

Meeting Summary
Motor Vehicle Dealer Board
Monday, March 11, 2013

Chairman Rick Holcomb called the Dealer Board meeting to order at 12:25 p.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, Brian Hutchens, Ronald Kody, Wanda Lewark, Chip Lindsay, George Pelton, Kevin Reilly, Joe Tate, Jimmy Whitten, Sally Woodson and Tommy Woodson. (Absent: Matt McQueen, Thomas Moorehead, 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 January 14, 2013 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.

- **Cloverhill Motors and Charles H. Thorpe, Jr.** 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 Cloverhill Motors and Charles H. Thorpe, Jr. for alleged violations of VA Code Sections 46.2-1518, 46.2-1530, 46.2-1537, 46.2-1559 and 46.2-1561. Based on due consideration, the Board believes a civil penalty should be assessed against Cloverhill Motors and Charles H. Thorpe, Jr. The Board hereby assesses a \$500 civil penalty against Cloverhill Motors and Charles H. Thorpe, Jr; and based on due consideration, the Board believes that Mr. Thorpe's dealership should be re-inspected and that the inspection must be satisfactory and that all licenses and certificates issued by the Board to Mr. Thorpe 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. Thorpe's dealership and if the inspection is not satisfactory the Board suspends all licenses and certificates issued by the Board to Mr. Thorpe until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative.

George Pelton seconded. All in favor: 15 (Alvarez, Bailey, Boswell, Holcomb, Hooper, Hudgins, Hutchens, Lewark, Lindsay, Pelton, Reilly, Tate, Whitten, S. Woodson and T. Woodson). Opposed: 1 (Kody). The motion carried.

- **American Idol Motors, LLC and Naveed Ahmed.** 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 American Idol Motors, LLC and Naveed Ahmed for alleged violations of Va. Code Sections 46.2-1575(9) and 46.2-1575(10). Based on due consideration, the Board believes a civil penalty should be assessed against American Idol Motors, LLC and Naveed Ahmed. The Board hereby assesses a \$500 civil penalty against American Idol Motors, LLC and Naveed Ahmed; and based on due consideration, the Board believes that Mr. Ahmed's dealership should be re-inspected and that the inspection must be satisfactory and that all licenses and certificates issued by the Board to Mr. Ahmed 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. Ahmed's dealership and if the inspection is not satisfactory the Board suspends all licenses and certificates issued by the Board to Mr. Ahmed. until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative.

Lynn Hooper seconded. The motion carried unanimously.

- **East Coast Auto Brokers, LLC and James Musick.** 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 East Coast Auto Brokers, LLC and James Musick for alleged violations of Va. Code Sections 46.2-1575 (6) and 46.2-1575 (9). Based on due consideration, the Board believes a civil penalty should be assessed against James Musick. The Board hereby assesses a \$2,000 civil penalty against James Musick; and based on due consideration, the Board believes that all licenses and certificates issued by the Board to Mr. Musick should be suspended. The Board hereby suspends for six months [until September 11, 2103] all licenses and certificates issued by the Board to Mr. Musick; and based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Musick in running East Coast Auto Brokers, LLC. The Board mandates that Mr. Musick successfully complete the dealer-operator course by September 11, 2013. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Mr. Musick by the Board until such time Mr. has successfully completed the course.

Sally Woodson seconded. The motion carried unanimously.

- **Carz Unlimited, LLC and Krystal Niles-Smith.** Tommy Woodson 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 \$5,000 civil penalty against Carz Unlimited, LLC and Krystal Niles-Smith; and revoked Ms Niles-Smith's dealer operator certificate of qualification.; and Ms. Niles-Smith appealed the Board's decision and requested a formal hearing that was conducted on November 20, 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 Carz Unlimited, LLC and Krystal Niles-Smith for alleged violations of Va. Code Sections 46.2-1529, 46.2-1537, 46.2-1550, 46.2-1550.1, 46.2-1550.2, 46.2-1574 and 46.2-1575.1. Based on due consideration, the Board believes a civil penalty should be assessed against Carz Unlimited, LLC and Krystal Niles-Smith. The Board

hereby assesses a \$5,000 civil penalty against Carz Unlimited, LLC and Krystal Niles-Smith; and based on due consideration, the Board believes that Ms Niles-Smith's dealership should be re-inspected and that the inspection must be satisfactory and that all licenses and certificates issued by the Board to Ms Niles-Smith should be suspended until such time as she 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 Ms Niles-Smith's dealership and if the inspection is not satisfactory the Board suspends all licenses and certificates issued by the Board to Ms Niles-Smith until such time as she has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative

George Pelton seconded. The motion carried unanimously.

Licensing Committee

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

- **Donald Anderson, Salesperson.** Jimmy Whitten made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Donald Anderson for alleged violations of Va. Code Sections 46.2-1575 (6) and 46.2-1575 (7). Based on due consideration, the Board believes a civil penalty should be assessed against Donald Anderson. The Board hereby assesses a \$5,000 civil penalty against Donald Anderson.

Andy Alvarez seconded. The motion carried unanimously.

- **Robert C. Johnson, Jr.** 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 executive director, under the authority granted by the Motor Vehicle Dealer Board, denied the salesperson license application submitted to the Board by Robert C. Johnson, Jr. Mr. Johnson appealed the denial and requested a formal hearing; and the Board has reviewed and considered the facts and evidence and the report of a formal hearing as prepared by the hearing officer concerning Robert C. Johnson, Jr. for alleged violations of Va. Code Sections 46.2-1575 (13) (having been convicted of a felony). Based on due consideration, the Board believes Mr. Johnson's license application should be denied. The Board hereby denies Robert C. Johnson, Jr's application for a salesperson license

George Pelton 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.

Bridget R. Shannon and Autoplex of Richmond, Courtavius A. Coleman and 7 Cities Autobrokers, LLC and Rosalyn A. Haram and Auto Warehouse Direct of Chantilly. Chairman Lynn Hooper summarized for the Board the discussion held in the committee meeting regarding Bridget R. Shannon and Autoplex of Richmond, Courtavius A. Coleman and 7 Cities Autobrokers, LLC and Rosalyn A. Haram and Auto Warehouse Direct of Chantilly. 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:

Bridget R. Shannon and Autoplex of Richmond	
\$3,095.00	
Courtavius A. Coleman and 7 Cities Autobrokers, LLC	\$6,328.28
Rosalyn A. Haram and Auto Warehouse Direct of Chantilly	\$7,650.00

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

General Assembly Update: Ann Gambardella, VADA, discussed the following bills that would affect the dealer community:

- **HB 1632 and SB 1051 Manufacturer Fines and Fees:** Current code prohibits a manufacturer from collecting chargebacks for warranty or sales incentive audits before a dealer exhausts its remedies under the franchise agreement and through DMV for disputing those amounts. This legislation protects dealers from having to fight to get back their own money after successfully disputing the chargebacks. This bill extends those same protections against having their money taken to administrative fees and other fines and charges that the manufacturer may try to assess the dealer for action that the manufacturer deems a violation of its policies.

- **HB 1539 Sale of Motor Vehicles on Consignment (Auctions)** The bill revises the requirements concerning inspections of vehicles offered for sale at auctions - sales that are considered consignments under current Code. Currently, vehicles with a rejection sticker cannot be sold at a retail auction under current law even though a dealer could sell the vehicle on their lot with a rejection sticker. This change in the law will allow vehicles to be sold at auctions even if the vehicle has a rejection sticker provided it is disclosed why the vehicle was rejected. VIADA and MVDB supported this bill which is effective as of July 1, 2013.

PoD, On-Line Mandate for Franchise Dealers and New Procedure For Dealers Switching On-line Vendors: Rick Holcomb indicated that DMV will be mailing three different letters to dealers which are as follows:

- **PoD Update:** Effective July 1, 2013, all PoD temporary tags must be printed on the synthetic paper. To use this paper, a dealer will need a laser printer and it must use toner, not ink cartridges.
- **On-Line Mandate:** DMV has the authority to mandate electronic filing of any type of document or payment, provided 12 months written notice is given. In accordance with that authority, effective March 15, 2014, all applications for title and registration of vehicles processed via a **franchise automobile dealer** must be processed on-line.
- **New Procedure For Dealers Switching to On-line Vendors:** In an effort to facilitate dealerships in transitioning from one on-line vendor to another, DMV is implementing an inventory review process that will eliminate the need for the previous vendor to be on site to initiate the transfer of inventory. The transfer will be overseen by a DMV representative, who will ensure that the inventory is accurately accounted for and, if needed, document any discrepancies for further review by the agency.

Executive Director's Report. Bruce Gould reported that part time wage employees hours have been reduced to working 29 hours per week as mandated. He will be looking into hiring one (1) more part timer to help make up the missing hours. Bruce extended an invitation to any of the Board members to attend hearings. They are open to the public. Just call in advance and let someone know.

The next meeting will be scheduled for May 13, 2013.

There being no further business to come before the Motor Vehicle Dealer Board, Chairman Holcomb adjourned the meeting at 1:06 p.m.

Meeting Summary
Dealer Practices Committee
Monday, March 11, 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 Ted Bailey, Ronald Kody, Chip Lindsay, Kevin Reilly, Joe Tate, Jimmy Whitten and Sally Woodson. (Absent: Matt McQueen, Thomas Moorehead and Rodney Williams). Other Board members present: Andy Alvarez, Don Roy Boswell, Art Hudgins, Brian Hutchens, Rick Holcomb, Lynn Hooper, Wanda Lewark and 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 January 14, 2013 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conferences:

- **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 Sections 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.

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

Motion was made Tommy Woodson to accept the original decision and assess Mr. Thorpe a \$500 civil penalty and a satisfactory inspection. Sally Woodson seconded. All in favor: 7. (Woodson, Bailey, Lindsay, Reilly, Tate, Whitten, Woodson. Opposed: 1 (Kody). The motion carried.

- **American Idol Motors, LLC and Naveed Ahmed.** On January 16, 2013, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1575(9) (having been convicted of any criminal act involving the business of selling vehicles) and 46.2-1575(10) (willfully retaining in his possession title to a motor vehicle that has not been completely and legally assigned to him). Based on the information provided at the conference, the hearing officer recommended that the Board renew his dealer license application and his application for certificate of qualification/salesperson's license. He also indicated that since Mr. Ahmed paid restitution for all fines and costs, no civil penalty should be assessed. He also recommended that a re-inspection of his dealership be performed and to also include a DMV special agent.

Motion was made by Joe Tate to assess a civil penalty of \$500 and to have a satisfactory inspection. Kevin Reilly seconded. The motion carried unanimously.

- **East Coast Auto Brokers, LLC and James Musick.** On December 3, 2012, an informal fact-finding conference 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 (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 be suspended for a period of 6 months. It was further recommended that a civil penalty of \$2,000.00 be assessed and to successfully complete the Dealer-Operator course.

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

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

Review and Action: Formal Hearing:

- **Carz Unlimited, LLC and Krystal Niles-Smith.** Historical overview leading up to the formal hearing: On June 22, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1529 (failure to maintain all dealer records on the premises of the licensed location), 46.2-1537 (Licensed salespersons not on payroll), 46.2-1550 (improper use of or permitting the improper use dealer's license plates), 46.2-1550 (1) (Unlawful use of Transport Tags for customer test drives), 46.2-1550 (2) (Unlawful use of dealer plates), 46.2-1574 (failure to be responsible for the acts of the dealers salespersons) and 46.2-1575 (Grounds for denying, suspending, or revoking licenses or certificates of dealer registration or qualification) and 46.2-1575 (1) (Material misstatement or omission in application for license). Based on the information provided at the conference, the hearing officer recommended assessing a civil penalty of \$1,250.00 and for the dealership to be re-inspected to insure compliance with all dealer licensing laws. On October 12, 2012, Ms. Niles-Smith appealed the decision and requested a formal hearing. On November 20, 2012, a formal hearing was conducted. Based on the information provided at the conference the hearing officer recommended assessing a civil penalty of \$5,000.00, allowed to keep her licenses and the dealership be inspected twice a year.

Ms. Niles-Smith was present and spoke on her own behalf.

Motion was made by Jimmy Whitten to accept the hearing officer's recommendation; however he modified the inspection to 1 and not 2 per year as indicated. Joe Tate 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 13, 2013

The meeting adjourned at 10:24 a.m.

Meeting Summary
Dealer Licensing Committee
Monday, March 11, 2013

Chairman Jimmy Whitten called the Dealer Licensing Committee meeting to order in Room 702 at 10:24 a.m. DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members Andy Alvarez, Roy Boswell, Art Hudgins, Brian Hutchens, Wanda Lewark, George Pelton, Joe Tate and Sally Woodson. Other Board members present: Tommy Woodson, Kevin Reilly, Rick Holcomb, Lynn Hooper, Chip Lindsay, Ted Bailey and Ron 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 January 14, 2013 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: Information Fact-Finding Conference:

- **Donald Anderson, Salesperson.** On February 7, 2013, an informal fact-finding conference 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 (7) (advertising). Based on the information provided at the hearing, the hearing officer recommended that Mr. Anderson have all licenses and/or certificates of dealership registration or qualification to sell motor vehicles suspended. It was further recommended that a penalty of \$14,000 be assessed against Mr. Anderson.

Mr. Anderson and his attorney, Keith Marcus were present and Mr. Marcus spoke on behalf of his client. Mr. Anderson and Mr. Marcus responded to questions posed by the members.

Motion was made by Joe Tate to accept the civil penalty of \$14,000 be assessed; however, they are going to allow Mr. Anderson to keep his license. George Pelton seconded. The motion carried unanimously.

Review and Action: Formal Hearing:

- **Robert C. Johnson, Jr.** Historical overview leading up to the formal hearing: On August 30, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1575 (13) (having been convicted of a felony). Based on the information provided at the hearing, the hearing officer recommended that Mr. Johnson be denied a license to sell motor vehicles in the Commonwealth of Virginia. On November 2, 2012, Bruce Gould carefully reviewed the findings of fact, the evidence from the court, the conclusions of law, the hearing officer's report and the testimonies given at the hearing and determined that his application to become licensed to sell motor vehicles should be denied. On December 5, 2012, the board staff received Mr. Johnson's appeal and requested a formal hearing. On February 6, 2013, a formal hearing was conducted to address the alleged violations as mentioned above. Based on the information provided at the hearing, the hearing officer recommended that Mr. Johnson's application to become licensed to sell motor vehicles should be denied.

Motion was made by Andy Alvarez to accept the hearing officer's recommendation. Joe Tate 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 13, 2013.

The meeting adjourned at 10:58 a.m.

Meeting Summary
Advertising Committee
Monday, March 11, 2013

Chairman Kevin Reilly called the Advertising Committee meeting to order in Room 702 at 10:58 a.m., DMV Headquarters, 2300 West Broad Street, Richmond, Virginia. Present were Committee members Andy Alvarez, Ronald Kody, Chip Lindsay, George Pelton, Sally Woodson and Tommy Woodson. (Absent: Matt McQueen and Rodney Williams). Other Board members present: Art Hudgins, Brian Hutchens, Roy Boswell, Rick Holcomb, 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 January 14, 2013 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

- **Update: Review of the Advertising Regulations.** Bruce Gould indicated the regulations are currently being reviewed. Under the comprehensive review, public comments will be taken and public hearings will be conducted. A further update will be provided at the May meeting.
- **Update: Internet "Lead" Vendors.** Bruce Gould indicated that vendors have been identified that advertise for dealers. Several vendors were not in compliance of the advertising laws and regulations. One in particular, Vast.com was contacted and informed that they were not in compliance by paying bird dog fees to dealers and they have indicated they will do whatever it takes to abide by the laws.

John Summer, JTZ, Enterprise. His company specializes in web design and hosting. He spoke in reference to VA Code Section 46.2-1537 (bird dogging). He indicated that his services would like to be paid per lead and he would like to see VA Code Section 46.2-1537 be reviewed so he could conduct his business in Virginia.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

The next meeting was scheduled for May 13, 2013.

NEW BUSINESS FROM THE FLOOR

- **Incentives/Rebates.** Bruce Gould asked for guidance from the Committee concerning advertised prices that included incentives/rebates. The issue was discussed and it was determined that the advertised price could only include incentives/rebates that are available to all purchasers. If other incentives/rebates are available based on specific criteria (e.g. military rebate) these additional incentives/rebates can be listed but not subtracted from the advertised price. Also, if a specific vehicle is advertised, the advertisement may not include a statement such as “rebate up to NNN Dollar Amount” if the stated “up to” dollar amount is not available for that vehicle. [For example, if a manufacturer is offering rebates of up to \$5,000 and the vehicle advertised is only eligible for a \$3,000 rebate; the advertisement may not state rebates up to \$5,000].

The meeting adjourned at 11:37 a.m.

Meeting Summary
Transaction Recovery Fund Committee
Monday, March 11, 2013

Chairman Lynn Hooper called the Transaction Recovery Fund Committee meeting to order at 11:38 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members: Andy Alvarez, Ted Bailey, Roy Boswell, Brian Hutchens and Kevin Reilly. (Absent: Matt McQueen and Thomas Moorehead). Other Board members present: Tommy Woodson, Rick Holcomb, Jimmy Whitten, Chip Lindsay, 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 January 14, 2013 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:

- **Bridget R. Shannon and Autoplex of Richmond** On December 11, 2008, Ms. Shannon entered into a contract with Autoplex of Richmond, Inc. for the purchase of a 2003 Mercedes Benz for a price of \$27,999.00 and a processing fee of \$348.00, making the total vehicle price of \$28,347.00. In addition, to the purchase Ms. Shannon purchased an extended warranty for \$3,095.00. The warranty was to provide bumper to bumper coverage for 36,000 miles (from the mileage on the vehicle at the time of purchase) or 36 months, whichever came first. The cost of the warranty was financed into the vehicle loan with BB&T.

In January 2010, Ms. Shannon began having issues with the anti-theft protection system and the gearshift would stick when trying to shift from park to another gear. She contacted the warranty administrator (DriverzEdge) to inquire on where she could take the vehicle for the repairs. DriverzEdge indicated she could take the vehicle to any repair shop or dealership of her choice, and all she needed to do was provide them with the warranty contract and they would deal directly with them for payment. Ms. Shannon decided to take the vehicle to a Mercedes Benz dealership located in Richmond, Virginia. She provided the warranty contract to the service manager. Ms. Shannon received a call from the service manager and he indicated that the gear shift had gone bad in the vehicle and needed to be replaced. He then indicated that he had contacted the warranty administrator, provided the contract number, vehicle identification, her name and address and the warranty administrator indicated that she did not exist in their system.

Ms. Shannon immediately contacted Autoplex and requested to speak with the owner (John Messer), since he was the person that had handled her vehicle purchase. The sales manager for Autoplex at the time, Charlie (last name unknown) indicated that Mr. Messer was not available and that he would assist Ms. Shannon with the warranty issue. Approximately, two (2) hours later, Charlie contacted Ms. Shannon and indicated he could not locate her warranty paperwork in his office and that she would need to speak directly with Mr. Messer. However, he would go ahead and take her vehicle to a repair shop (Sanko Auto Repair) to get the vehicle fixed, at no charge and provide a loaner vehicle until hers was fixed.

After a couple of weeks had passed; Ms. Shannon filed a written complaint with the Motor Vehicle Dealer Board. Shortly thereafter Mr. Messer contacted Ms. Shannon regarding the warranty she had purchased. Mr. Messer was unable to provide any logical or legitimate excuse for the warranty fiasco; however Ms. Shannon decided to give him an opportunity to make good on the warranty. She went to Autoplex and met with Mr. Messer and his finance manager (Dwayne) and signed a second warranty agreement with DriverzEdge, which was signed in April, 2010.

In February, 2011, Ms. Shannon began having more issues with the Mercedes and decided to take the vehicle to Complete Automotive of Richmond. The repair shop concluded that the shaft dampeners had gone bad in the vehicle, which caused the vehicle to ride roughly. The repair shop was familiar with DriverzEdge and indicated that this would definitely be covered under the warranty. They contacted the warranty company and were informed that Ms. Shannon did not exist in their database of customers. After hearing the news for a second time, Ms. Shannon realized that Mr. Messer had defrauded her again.

On February 25, 2011, Bridgett Shannon filed a Warrant in Debt in the Henrico General District Court against Autoplex of Richmond, Inc. and served the Registered Agent (William L. Jeffries, Jr.) for the purchase of vehicle warranty and the dealer did not remit payment to the warranty administrator. Note: May 2, 2011 Judgment dismissed w/o prejudice. Ms. Shannon then filed an appeal from the General District Court to the Circuit Court of the County of Henrico. On January 20, 2012 the Circuit Court of the County of Henrico awarded Ms. Shannon a default judgment against Autoplex of Richmond, Inc. in the amount of \$3,095.00. Ms. Shannon has been unsuccessful in collecting payment on her judgment.

On October 5, 2012, Ms. Shannon hand delivered to the Motor Vehicle Dealer Board documentation for consideration of payment from the Motor Vehicle Transaction Recovery Fund (Fund). On October 12, 2012, Bridgett Shannon provided the Judgment Claim Request form (MVDB-13) and a copy of the original Warrant in Debt.

Staff believed that Ms. Shannon's claim met the requirement of the law. Therefore, the Dealer Board staff requested that the Recovery Fund Committee and Full Board to approve Ms. Shannon's claim against the Fund in the amount of \$3,095.00, which based on the full judgment amount.

On February 25, 2013, 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 \$3,095.00 from the Fund to Ms. Shannon.

John Messer of Autoplex was present and spoke on behalf of Autoplex.

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

- **Courtavius A. Coleman and 7 Cities Autobrokers, LLC.** On December 27, 2010, Mr. Coleman entered into a contract to purchase a 2006 Cadillac, from 7 Cities Autobrokers, LLC for a sales price of \$16,621.10 + \$295.00 processing fee making the total purchase price of \$16,916.10. In addition, the dealership collected (the sales tax of \$507.48, title fee of \$10.00, registration fee of \$49.50, the dealer business tax of \$16.92 and an online system filing fee of \$10.00) thus making the total amount due on the purchase in the amount of \$17,500.00. Mr. Coleman took possession of the vehicle and financed the full amount (\$17,500.00) through Navy Federal Credit Union.

At the time of the purchase, the licensed salesperson (Fitzroy Smith) for 7 Cities provided a carfax on a Cadillac which reflected a good title with no prior mechanical problems. At no time during the negotiations, did the licensed salesperson disclose that the vehicle had been damaged and rebuilt. As it turns out, the vehicle had some major mechanical problems with the transmission and the rack and pinion. Due to the mechanical problems, Mr. Coleman learned that the carfax was on a different vehicle from the one he was purchasing and the vehicle he purchased had a salvage title.

On June 1, 2011, Mr. Coleman filed a Warrant in Debt in the Norfolk General District Court against 7 Cities Autobrokers, LLC in the amount of \$25,000 for fraud and misrepresentations of the vehicle he purchased that had a salvage title. On June 29, 2011, Mr. Coleman filed a Motion to reopen the civil case because he had no way to court due to the vehicle in question was not in running condition. On August 30, 2011, the Norfolk General District Court awarded Mr. Coleman a default judgment against 7 Cities Autobrokers, LLC in the amount of \$25,000.00.

On August 29, 2012, Mr. Coleman had been unsuccessful in collecting on the judgment he had been awarded and contacted the Motor Vehicle Dealer Board to inquire on how to obtain reimbursement of his monies. Mr. Coleman submitted copies of the default judgment, copy of the Warrant in Debts, the Bill of Particulars and copy of the Buyer's Order. On September 18, 2012, the Dealer Board staff acknowledged Mr. Coleman's possible claim and after a careful preliminary review, pursuant to §46.2-1527.2 provided Mr. Coleman with the dealerships surety bonding company. On October 2, 2012, the dealer's surety bonding company (Western Surety) paid \$13,671.72 on Mr. Coleman's judgment.

On October 12, 2012, Mr. Coleman submitted to the Dealer Board documentation for consideration of payment on the remaining balance of his judgment order. On October 17, 2012, the Dealer Board staff acknowledged receipt of Courtavius Coleman's possible claim against the Fund. Staff requested additional documentation regarding his claim and enclosed the Judgment Claim Request form to be returned to the Dealer Board.

On November 14, 2012, the Dealer Board received from Mr. Coleman the Judgment Claim Request form (MVDB-13) and the repair order from (Action Automotive, Inc) on items needing to be replaced totaling \$4,527.98. After a careful preliminary review, Mr. Coleman's claim does meet **in part** the criteria for payment from the Fund, pursuant to Virginia Code §46.2-1527.3. Judgment was awarded in a court of competent jurisdiction in the Commonwealth of Virginia. Currently, Mr. Coleman has possession of the vehicle; however the vehicle is not in running condition and needs repairs before it is road worthy. On August 30, 2011, the Norfolk General District Court awarded Mr. Coleman a default judgment against 7 Cities Autobrokers in the amount of \$25,000.00. It was not until after the judgment was awarded did Mr. Coleman submit copies of his lawsuit. **Thus, there was not compliance with the provisions of §46.2-1527.4 in serving any documents, including the initial complaint on the Board so that it may determine whether it would exercise its discretion to move to intervene.** Mr. Coleman is now requesting consideration of reimbursement for the remaining balance of his judgment from the Fund. **(\$25,000.00 - 13,671.72 paid by bond = \$11,328.28)**

However, pursuant to Va. Code §46.2-1527.5, the maximum claim of one judgment creditor against the Fund based on an unpaid judgment arising out of any loss or damage by reason of a claim submitted under §46.2-1527.2 or §46.2-1527.3 involving a single transaction shall be limited to \$20,000.00, including any amount paid from the dealer's surety bond, regardless of the amount of the unpaid final judgment of one judgment creditor. [Limitations of recovery from the Fund: Claim applies to the Va. Motor Vehicle Dealer Licensing Laws of July, 2011] Thus, if compensable from the Fund (\$20,000.00 - \$13,671.72 = \$6,328.28). Further, 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.

It is unclear on the face of the judgment how the court arrived at \$25,000.00 in actual damages. In addition, Mr. Coleman currently has possession of the vehicle, he has received \$13,671.72 from the surety bond and has provided a repairs receipt in the amount of \$4,527.98 in order to make the vehicle road worthy.

On February 25, 2013, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that the claim should not be considered.

Motion was made by Kevin Reily to pay \$6,328.48 to Mr. Coleman. Lynn Hooper seconded. The motion carried unanimously.

- **Rosalyn A. Haram and Auto Warehouse Direct of Chantilly.** In June, 2009, Mrs. Haram began negotiations with Auto Warehouse Direct of Chantilly (Auto Warehouse) and its owner/ salesperson (Bezhad Touhidi) to purchase a 2004 Acura, in which she had seen advertised on the internet's website Auto Trader. Mrs. Haram indicated she was searching for a vehicle that was a one owner, with low mileage, a safe and reliable vehicle she could purchase for her 19 year old daughter. Mr. Touhidi indicated that the previous owner had all the scheduled maintenance completed and that the vehicle was in perfect running condition. Mr. Touhidi stated that his business had just had the oil changed at (38,405 miles) in preparation for the sale.

Mr. Touhidi then obtained a Car Fax report on his laptop which seemed to corroborate the one owner, low mileage, no accidents, and no engine problems as a purchase requirement of Mrs. Haram. She requested a copy of the Car Fax report; but Mr. Touhidi indicated he did not have access to a printer. On June 20, 2009, relying on the warranties, representations and promises of Mr. Touhidi, owner/salesperson of Auto Warehouse, Mrs. Haram purchased the 2004 Acura with a 90 day/3,000 mile warranty for a purchase price of \$13,000.00 plus a processing fee of \$195.00 and a dealer business tax of \$22.10 making the total selling price of \$13,217.10. Mrs. Haram made a down payment of \$5,000 leaving an unpaid balance of \$8,210.10 to be financed. Mrs. Haram then had to pay the West Virginia sales tax of \$660.00 and a license registration fee of \$30.00, totaling \$690.00.

On August 28, 2009, two months after the purchase and approximately 5,000 miles, Mrs. Haram's daughter was driving the vehicle when it suddenly ceased running. The vehicle was towed to Cupp's Auto Repair in Martinsburg, West Virginia. Mrs. Haram was advised by Cupp's the vehicle had sustained substantial engine damage and would require a new engine. Cupp's recommended that she call the dealership where the vehicle was originally purchased to determine if an extended warranty existed. Mrs. Haram began calling area Acura dealerships to determine where the vehicle had been originally sold. She was then able to learn that the vehicle was originally sold by Radley Acura to a Daniel H. Horowitz and that it had suffered an earlier catastrophic engine failure. The vehicle was towed from its location in Martinsburg, West Virginia to Radley Acura for diagnosis. Radley Acura advised Mrs. Haram that there was a catastrophic internal engine failure requiring complete replacement at a cost of \$9,648.92. Further, Radley indicated that the current mechanical condition of the vehicle's engine was identical to the original failure which occurred on May 1, 2009 which they had in fact diagnosed when the previous owner (Mr. Horowitz) had taken the vehicle in for repair when it had failed on him.

Mrs. Haram would not have purchased the vehicle if she had known the truth regarding the engine failure. As a result of the misrepresentations of Auto Warehouse and Mr. Touhidi, Mrs. Haram obtained legal counsel (John Gayle, Jr., Esquire) in order to pursue the dealer civilly in court for her monetary loss. On March 2, 2010, John Gayle, Jr., Esquire on behalf of Rosalyn Haram filed a "Complaint" in the Circuit Court of Loudoun County against Auto Warehouse Direct of Chantilly. On June 23, 2012 entered the final order awarding judgment for actual fraud and violation of the Virginia Consumer Protection Act, in the amount of \$83,180.00.

On June 25, 2012, the Court awarded Mrs. Haram attorney fees of \$65,481 plus court costs of \$349 for a total of \$65,830, under the VCPA. On October 9, 2012, the surety bonding company (Western Surety) for BTB Development International, Inc. t/a Auto Warehouse Direct of Chantilly paid \$12,350.00 on Mrs. Haram's judgment for the actual damages. On December 3, 2012, John Gayle, Jr., Esquire on behalf of Rosalyn Haram submitted to the Dealer Board documentation for consideration of reimbursement in the amount of \$20,000 from the Fund.

On December 24, 2012, counsel (David Mahdavi, Esquire) to Niemars, Inc. contacted the Dealer Board regarding the "Notice of Verified Claim" dated December 4, 2012 by Behzad Touhidi. Counsel indicated that Niemars, Inc and BTB are two separate entities and that Mr. Touhidi has no ownership interest in Niemars. Staff explained the process and Notice was sent to Niemars, Inc., BTB and Mr. Touhidi because the Board's records show Behzad Touhidi as president of both dealerships. Staff provided via email attachments to counsel copies of the DSD-10's submitted to the Board for BTB, the corporate name to Niemars, which reflects Mr. Touhidi as the owner.

On February 25, 2013, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended payment of \$7,650.00. It was further recommended that Behzad Touhidi should be reviewed for the status of his sales license. (This amount is based on \$20,000.00 the maximum amount (pursuant to §46.2-1527.5) involving a single transaction minus the \$12,350.00 paid by the dealers surety bonding company. [**\$20,000 - \$12,350 = \$7,650**])

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

NEW BUSINESS FROM THE FLOOR

The next meeting was scheduled for May 13, 2013.

The meeting adjourned at 12:17 p.m.