

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, March 14, 2011

Chairman Rick Holcomb called the Dealer Board meeting to order at 11:19 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 Frank Pohanka, Wanda Lewark, Lynn Hooper, T.K. Hughes, Henry Jones, David Lacy, Pat Patrick, Matt Queen, Larry Shelor, Joe Tate, Jimmy Whitten, Robert Woodall, Sally Woodson and Tommy Woodson. (Absent: Chip Lindsay, Matt Lohr, Thomas Moorehead, Kevin Reilly). Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Wanda Neely, Ann Majors and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office. Alice Weedon acted as Recording Secretary.

PUBLIC COMMENT

There was no public comment.

The January 10, 2011 meeting summary was approved.

STATUTORY COMMITTEE REPORTS

Dealer Practices Committee:

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

- **Variance Request: American Classics and William Myers.** Vice-Chairman Tommy Woodson summarized for the Board the discussion held in the committee meeting regarding American Classics and William Myers. Based on that discussion, Mr. Woodson indicated that this issue is tabled until the May meeting, therefore no motion is needed at this time.
- **M & I Auto Sales and Issmail Alchaleh.** Vice-Chairman Tommy Woodson summarized for the Board the discussion held in the committee meeting regarding M & I Auto Sales and Issmail Alchaleh. Based on that discussion, Mr. Woodson made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning M & I Auto Sales, Inc and Issmail Alchaleh for alleged violations of Va. Code Sections 46.2-1510(4) (no working telephone listed in the name of the dealership), 46.2-1529 (failure to maintain all dealer records on the premises of the licensed location), 46.2-1530 (failing to maintain buyer's orders), 46.2-1533 (failing to maintain business hours), 46.2-1537 (failure to have salespersons properly licensed), 46.2-1548 (dealer plate records required), 46.2-1550 (improper use of or permitting the improper use dealer's license plates) and 46.2-1575(2) (failure to comply subsequent to receipt of a written warning); based on due consideration, the Board believes a civil penalty should be assessed against M & I Auto Sales, Inc and Issmail Alchaleh. The Board hereby assesses a \$3,000 civil penalty against M & I Auto Sales, Inc and Issmail Alchaleh; and based on due consideration, the Board believes that all licenses issued by the Board to Mr. Alchaleh should be revoked. The Board hereby revokes all licenses issued by the Board to Mr. Alchaleh.

Matt Queen seconded. The motion carried unanimously.

- **Razaq Auto Sales and Jamal A. Abdulwahab.** Vice-Chairman Tommy Woodson summarized for the Board the discussion held in the committee meeting regarding Razaq Auto Sales and Jamal A. Abdulwahab. Based on that discussion, Mr. Woodson made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Razaq Auto Sales, Inc. and Jamal A. Abdulwahab for alleged violations of Va. Code Section(s) 46.2-1575 (6) (having used deceptive acts or practices) and 46.2-1575 (9) (having been convicted of any criminal act involving the business of selling vehicles). Based on due consideration, the Board believes a civil penalty should be assessed against Razaq Auto Sales, Inc. and Jamal A. Abdulwahab. The Board hereby assesses a \$2,000 civil penalty against Razaq Auto Sales, Inc. and Jamal A. Abdulwahab; and based on due consideration, the Board believes that all licenses issued by the Board to Mr. Abdulwahab should be revoked. The Board hereby revokes all licenses issued by the Board to Mr. Abdulwahab.

Joe Tate seconded. David Lacy abstained due to a business relationship that Mr. Lacy had with Razaq Auto Sales and Mr. Abdulwahab. The motion carried.

- **Virginia Beach Auto Showcase, Inc. and Angela Anderson.** Vice-Chairman Tommy Woodson summarized for the Board the discussion held in the committee meeting regarding Virginia Beach Auto Showcase, Inc. and Angela Anderson. Based on that discussion, Mr. Woodson made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Virginia Beach Auto Showcase, Inc. and Angela Anderson for alleged violations of Va. Code Sections 46.2-1533 (failing to maintain business hours), 46.2-1537 (failure to have salespersons properly licensed) and 46.2-1575 (1) (material misstatements). Based on due consideration, the Board believes a civil penalty should be assessed against Virginia Beach Auto Showcase, Inc. and Angela Anderson. The Board hereby assesses a \$2,500 civil penalty against Virginia Beach Auto Showcase, Inc. and Angela Anderson; and based on due consideration, the Board believes that all licenses issued by the Board to Ms Anderson should be suspended until such time as she has provided satisfactory proof that she has returned the \$900 deposit that Mr. Gary Waterman gave to Virginia Beach Auto Showcase. The Board hereby suspends all licenses issued by the Board to Ms Anderson until such time as she has provided the Motor Vehicle Dealer Board Executive Director with satisfactory proof that she has returned Mr. Waterman's \$900 deposit.

Joe Tate seconded. The motion carried unanimously.

Licensing Committee

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

- **Timothy S. Kaylor, Salesperson.** Vice-Chairman Lynn Hooper summarized for the Board the discussion held in the committee meeting regarding Timothy S. Kaylor. Based on that discussion, Mr. Hooper made the following motion: 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. Timothy S. Kaylor and based on due consideration, the Board believes that Mr. Kaylor's application for a motor vehicle salesperson's license should be approved. The Board hereby approves the issuance of a salesperson's license to Mr. Timothy S. Kaylor.

Robert Woodall seconded. Larry Shelor abstained because Mr. Kaylor plans on working at one of Mr. Shelor's stores. The motion carried.

- **Don A. Haverstock, Salesperson.** Vice-Chairman Lynn Hooper summarized for the Board the discussion held in the committee meeting regarding Don A. Haverstock. Based on that discussion, Mr. Hooper made the following motion: 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. Don A. Haverstock and based on due consideration, the Board believes that Mr. Haverstock's application for a motor vehicle salesperson's license should be approved. The Board hereby approves the issuance of a salesperson's license to Mr. Don A. Haverstock; and the Board believes that Mr. Haverstock's dealer operator certificate of qualification should be revoked. The Board revokes Mr. Don A. Haverstock's dealer operator certificate of qualification.

Frank Pohanka seconded. The motion carried unanimously.

Advertising Committee

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

Transaction Recovery Fund Committee:

Chairman Larry Shelor summarized discussions held and actions that were taken during the Committee Meeting.

- **Mark G. Brown and Rivera Motors, LLC and Walter Ecker, III and Five Star Used Auto Sales & Service, Inc.** Chairman Larry Shelor summarized for the Board the discussion held in the committee meeting regarding Mark G. Brown and Rivera Motors, LLC and Walter Ecker, III and Five Star Used Auto Sales & Service, Inc. Based on that discussion and the recommendations in these cases, Mr. Shelor 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 claims should be payable from the Fund.

Mark G. Brown and Rivera Motors, LLC.		\$8,044.66
Walter Ecker, III and Five Star Used Auto Sales & Service, Inc.	\$7,569.00	

Matt Queen seconded. The motion carried unanimously.

OLD BUSINESS

General Assembly Update: Bruce Gould indicated that the following is a summary of Bills adopted by the Virginia General Assembly that are related to motor vehicle dealers. Except as otherwise noted, all are effective as of July 1, 2011. The list does not include any changes to the motor vehicle franchise laws.

HB 2011 Motor Vehicle Dealer Board Omnibus Bill. Delegate Carrico was the patron for this MVDB initiated proposal that does the following:

- Allow the Commissioner of the Virginia Department of Agriculture and Consumer Services (VDACS) to designate a staff member to represent him/her on the Motor Vehicle Dealer Board.
- Allow the MVDB to recover costs associated with reprinting licenses and certificates by authorizing the MVDB to collect a \$10 fee for reprints of dealer certificates and salespersons licenses. (The cost for reprinting a registration card will remain at \$2.00.)
- Allow the MVDB to recover costs associated with reinstating suspended licenses, certificates and registrations by authorizing the MVDB to collect \$50 to reinstate fee. For example, the \$50 fee will apply in those instances where a dealer allows his/her bond to lapse and the dealer's license is suspended pending reinstatement of the bond.
- Technical amendment to require dealers to maintain copies of buyer's orders for five years and to maintain proof that they have safety inspected their vehicles.

- Require dealers to have an internet connection and an email address by July 1, 2013.
- Requires the MVDB to study the internet/email address provision of the bill and “. . . advise the Governor and the General Assembly of the desirability and feasibility of these provisions on or before December 1, 2011.”

[HB 1838 Motor Vehicle Transaction Recovery Fund](#). Delegate Scott Garrett was the patron of this bill that MVDB initiated. The bill clarifies that a claimant may not collect more than a total of \$20,000 between the bond and the Motor Vehicle Transaction Recovery Fund (MVTRF). The bill also modifies the method by which funds may be used from the MVTRF to pay for the administration of the Fund.

The chair of the Senate Transportation Committee asked that the MVDB convene a meeting or series of meetings with interested parties before the 2012 GA to review and discuss options available to ensure the long term viability of the Motor Vehicle Transaction Fund. At minimum, to be discussed at the meeting(s) is an increase in the maximum claim amount.

[HB 1412 Increases the threshold for reporting water damaged vehicles](#). Delegates Timothy Hugo and Robin Abbott and Senator Stephen Newman were the patrons of bills that will increase the threshold for reporting water damage from \$1,000 to \$3,500. Whenever an insurance company pays a claim of \$3,500 or more in water damage, they must report this payment to the Department of Motor Vehicles. DMV will then brand the title.

[HB 1904 Drive Away License plates](#). Delegate Timothy Hugo was the patron for this bill that will add auto auctions to the list of those permitted to use Drive Away license plates. This will enable auto auctions to bring vehicles, such as, off-lease and rental units to the auction for reconditioning and sale.

[HB 1903 Temporary transport license plates; print-on-demand program](#). Delegate Timothy Hugo was the patron of this bill that will allow DMV to implement print-on-demand (PoD) for temporary transport plates. Dealers will be given ample notice once this program is implemented. A time frame for implementation has not yet been established

[SB 915 Inspection of motor vehicles; exceptions to requirements](#). Delegate Ryan McDougale was the patron of this bill that restates requirements for motor vehicle safety inspections and places exemptions under a single Code section. It does not appear that the bill changes any of the current exceptions to the safety inspection requirement. The following is a list of exemptions that might be of interest to motor vehicle dealers. This is not a comprehensive list of the exemptions, rather just those that are directly related to motor vehicle dealers.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

NEW BUSINESS FROM THE FLOOR

Rick Holcomb spoke on HB 2011, which will allow the Commissioner of the Virginia Department of Agriculture and Consumer Services to designate a staff member to represent him on the Motor Vehicle Dealer Board. He suggested that for the May meeting, Mr. Andy Alvarez, who will hopefully be the designee, to sit at the table during the committees and full board meeting, but he will not be able to vote. Also, Mr. Holcomb spoke on license plate holders that are obscuring areas of the license plates. Some plates have the same number, but at the bottom of the plate indicate, for example, Senator, Governor, Delegate, etc. Law enforcement needs to be able to see top and bottom of the license plate. He recommended that the dealers take a look at their holders and if they cover any part of the plate, it needs to be corrected.

The next meeting will be scheduled for May 9, 2011.

Executive Director's Report. Bruce Gould indicated that dealers should be depleting their stock of cardboard temporary tags as the May 1, 2011, deadline to sign up for the DMV Print-on-Demand (PoD) temporary tags program approaches. Dealers who have not entered into an agreement with one of the PoD vendors should take immediate action. DMV requires that all dealers who wish to provide their customers with temporary tags participate in the PoD temporary tags program. On May 1, 2011, cardboard temporary tags will no longer be issued to dealers who have not entered into an agreement with one of the PoD vendors.

There being no further business to come before the Motor Vehicle Dealer Board, Chairman Holcomb adjourned the meeting at 12:05 p.m.

Meeting Summary
Dealer Practices Committee
Monday, March 14, 2011

Vice-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 T.K. Hughes, David Lacy, Wanda Lewark, Matt Queen, Larry Shelor, Robert Woodall and Sally Woodson. (Absent: Kevin Reilly, Chip Lindsay, Thomas Moorehead). Other Board members present: Pat Patrick, Frank Pohanka, Jimmy Whitten, Rick Holcomb, Joe Tate, Henry Jones. 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 January 10, 2011 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

- **Variance Request in Hours: American Classics and William Myers.** Mr. Myers was present and indicated that the mainstay of his business is antiques and he indicated that it makes no sense to sit in a storage building or in a building without any inventory offered for sale to the general public. After being rejected in November of 2008 for a variance for "by appointment only" hours, he is requesting again for a variance of hours by appointment.

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

Motion was made by David Lacy to deny the variance request in hours. Motion failed for lack of a second.

Rick Holcomb suggested that this issue be tabled until the May meeting pending staff presenting a narrow, but with conditions, resolution for consideration by the Board. Mr. Holcomb indicated that he must maintain his current hours until this matter is resolved.

Motion was made by Matt Queen to table this issue until the May meeting. Sally Woodson seconded. All in favor: 7 (Lacy, Lewark, Queen, Shelor, Woodall, S. Woodson and T. Woodson). Opposed: 1 (Hughes). The motion carried.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conferences:

- **M & I Auto Sales, Inc and Issmail Alchaleh.** On November 9, 2010, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section 46.2-1510(4) (no working telephone listed in the name of the dealership), 46.2-1529 (failure to maintain all dealer records on the premises of the licensed location), 46.2-1530 (failing to maintain buyer's orders), 46.2-1533 (failing to maintain business hours), 46.2-1537 (failure to have salespersons properly licensed), 46.2-1548 (dealer plate records required), 46.2-1550 (improper use of or permitting the

improper use dealer's license plates) and 46.2-1575(2) (failure to comply subsequent to receipt of a written warning). Based on the information provided at the conference, the hearing officer recommended that Mr. Alchaleh's license to do business in the Commonwealth of Virginia be revoked, with no opportunity to reapply. She further recommended that Mr. Alchaleh be assessed a civil penalty of \$3,000.

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

Motion was made by T.K. Hughes to accept the hearing officer's recommendation. Larry Shelor seconded. The Board recognized that Mr. Alchaleh could not be denied the opportunity to apply in the future, and that portion of the hearing officer's recommendation was not accepted. The motion carried unanimously.

- **Razaq Auto Sales, Inc. and Jamal A. Abdulwahab.** On November 19, 2010, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1575 (6) (having used deceptive acts or practices) 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 all of Mr. Abdulwahab's licenses and certificates to sell motor vehicles in the Commonwealth of Virginia be revoked. She further recommended that Mr. Abdulwahab be assessed a civil penalty of \$2,000.

Motion was made by Robert Woodall to accept the hearing officer's recommendation. Larry Shelor seconded. David Lacy abstained due to a working relationship with the dealer. The motion carried.

- **Virginia Beach Auto Showcase, Inc. and Angela Anderson.** On December 14, 2010, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1533 (failing to maintain business hours), 46.2-1537 (failure to have salespersons properly licensed) and 46.2-1575 (1) (material misstatements). Based on the information provided at the conference, the hearing officer indicated that because Ms. Anderson's husband, Mike Anderson has a much larger role in running Virginia Beach Auto Showcase than her, it is recommended that the Board require Mr. Anderson to apply for status as a Dealer-Operator. If Angela Anderson continues her role as Dealer-Operator, it is recommended that she complete the Dealer-Operator course. It was also recommended that a civil penalty of \$200 be assessed.

Ms. Anderson was present and spoke on her own behalf.

Motion was made by Robert Woodall to assess a civil penalty of \$500 and suspension of license until she can provide evidence that a consumer's \$900 deposit has been returned. T.K. Hughes seconded. The motion carried unanimously.

NOTE: It was determined that the Board does not have the authority to require Mr. Anderson to become the dealer-operator as recommended by the hearing officer.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for May 9, 2011.

The meeting adjourned 10:21 a.m.

Meeting Summary
Dealer Licensing Committee
Monday, March 14, 2011

Vice-Chairman Lynn Hooper called the Dealer Licensing Committee meeting to order at 10:21 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members T.K. Hughes, Henry Jones, Pat Patrick, Frank Pohanka, Joe Tate, Jimmy Whitten and Robert Woodall. (Absent: Chip Lindsay). Other Board members present: Rick Holcomb, Sally Woodson, David Lacy, Larry Shelor, Tommy Woodson and Wanda Lewark. 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 January 10, 2011 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

- **Update: Independent Dealer Operator Recertification Program.** Prin Cowan introduced Ann Majors, Education and Compliance Specialist, and indicated that she was hired to be the primary point of contact for administering the Independent Dealer Operator Recertification Program. Prin indicated that the first round of letters (104) went out on January 18, 2011 that need to be recertified by May 31, 2011. The second round of letters (69) went out on March 4, 2011 that need to be recertified by July 30, 2011 and the third round of letters (36) will be mailed out March 18, 2011 for those who need to be recertified by August 31, 2011. The 4th round of letters (650+) will be sometime in April for those who need to be recertified by September 30, 2011. This will be the largest pool of notifications for the year and will be mailed in stages. Ann has quickly engaged herself in the Independent Dealer Operator program regulations and recertification guidelines and has been in communication with Independent Dealer Operators throughout Virginia as well as our course providers to assist in getting this program underway.

OLD BUSINESS FROM THE FLOOR:

There was no old business from the floor.

NEW BUSINESS

Review and Action: Formal Hearings:

- **Timothy S. Kaylor, Salesperson.** On February 7, 2011, a formal hearing was conducted to address the alleged violations of VA Code Sections 46.2-1575 (6) (having used deceptive acts or practices) and 46.2-1575 (13) (having been convicted of a felony). As a matter of information, Mr. Kaylor waived his right to an informal fact-finding conference and requested a formal hearing. Based on the information provided at the conference, the hearing officer recommended that Mr. Kaylor's application for a salesperson license should be approved.

Mr. Kaylor and his attorney, Bill Lehner, were present and spoke on his own behalf.

Motion was made by Robert Woodall to accept the hearing officer's recommendation. Frank Pohanka seconded. The motion carried unanimously.

- **Don A. Haverstock, Salesperson.** On February 3, 2011, a formal hearing was conducted to address the alleged violations of VA Code Sections 46.2-1575 (8) (having been convicted of any fraudulent act in connection with the business of selling vehicles or any consumer-related fraud) and (13) (having been convicted of a felony). As a matter of information, on January 25, 2011, Bill Lehner, attorney for Mr. Haverstock, waived his right to an informal fact-finding conference and requested a formal hearing. Based on the information provided at the conference, the hearing officer recommended that Mr. Haverstock's application for a salesperson license should be denied.

Mr. Haverstock and his attorney, Bill Lehner, were present and spoke on his own behalf.

Motion was made by Joe Tate to reject the hearing officer's recommendation and allow Mr. Haverstock to become licensed as a salesperson; however, his dealer operator certificate should be revoked. T.K. Hughes seconded. The motion carried unanimously.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for May 9, 2011.

The meeting adjourned at 10:44 a.m.

Meeting Summary
Advertising Committee
Monday, March 14, 2011

Chairman Lynn Hooper called the Advertising Committee meeting to order at 10:44 a.m. in Room 702, at DMV Headquarters, 2300 West Broad Street, Richmond, Virginia. Present were Committee members Matt Queen, Larry Shelor, Joe Tate, Jimmy Whitten, Sally Woodson and Tommy Woodson. (Absent: Matt Lohr and Kevin Reilly). Other Board members present: Rick Holcomb, T.K. Hughes, Henry Jones, David Lacy, Wanda Lewark, Pat Patrick, Frank Pohanka, Robert Woodall. 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 January 10, 2011 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

Lynn Hooper reviewed and discussed the Advertising Report with the Committee members.

The next meeting was scheduled for May 9, 2011.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The meeting adjourned at 10:45 a.m.

Meeting Summary
Transaction Recovery Fund Committee
Monday, March 14, 2011

Chairman Larry Shelor called the Transaction Recovery Fund Committee meeting to order at 10:45 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members: Henry Jones, David Lacy, Wanda Lewark, Pat Patrick, Frank Pohanka, Matt Queen and Joe Tate. (Absent: Matt Lohr). Other Board members present: T.K. Hughes, Tommy Woodson, Rick Holcomb, Lynn Hooper, Jimmy Whitten, Sally Woodson, Robert Woodall. 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 January 10, 2011 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:

- **Mark G. Brown and Rivera Motors, LLC.** On August 9, 2008, Mr. Brown entered into a contract to purchase a 2005 Mercedes Benz from Rivera Motors, LLC for a total purchase price of \$26,500.00 (\$25,345.50 base price, \$4.00 license fee, \$10.00 title fee, the 3% title tax of \$769.22, the dealer's business tax of \$51.28, the on-line systems filing fee of \$25.00 and \$295.00 process fee).

At the time of the purchase, Mr. Brown traded-in a 2002 Lincoln which had a remaining balance owed to USAA Federal Savings Bank in the amount of \$13,000.00 and Mr. Brown provide Rivera with a check for \$26,000.00 for the Mercedes. On that same day, Rivera contacted USAA in the presence of Mr. Brown regarding the pay-off arrangements; however, Mr. Rivera did not pay off the USAA loan. Subsequently, arrangements were made for Rivera to pay Mr. Brown and he would pay off the USAA loan. From August 2008 through March 2009, Rivera made payments to Mr. Brown and he, in turn, continued to pay on the loan to USAA. The last payment Rivera made on the loan was March 16, 2009. (Total payments Rivera made were \$5,315.35). Rivera Motors failed to meet the financial (verbal and written) contract with Mr. Brown. Therefore, USAA is holding Mr. Brown liable for the remaining balance on the loan for the Lincoln. Mr. Brown later learned that Rivera Motors had sold his Lincoln to a third party prior to completing their financial agreement.

According to the USAA statement, on August 1, 2008, the balance owed on the Lincoln was \$13,757.16. The transaction in connection with the purchase occurred on August 9, 2008, therefore if the amount Rivera paid is subtracted, which was \$5,315.35, from the \$13,757.16, it would leave a balance of \$8,441.81 still remaining on the loan. As of February 22, 2010, the current balance owed is \$3,681.74 because Mr. Brown continued to make payments on the Lincoln. A more recent statement dated December 13, 2010 reflects a remaining balance of \$84.12 on the loan. Since this report, Mr. Brown has paid off the loan and has a clear Maryland title to the Lincoln.

On March 22, 2010, Strickler Sanford, IV, Esquire, on behalf of his client Mark Brown, submitted to the Dealer Board, as prior notification, a copy of the Warrant in Debt that had been filed in Norfolk General District Court against Rivera Motors, LLC. On April 22, 2010, the Norfolk General District Court awarded Mark Brown a Default Judgment against Rivera Motors, LLC in the amount of \$7,400.00 plus \$44.00 court costs and \$600.00 in attorney fees.

On July 22, 2010, the Board requested a more legible copy of the Buyer's Order and any documentation showing proof of trade-in and proof from the lien holder on the continued payments made by Mr. Brown. On July 26, the Dealer Board spoke with Mr. Sanford regarding the additional documentation and counsel indicated he was unable to provide a legible copy of the Buyer's Order, but did have a Buyer's Guide. Further counsel indicated that he believed this was a verbal agreement regarding the Lincoln. The Dealer Board researched the vehicle identification number of the Lincoln and the records reflect there is "No Record" of the Lincoln being registered in the Commonwealth of Virginia. The 2002 Lincoln is not shown as a trade-in on the Buyer's Order in connection with the purchase and there is no other supporting documentation. It appears that Mr. Brown may have made a verbal agreement with Rivera Motors to sell the Lincoln.

On February 10, 2011, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer indicated that the requirements needed are not present and the fund should not be used in this case.

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

Motion was made by Pat Patrick to reject the hearing officer's recommendation and pay the claim in the amount of \$8,044.66. In prior cases, the bill of sale did not show a trade-in and the claims were denied for failing to pay off the trade-in's remaining balance due the bank. In this case, the bill of sale also did not show a trade-in, but the Board specifically found other facts present that distinguished this case from the others to show evidence of a trade-in and hence approved the claim. Matt Queen seconded. All in favor: 7 (Jones, Lacy, Lewark, Patrick, Pohanka, Queen and Shelor). Opposed: 1 (Tate). The motion carried.

- **Walter Ecker, III and Five Star Used Auto Sales & Service, Inc.** In November 2009, Mr. Ecker saw an advertisement on craigslist.com where Five Star Used Auto Sales & Service, Inc. offered for sale a 1999 BMW for \$6,500.00. The BMW appeared in several different types of advertisements for the same price of \$6,500 and with the phrase "Guaranteed Credit Approval" emphasized. In contacting the dealership, he spoke with a representative named "Nick" and when asked questions about how the engine ran, previous collision damage and the mileage, he was told that the engine ran great, there was no prior collision damage and the mileage was not that high compared to other 1999 BMW's.

Nick then requested that Mr. Ecker provide his name, address, work and income information through the website so the dealership could inquire about financing the vehicle. Upon providing that information, Mr. Ecker also tendered \$500.00 on his debit card for the dealership to hold the vehicle. After Mr. Ecker provided the credit information, Five Star indicated that a bank would not agree to finance the transaction, but he could finance the vehicle through in-house financing for a vehicle sales price of \$8,000 and \$3,500 as a down payment. Salesperson Marino Cerqueira indicated to Mr. Ecker that the vehicle's price had to increase from the advertised price because he was financing the vehicle. Mr. Ecker agreed to the proposed terms by Five Star.

On November 24, 2009, Mr. Ecker arrived at the dealership to complete the transaction to purchase the vehicle. Upon his arrival, the vehicle was in the service bay. He was unable to test drive the vehicle and after looking at the vehicle, he thought the price was too high based upon its condition. After noticing some problems with the vehicle, the dealership agreed to fix the problems and have it inspected. Mr. Ecker requested that the dealership reduce the price and they agreed to lower the total charge to \$7,500.00.

Five Star completed a Buyer's Order and a "To Be Done" form to complete the sale of the vehicle. At that time, Mr. Ecker provided the dealer a cashier's check in the amount of \$3,000.00 so that the dealership had the total down payment of \$3,500.00. The dealership retained possession of the vehicle so that it could perform the repairs as promised. Between November 24 and December 10, 2009, Mr. Ecker had sent numerous text messages and called the dealership many times to inquire on the status of the work on the vehicle. On December 10, 2009, Mr. Ecker picked up the vehicle, Mr. Cerqueira indicated that the "To Be Done" list was completed and he took it on a short test drive. On December 10, Five Star had Mr. Ecker sign another Buyer's Order and Retail Installment Sales Contract with a balance of \$4,000 owed. Mr. Ecker indicated that the Contract was unreadable as to the material terms of the financing and they did not disclose the \$1,000 increase in the price as a finance charge on the contact. The dealership did not transfer the title with a lien in its favor, nor provided a title to Mr. Ecker. Instead they issued Mr. Ecker with a temporary certificate and indicated the sales date as December 10, 2009 when in fact they had a valid contract on November 24, 2009. The dealership promised to send Mr. Ecker a Virginia title with a lien recorded in their favor.

Beginning December 11, Mr. Ecker began experiencing all kind of mechanical issues with the vehicle and he took the vehicle to a local garage. The garage performed a diagnostic test on the vehicle and the test revealed 12 codes indicating problems with the vehicle. After learning the vehicle was not fixed in accordance with the dealership's promise, Mr. Ecker contacted the dealership and ultimately on December 16, 2009, Five Star had the vehicle towed from Mr. Ecker's residence in Maryland to the dealership in Chantilly. Prior to the towing, Mr. Ecker gave Five Star the list of many items wrong with the vehicle. On December 28, 2009, Mr. Ecker contacted the dealership about his vehicle and Mr. Cerqueira indicated that they were still working on the vehicle.

Because Mr. Ecker had no title, his contract had been breached and it appeared the dealership had misrepresented the condition and history of the vehicle, he demanded rescission of the contract and the return of the \$3,500 down payment. The dealership refused to honor the request for rescission and continues to hold possession of the vehicle, title and Mr. Ecker's money. Mr. Ecker sought legal counsel (Blankingship & Christiano, P.C.) in order to pursue Five Star civilly in court in order to obtain his monetary loss in connection with the purchase of the 1999 BMW. Based upon the condition of the vehicle, it had undisclosed damage prior to the sale of the vehicle to Mr. Ecker. Further, a Google search of the vehicle identification number revealed that Insurance Auto Auctions offered the vehicle sale. Insurance Auto Auction sells vehicles that have been declared a total loss by an insurance company and only offers vehicles for sale to car dealerships. Because the vehicle was sold at this particular auction, Five Star would have known that the vehicle had to have been declared a total loss by an insurance company.

On April 8, 2010, Thomas B. Christiano, Esquire, on behalf of Mr. Ecker, submitted documentation to the Dealer Board in regards to his client's possible claim against the Motor Vehicle Transaction Recovery Fund. On April 14, 2010, the Dealer Board sent a letter to Mr. Christiano acknowledging receipt of his client's possible claim and after a careful preliminary review, staff referred counsel to the dealer's (\$50,000) surety bonding company (Western Surety) and provided a copy of the bond. On August 12, 2010 the United States District Court Alexandria Division awarded Walter Ecker a default judgment against Five Star Used Auto Sales and Service, Inc. in the amount of \$59,521.42 (\$8,492.07 actual damages; \$1,000.00 statutory damages; \$42,460.35 punitive damages and \$7,569.00 in attorney fees).

On November 22, 2010, Mr. Christiano submitted proof of payment dated 11/16/10 from the surety bonding company in the amount of \$8,492.07 for the actual damages on his client's claim and is now requesting consideration of payment of the attorney fees from the Fund. After carefully reviewing all the documentation, Mr. Ecker's claim meets the criteria for payment from the Fund.

On February 8, 2011, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that the Board should consider Mr. Ecker's request to pay the attorney fees of \$7,569.00.

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

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for May 9, 2011.

The meeting adjourned at 11:15 a.m.