

Meeting Summary
Motor Vehicle Dealer Board
Monday, March 10, 2014

Chairman Rick Holcomb called the Dealer Board meeting to order at 11:59 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 Ted Bailey, Roy Boswell, Gardner Britt, David Duncan, Steve Farmer, David Gripshover, Clayton Huber, Art Hudgins, Ron Kody, Chip Lindsay, Chris Maher, Matthew McQueen, Jacques Moore, Jr., and Joe Tate. (Absent: Andy Alvarez, Brian Hutchens and George Pelton). 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 13, 2014 meeting summary was approved.

Rick Holcomb indicated that he must leave for a planned business trip so, at this time, he spoke on some changes that are being made to driving records, licensing and new types of vehicles. He then turned the meeting over to Vice-chairman Ron Kody.

STATUTORY COMMITTEE REPORTS

Dealer Practices Committee:

Chairman Ron Kody summarized discussions held and actions that were taken during the Committee Meeting.

William Myers, American Classics. Ron Kody indicated that this issue will be tabled to the May meeting at the request of Mr. Myers.

- **Heritage Motor Company, Inc. and Stelios G. Karayiannis.** Ron Kody 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 Heritage Motor Company, Inc. and Stelios G. Karayiannis for alleged violations of Va. Code Sections 46.2-1537 and 46.2-1574. Based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Karayiannis in running his dealership. The Board mandates that Mr. Karayiannis successfully complete the dealer-operator course by September 12, 2014. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Mr. Karayiannis by the Board until such time Mr. Karayiannis has successfully completed the course.

Matt McQueen seconded. The motion carried unanimously.

- **Candy Automotive, Inc. and Hayward S. Statum.** Ron Kody 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 Candy Automotive, Inc. and Hayward S. Statum for alleged violations of Va. Code Sections 46.2-1529, 46.2-1530, 46.2-1537, 46.2-1539, 46.2-1542, 46.2-1550.2, 46.2-1559, and 46.2-1575 (2). Based on due consideration, the Board believes a civil penalty should be assessed against Candy Automotive, Inc. and Hayward S. Statum. The Board hereby assesses a \$4,000 civil penalty against Candy Automotive, Inc. and Hayward S. Statum; and based on due consideration, the Board believes that Mr. Statum'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. Statum 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. Statum's dealership and if the inspection is not satisfactory the Board suspends all licenses and certificates issued by the Board to Mr. Statum until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative; and based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Statum in running his dealership. The Board mandates that Mr. Statum successfully complete the dealer-operator course by September 12, 2014. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Mr. Statum by the Board until such time Mr. Statum has successfully completed the course.

Joe Tate seconded. The motion carried unanimously.

- **New River Imports and David A. Beasley.** Ron Kody 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 New River Imports and David A. Beasley for alleged violations of Va. Code Sections 46.2-1529, 46.2-1537, 46.2-1548, and 46.2-1575 (2). Based on due consideration, the Board believes a civil penalty should be assessed against New River Imports and David A. Beasley. The Board hereby assesses a \$1,000 civil penalty against New River Imports and David A. Beasley; and based on due consideration, the Board believes that Mr. Beasley'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. Beasley should be suspended until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative other than Mr. Scott and that another field representative perform this inspection. The Board hereby mandates that a Motor Vehicle Dealer Board field representative re-inspect Mr. Beasley's dealership and if the inspection is not satisfactory the Board suspends all licenses and certificates issued by the Board to Mr. Beasley until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative other than Mr. Scott.

Chris Maher seconded. David Duncan abstained due to family business conducted with Mr. Beasley. All in favor: 12 (Kody, Bailey, Boswell, Britt, Farmer, Gripshover, Huber, Hudgins, Lindsay, Maher, McQueen, Moore). Opposed: 1 (Tate). The motion carried.

Licensing Committee

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

- **Albert Stanley, Salesperson.** Joe Tate 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 Albert Stanley for alleged violations of Va. Code Sections 46.2-1538, 46.2-1575 (4), 46.2-1575 (6) and 46.2-1575 (12). Based on due consideration, the Board believes a civil penalty should be assessed against Albert Stanley. The Board hereby assesses a \$1,750 civil penalty against Albert Stanley.

Art Hugins seconded. The motion carried unanimously.

- **Marbin Humberto Bustillo, Salesperson.** Joe Tate 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 Marbin Humberto Bustillo for alleged violations of Va. Code Sections 46.2-1538, 46.2-1575 (6) and 46.2-1575 (7). Based on due consideration, the Board believes civil penalty should be assessed against Marbin Humberto Bustillo. The Board hereby assesses a \$1,000 civil penalty against Marbin Humberto Bustillo; and based on due consideration, the Board believes that Board staff should investigate Insiders Auto Sales and Carmart and Mr. Rahimi. The Board hereby directs the Board staff to investigate Insiders Auto Sales and Carmart and Mr. Rahimi as to their/his role in the faulty Craigslist advertisements.

Mr. Bustillo spoke on his own behalf.

David Duncan seconded. The motion carried unanimously.

Advertising Committee

Chairman Chip Lindsay summarized discussions that were held during the Committee Meeting.

- **Digital Advertising/Advertised Price: Jim O'Connell, President, Koons Automotive Group.** Chip Lindsay indicated that Mr. O'Connell spoke on the issue of his Advertised price and Digital Advertising. Committee discussed the issue following guidelines of FTC in regards to manufacturer's rebates. The Task Force will have a broader discussion on internet advertising and creating new guidelines.

Transaction Recovery Fund Committee:

Chairman Ted Bailey summarized discussions held and actions that were taken during the Committee Meeting.

- **Adam N. Lewis vs. Auto Advantage Auto Sales.** Chairman Ted Bailey summarized for the Board the discussion held in the committee meeting regarding Adam N. Lewis and Auto Advantage Auto Sales. Based on that discussion and the recommendations in these cases, Mr. Bailey 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 this claim should be denied.

Matt McQueen seconded. The motion carried unanimously.

OLD BUSINESS

Update: General Assembly. Bruce Gould talked about an omnibus bill, initiated by the Board, and passed by the General Assembly and now awaits the Governor's signature, that includes features all of which are related the Motor Vehicle Dealer Licensing laws: (1) allows the Governor to appoint a second citizen member to the Board to replace the Consumer Services representative, (2) Increases the Transaction Recovery Fund Fee from \$250 to \$350, (3) Move the registration of Foreign Dealers from DMV to MVDB. Foreign dealers and dealers in other states who must secure a certificate of registration from DMV in order to sell vehicles at Virginia wholesale auctions. (4) Allow the Dealer Board to administratively set fees rather than by regulation.

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 talked about his responsibility is to carry out the direction of the Board members. Also, the Board receives no general fund monies. Fees paid by dealers are the source of revenue by the Dealer Board. The Dealer Board is very careful with spending. With that in mind, Mr. Gould indicated that imaging is used to store documents. When changing the servers to a more secure location, it was discovered that the system slowed down almost to a halt. The "pipeline" used to move documents, is too small. In order to fix this, a broadband connection is needed. Comcast is the approved broadband provider. The cost for securing broadband via the state contract is \$455. Comcast Business had a promotion of \$150 per month for broadband. The offer expired and the regular price per is now \$200, which is still a savings. He requested a waiver with VITA to obtain Comcast Business rather than through the State contract in order to save money. The request was denied. He was told that price is not a reason to approve a waiver in order to save the agency money.

Motion was made by Ron Kody to support Board staff to competitively shop prices from Comcast for broadband service for imaging purposes. Joe Tate seconded. The motion carried unanimously.

The next meeting will be scheduled for May 12, 2014.

There being no further business to come before the Motor Vehicle Dealer Board, Vice-Chairman Ron Kody adjourned the meeting at 12:40 p.m.

Meeting Summary
Dealer Practices Committee
Monday, March 10, 2014

Chairman Ron Kody 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 Roy Boswell, Gardner Britt, Steve Farmer, Clayton Huber, Chip Lindsay, Matthew McQueen, Chris Maher and Joe Tate. (Absent: Brian Hutchens and George Pelton). Other Board members present: Rick Holcomb, Ted Bailey, David Duncan, David Gripshover, Art Hutchens, Jacques Moore. 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 13, 2014 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

- **Variance Request: American Classics and William Myers.** In November of 2008 and May of 2011, Mr. Myers requested that, since he is not in the business to sell automobiles for transportation, but rather to sell antique, classic and specialty cars, he should be granted a permanent variance to be opened on an "appointment only" basis. Both of those requests were denied. On February 22, 2014, Mr. Myers again requested a variance request in hours to be only by appointment only.

Due to Mr. Myers having a medical appointment, Ron Kody tabled this issue to the May meeting. Mr. Myers must maintain his business until such time a variance is approved.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conferences:

- **Heritage Motor Company, Inc. and Stelios G. Karayiannis.** On November 26, 2013, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1537 (Licensed Salesperson/Birddog) and 46.2-1574 (Acts of officers). Based on the information provided at the conference, the hearing officer recommended that Mr. Karayiannis successfully complete the Dealer-Operator 2-day Course.

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

Motion was made by Chris Maher to accept the hearing officer's recommendation for Mr. Karayiannis to successfully complete the Dealer-Operator 2-day course. Matt McQueen seconded. After much discussion from the Committee on whether to assess a civil penalty or take the course, Mr. Karayiannis volunteered to take the Dealer-Operator 2-day course. The motion carried unanimously.

- **Candy Automotive, Inc. and Hayward S. Statum.** On November 20, 2013, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1529 (Dealer records), 46.2-1530 (Buyer's order), 46.2-1537 (Licensed Salesperson/Birddog), 46.2-1539 (Inspection of vehicles required), 46.2-1542 (Temporary registration), 46.2-1550.2 (Transport Tag record of use and issuance), 46.2-1559 (Records to be kept by dealers for inspection), 46.2-1575 (2) (Failure to comply with a written warning). Based on the information provided at the conference, the hearing officer recommended assessing a civil penalty of \$4,000, satisfactory inspection and to successfully complete the Dealer-Operator 2-day course.

Motion was made by Steve Farmer to accept the hearing officer's recommendation of a \$4,000 civil penalty, satisfactory inspection and to successfully complete the Dealer-Operator 2-day course. Joe Tate seconded. The motion carried unanimously.

- **New River Imports and David A. Beasley.** On November 20, 2013 an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1529 (Dealer records), 46.2-1537 (Licensed Salesperson/Birddog), 46.2-1548 (Transport Plates-records, D-tags), and 46.2-1575 (2) (Failure to comply with a written warning). Based on the information provided at the conference, the hearing officer recommended assessing a civil penalty of \$3,500 and a satisfactory inspection.

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

Motion was made by Steve Farmer to accept the hearing officer's recommendation of a \$3,500 civil penalty and a satisfactory inspection. Joe Tate seconded.

Substitute motion was made by Chris Maher to assess a \$1,000 civil penalty and a successful inspection by a different field representative. Gardner Britt seconded. All in favor: 7 (Kody, Boswell, Britt, Huber, McQueen, Maher, Lindsay). Opposed: 2 (Farmer and Tate). The motion carried.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for May 12, 2014

The meeting adjourned at 10:15 a.m.

Meeting Summary
Dealer Licensing Committee
Monday, March 10, 2014

Chairman Joe Tate called the Dealer Licensing Committee meeting to order in Room 702 at 10:15 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members Art Hudgins, Ted Bailey, David Duncan, David Gripshover, Chip Lindsay and Jacques Moore. (Absent: Andy Alvarez and George Pelton). Other Board members present: Rick Holcomb, Gardner Britt, Steve Farmer, Roy Boswell, Ron Kody, Matt McQueen Clay Huber and Chris Maher. 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 13, 2014 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:

- **Albert Stanley, Salesperson.** On January 22, 2014, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1538 (Salesman selling for other than his employer), 46.2-1575 (4) (Defrauding or damaging a retail buyer), (6) (Having used deceptive acts and practices and (12) (Leasing, renting, lending, or otherwise allowing the use of a dealer's license plate by persons not specifically authorized under this title). Based on the information provided at the conference, the hearing officer recommended assessing a civil penalty of \$1,750.

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

Motion was made by David Gripshover to accept the hearing officer's recommendation of assessing a civil penalty of \$1,750. Jacques Moore seconded. The motion carried unanimously.

Marbin Humberto Bustillo, Salesperson. On February 19, 2014, an informal fact-finding conference was conducted to address the alleged violations VA Code Section(s) 46.2-1538 (Salesman selling for other than his employer), 46.2-1575 (6) (Having used deceptive acts or practices) and (7) (Deceptive acts and practices specifically when seeking licenses or registrations). Based on the information provided at the conference, the hearing officer recommended assessing a civil penalty of \$4,000 and revocation of all licenses and certificates.

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

Motion was made by Art Hudgins to assess a civil penalty of \$1,000 and to investigate the dealerships Insiders and Car Mart for their business practices. David Duncan 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 12, 2014

The meeting adjourned at 10:51 a.m.

Meeting Summary
Advertising Committee
Monday, March 10, 2014

Chairman Chip Lindsay called the Advertising Committee meeting to order at 10:51 a.m. in Room 702, DMV Headquarters, 2300 West Broad Street, Richmond, Virginia. Present were Committee members Roy Boswell, David Duncan, Clayton Huber, Art Hudgins, Ronald Kody and Matthew McQueen. (Absent: Andy Alvarez and Brian Hutchens). Other Board members present: Rick Holcomb, Jacques Moore, Gardner Britt, Steve Farmer, Joe Tate, Ted Bailey, David Gripshover and Chris Maher. 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 13, 2014 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

Update: Advertising Regulations. Bruce Gould indicated that there will be a meeting at 1:30 in Room 702 to discuss the Advertising Regulations and he invited all that would like to attend.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

- **Digital Advertising/Advertised Price.** Jim O'Connell, President, Koons Automotive Group. Bruce Gould indicated that the Dealer Board received a consumer complaint concerning the advertised price of new Fords on the Koons Ford Web site. The Koons Ford "WOW" advertised price reduced the cost of the vehicle by a dollar amount that included a rebate when financed through the manufacturer. As this rebate was not available to all purchasers, the Board sent an education letter to the dealership stating that such advertising was not permitted. In order to advertise a price that includes rebates and incentives, they must be available to all purchasers. The dealer disagrees with the Board's interpretation and asked to be heard at this Committee.

Mr. O'Connell indicated that the only issue appears to be their inclusion in the price of rebates that are available when financing with the manufacturer; however, based on the communication between him and the Dealer Board, he is going to stop reducing the price by this type of rebate so that they are in compliance. He also indicated that this was not a deceptive rebate, but a rebate that is a "restrictive rebate" which means it would include military, college graduates and loyalty. There are others as well. Their disclaimer states that those types of rebates may be available, but they do not reduce their advertised WOW price by those amounts. He also has a concern for Digital Advertising and will be participating in the 1:30 p.m. Advertising Regulations meeting to address some concerns there, as well.

Mr. Don Hall, from the VADA, stated that on-line/digital advertising needs to be examined. Mr. Charapp, also with VADA, stated that the FTC is looking closely at dealer advertising. He suggested that they be consulted in regard to advertising rebates. Lastly, Mr. Charapp stated that perhaps it is time to take another look at internet advertising.

The next meeting was scheduled for May 12, 2014.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The meeting adjourned at 11:30 a.m.

Meeting Summary
Transaction Recovery Fund Committee
Monday, March 10, 2014

Chairman Ted Bailey 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: Steve Farmer, David Gripshover, Ron Kody, Matthew McQueen and Art Hudgins. (Absent: Andy Alvarez and Brian Hutchens). Other Board members present: Rick Holcomb, David Duncan, Jacques Moore, Gardner Britt, Roy Boswell, Chip Lindsay, Joe Tate and Chris Maher. 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 13, 2014 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:

Eric Fiske spoke on behalf of the Dealer Board about the possible denial of this claim.

- **Adam N. Lewis and Auto Advantage Auto Sales.** In January of 2011, Mr. Lewis purchased a 2004 Audi from Auto Advantage believing it to be an all wheel drive (AWD) vehicle. However, it was not an AWD vehicle and it also had a bad transmission. Mr. Lewis obtained legal counsel and pursued the dealer civilly in court. The lawsuit alleged, among other things, fraud in connection with the purchase of a motor vehicle. On September 24, 2013 the Henrico County Circuit Court awarded Adam Lewis judgment against Auto Advantage in the amount of \$15,655 actual damages and \$28,568 in attorney fees. Auto Advantage went out of business in August, 2012. In addition, Auto Advantage was subject to the bond requirements of the Code and the surety bonding company was Western Surety. Mr. Lewis, by counsel, made a claim against the bond for \$25,000.00 (damages and a portion of the attorney fees). The surety company argued that they were not liable for attorney's fees in this case because the fraud occurred in early 2011 when the Virginia Code §46.2-1527.2 did not allow the payment of attorney fees from the bond. Counsel for the claimant argued to the bonding company that the law at the time of the judgment was the proper criteria, and at that time, Virginia Code §46.2-1527.2 did allow for the payment of attorney's fees. The bonding company still denied the claim even though counsel threatened them with litigation. In the end, counsel's client accepted the payment of only actual damages and signed a release. Now, counsel's client has filed a claim with the Dealer Board for payment of the attorney's fees, which would be the difference between the actual damages of \$15,655 and the maximum amount payable under the statute of \$25,000, which would be approximately \$9,345.

The Dealer Board staff understands that counsel, rather than filing a lawsuit against the bonding company, accept their position, had his client sign a release and took payment of only the actual damages (\$15,655). Staff suspected that there were several reasons, including the legal costs to his client to continue when the difference between \$25,000 and \$15,655 was only about \$9,345. However, he chose to proceed with signing a release and accepting only the actual damages when the surety should have paid the entire \$25,000.

Since the claimant voluntarily took less than the amount allowable from the surety company and did not exhaust the bond, I would think that he also waived any further claim against the Fund. Historically, the Board staff would make a recommendation prior to an informal fact-finding conference. However, given the facts and code sections governing the Fund, the Dealer Board staff is requesting the expertise of the Recovery Fund Committee and Full Board in determining whether to deny or approve Mr. Lewis' claim against the Fund.

On February 11, 2014, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended denial of the payment from the Fund.

Motion was made by Matthew McQueen to deny this claim. David Gripshover seconded. The motion carried unanimously.

NEW BUSINESS FROM THE FLOOR

Attorney Fees. Matt McQueen spoke on the issue of attorney fees and how they have gotten out of hand. He would like to see if some statutory changes could be made the next time the General Assembly meets and to place a cap on these attorney fees. Eric Fiske indicated that the statute can be changed but getting the General Assembly to make those changes may prove difficult. No further discussion.

The next meeting was scheduled for May 12, 2014.

The meeting adjourned at 11:57 a.m.