Steve Yancoski) of American Auto Auction has declined to honor the civil judgment that was awarded to Mr. Sykes in connection with the purchase and never receiving the vehicle. Mr. Sykes had contacted several organizations for assistance in an effort to reclaim his monies. Finally, he sought help from the Eastern Virginia Legal Aid Society, in which advised Mr. Sykes to contact the Motor Vehicle Dealer Board. On June 4, 2012, Eric Sykes submitted to the Dealer Board documentation for consideration of reimbursement of his judgment from the Motor Vehicle Transaction Recovery Fund (Fund). On June 12, 2012, Steve Yancoski responded to the Board's notice and indicated that he had started making partial payments to Mr. Sykes on May 23, 2012 and as of today's date paid \$350 towards his judgment. Mr. Yancoski enclosed copies of (2) checks that were mailed to Eric Sykes.

On July 6, 2012, the Dealer Board staff spoke with Eric Sykes and inquired as to whether he had received any payments from Steve Yancoski, owner of American Auto Auction. Via email, Eric Sykes submitted to the Dealer Board notarized copies of the (2) un-cashed checks with a statement as to why he declined to cash the partial checks. In his statement, Mr. Sykes indicated he was advised by the initial special agent in charge of the criminal investigation that if he were to reclaim any funds from the business owner, then his case wouldn't hold during his trial and he wouldn't be accountable for what he had done. In May, 2012, Mr. Sykes contacted the registered agent (Harry Jernigan, III) for American Auto Auction and made it clear that he would only accept the full amount of money owed to him, not a partial payment.

Staff believed Mr. Sykes' claim met the requirement of the law. In June, 2011 Mr. Sykes had entered into a contract with American Auto Auction for the purchase of a 2003 Audi for the total purchase price of \$7,739.00. Mr. Sykes made a deposit of \$890.00 the day of the transaction and returned 2-days later with \$4,500.00 in cash and wanted to finance the remaining balance with the auction. The finance employee, due to Mr. Sykes circumstances allowed him an additional 2 weeks to pay for the vehicle in full. When Mr. Sykes returned to American Auto Auction; he was then informed that they were closing and the vehicle was nowhere in sight. Mr. Sykes had already paid a total of \$5,390.00 towards the purchase plus he never received the vehicle. Therefore, the Dealer Board staff recommended that the Recovery Fund Committee and full Board approve Eric Sykes' claim in the amount of \$5,446.00, which is based on the judgment amount (\$5,390.00) plus the costs of \$56.00.

On December 18, 2012, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended payment of \$5,446.00 from the Fund to Mr. Sykes.

Motion was made by Andy Alvarez 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 March 11, 2013.

The meeting adjourned at 10:55 a.m.