

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, May 8, 2006

Chairman D.B. Smit called the Dealer Board meeting to order at 11:12 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 Lynn Hooper, David Lacy, Wanda Lewark, Jim Mercer, Pat Patrick, Frank Pohanka, Kevin Reilly, Vince Sheehy, Larry Shelor, Jimmy Whitten and Thomas Woodson. (Absent: Jonathan Blank, Carlton Courter, Todd Hyman, Chip Lindsay, Hugh McCreight, Thomas Moorehead, and Robert Woodall). Peggy Bailey, Debbie Allison and Katherine Idrissi represented the Dealer Board. Jim Gurney and Gerry Slade represented DMV. Eric Fiske represented the Attorney General's Office. Alice Weedon acted as Recording Secretary.

The March 13, 2005 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

STATUTORY COMMITTEE REPORTS

Dealer Practices Committee:

- **VA Motor Vehicle Dealer Board Policy About Action on Adjudicated Cases That Do Not Involve the Transaction Recovery Fund.** Chairman Pat Patrick summarized for the Board the discussion held in the Committee meeting regarding the Hearing Resolution. Based on that discussion, Mr. Patrick made the following motion: To conserve its resources so that they can be used in appropriate cases that do not involve the Transaction Recovery Fund the Board provides the following guidance to the staff: When the staff becomes aware of a final judgment or decision involving a licensed dealer resulting from litigation or arbitration, it will seek advice from the Board about the principles to be used in deciding whether or not a formal or informal hearing process should be commenced. The staff may proceed without Board advice in those situations where it believes that the dealer's activities (1) pose a danger to the public or (2) are ongoing.

Vince Sheehy seconded. The motion carried unanimously.

- **Amirnassr A. Balakhanlon and Auto Outlet.** Chairman Pat Patrick summarize for the Board the discussion held in the Committee meeting regarding Amirnassr A. Balakhanlon and Auto Outlet. Based on that discussion, Mr. Patrick 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 Mr. Amirnassr A. Balakhanlon t/a Auto Outlet of Virginia for alleged violations of Va. Code §46.2-1529, failure to maintain all dealer records and Va. Code §46.2-1550, misuse of dealer license plates. Va. Code §46.2-1575(2), failure to comply subsequent to receipt of a written warning from the Department or the Board or any willful failure to comply. The Board hereby assesses a \$2,000 civil penalty against Mr. Amirnassr A. Balakhanlon. Based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Balakhanlon in running his dealership. The Board mandates that the dealer-operator must successfully complete and pass the dealer-operator 2 day study course within the next six (6) months, and in addition, the dealership must be re-inspected within six (6) months. If the dealer-operator fails to successfully complete and pass the 2 day study course, the case will remain open and will be re-visited by the Board for further consideration. If the dealer-operator successfully completes the course as out-lined above, the Board will take no further action on this particular case.

David Lacy seconded.

Substitute motion made by Jimmy Whitten to assess a \$2,000 civil penalty, along with successfully completing the Dealer-Operator course. The Full Board had the agency records before it, and did not believe that either the recommendation of the Hearing Officer or the Dealer Practices Committee was appropriate given the seriousness of the violations. Specifically, the Board was very concerned about the violations of §§45.2-1529 (failure to maintain records) and 46.2-1550 (improper use of dealer tags). Lynn Hooper seconded. The motion carried unanimously.

- **Martin R. Meyers and Beach Auto.** Chairman Pat Patrick summarize for the Board the discussion held in the Committee meeting regarding Martin R. Meyers and Beach Auto. Based on that discussion, Mr. Patrick 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 Mr. Martin R. Meyers t/a Beach Auto for alleged violations of Va. Code §46.2-1515, sales location to be specified; §46.2-1529, failure to properly maintain all dealer records ; §46.2-1575 (1), having made a material misstatement on an application; §46.2-1575 (2), failure to comply subsequent to receipt of a written warning/willful failure to comply; and §46.2-1575 (12), leasing, renting, lending or otherwise allowing the use of a dealer's license plate by person not specifically authorized. The Board hereby assesses a \$2,550 civil penalty against Mr. Martin R. Meyers. Based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Meyers in running his dealership. The Board mandates that Mr. Meyers must successfully complete and pass the dealer-operator course within the next six (6) months. Failure to successfully complete the course within six (6) months will result in a suspension of all licenses and certificates issued to Mr. Meyers by the Board until what time Mr. Meyers has successfully completed the course.

Larry Shelor seconded. The motion carried unanimously.

- **Brad Kaufman and Custom Auto Sales.** Chairman Pat Patrick summarize for the Board the discussion held in the Committee meeting regarding Brad Kaufman and Custom Auto Sales. Based on that discussion, Mr. Patrick 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 Mr. Brad Kaufman t/a Custom Auto Sales for alleged violations of Va. Code §46.2-1510 (5), dealers required to have an established place of business, which displays a sign and business hours; §46.2-1533, failure to be opened for business/post hours as required; §46.2-1534, related to the business sign requirements; §46.2-1575 (2), failure to comply subsequent to receipt of a written warning/willful failure to comply. The Board hereby assesses a \$1,000 civil penalty against Mr. Brad Kaufman t/a Custom Auto Sales. Based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Kaufman. The Board mandates that Mr. Kaufman must successfully complete and pass the dealer-operator course within six (6) months, and in addition, the dealership must be re-inspected within six (6) months. Failure to successfully complete the course within six (6) months will result in a suspension of all licenses and certificates issued to Mr. Kaufman by the Board until what time Mr. Kaufman has successfully completed the course.

Tommy Woodson seconded. The motion carried unanimously.

Licensing Committee

Full Board Vice-Chairman David Lacy summarized discussions held and actions that were taken during the Committee Meeting.

- **James Koons and Koon's Used Car Outlet.** Full Board Vice-Chairman David Lacy summarized for the Board the discussion held in the Committee meeting regarding James Koons and Koon's Used Car Outlet. Based on that discussion, Mr. Lacy 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 Mr. James Koons t/a Koons Auto Outlet for alleged violations of Va. Code §46.2-1537, allowing an unlicensed individual to solicit the sale of motor vehicles and compensating an individual, who is not licensed by the dealership, in the connection of the sale of a motor vehicle. Based on due consideration, and the report of a hearing officer, the Board believes a civil penalty should be assessed against Mr. James Koons t/a Koons Auto Outlet. The Board hereby assesses a civil penalty in the amount of \$500 on Mr. James Koons t/a Koons Auto Outlet Plymouth Dodge for twenty-two violations of Va. Code §46.2-1537 prohibiting dealers from paying a commission or compensating any person in connection with the sale of a motor vehicle, unless the person is licensed as a salesperson and employed by the dealer.

Vince Sheehy seconded. The motion carried unanimously.

- **Criminal History Check Proposal.** Full Board Vice-Chairman David Lacy summarized for the Board the discussion held in the Committee meeting regarding the Criminal History Check Proposal. Based on that discussion, Mr. Lacy made the following motion: To give the Executive Director the authority to pursue a test pilot of criminal history checks with ScreeningOne instead of continuing with the Department of State Police. If the analysis is positive the Executive Director may enter into an agreement with ScreeningOne to transfer criminal history check function from the Department of State Police to ScreeningOne.

Frank Pohanka seconded. The motion carried unanimously.

Advertising Committee

Chairman Frank Pohanka summarized discussions that were held during the Committee Meeting.

- **Advertising Issue:** At the Advertising Committee they did not have a full quorum, therefore this issue is being presented at Full Board. Peggy Bailey indicated that recently, the Dealer Board became aware of the proceedings and the final arbitration decision reached in November of 2005 regarding advertisement issues and Bruce Gould wanted to bring this forward for consideration and needs to know whether to move forward to convene an informal fact-finding conference on these advertisements placed in The Washington Post on July 3, 2004. Under the heading PRICING EXAMPLES we find the following statement, "AND 10 CARS WILL BE AVAILABLE FOR UNDER \$1,995". This could be a violation of Va. Code §46.2-1581(8) provides in relevant part, "[w]hen the price or credit terms of a vehicle are advised, the vehicle shall be fully identified as to year, make, and model." The advertisement did not list the year, make and mode of the ten cars priced under \$1,995. Also, in the disclaimer/disclosure portion of the advertisement, it states in part, "20% Above NADA Wholesale less 20 cents/mile overage, excess wear & tear and refurbishing fee." This could be a violation of Regulation 24 VAC 22-30-30(D) of the Regulated Advertising Practices provides that, "When terms, conditions or disclaimers are used, they shall always be stated clearly and conspicuously. An asterisk or other reference symbol may be used to point to a disclaimer or other information; but, the disclaimer shall not be used as a means of contradicting or changing the meaning of an advertised statement." There was no asterisk or other symbol to point the reader to the disclaimer. In addition, it appears that the disclaimer contradicts the advertised statement since the trade-in amount will be decreased by some unknown amount of "refurbishing fee" mileage and excess wear and tear. The advertisement also contained this statement "20% ABOVE N.A.D.A. FOR YOUR TRADE!". This could be a violation of Regulation 24 VAC 22-30-30(I) states in relevant part, "Offers to match down payments or guarantee minimum trade-in allowances or offers of cash or money back are forms of dealer rebates." In addition, according to the arbitration decision the advertised statement was not true, in fact, a "Black Book" was used in evaluating Ms. Blackwell's trade.

Motion was made by Frank Pohanka to follow protocol by researching the history of the violation and if there is no history, then give the dealer an educational phone call. Lynn Hooper seconded. The motion carried unanimously.

Transaction Recovery Fund Committee

Chairman David Lacy summarized discussions held and actions that were taken during the Committee Meeting.

- **(1) Diane M. Danner & Edward Mayo/Premier Auto, (2) Karen Thompson & Field Auto City, (3) Randall G. Wheeler, II & Diamond Kar Kare and (4) Katrina Halloway & Auto Provider.** Chairman David Lacy summarized for the Board the discussion held in the Committee meeting regarding (1) Diane M. Danner & Edward Mayo/Premier Auto, (2) Karen Thompson & Field Auto City, (3) Randall G. Wheeler, II & Diamond Kar Kare and (4) Katrina Halloway & Auto Provider. Based on that discussion and the recommendation in the case, Mr. Lacy made the following motions: Pursuant to §46.2-1527.1 et. seq. of the Code of Virginia, which is known as the Motor Vehicle Transaction Recovery Fund ("Fund"), the Board has reviewed and considered claims submitted for payment from the Fund and based on due consideration and recommendation of the hearing officer, the Board believes the following claims should be payable from the Fund. The Board hereby approves and reaffirms the following claims and payment amounts subject to compliance by the claimant with statutory requirements:

Diane M. Danner & Edward Mayo/Premier Auto	\$1,200.00
Karen Thompson & Field Auto City	\$18,938.40
Randall G. Wheeler, II & Diamond Kar Kare	\$13,046.63
Katrina Halloway & Auto Provider	\$20,000.00

Larry Shelor seconded. The motion carried unanimously.

OLD BUSINESS FROM THE FLOOR

- **Curbstoning Report.** Gerry Slade gave a brief update on ISO investigations relating to curbstoning since the March Board meeting.

There was no old business from the floor.

NEW BUSINESS

The next meeting will be scheduled for July 10, 2006

- **Executive Director's Report.** There was no Executive Director's Report.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

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

Meeting Summary
Dealer Practices Committee
Monday, May 8, 2006

Chairman Pat Patrick called the Dealer Practices Committee meeting to order at 8:32 a.m. in Room 702 of the DMV Headquarters Building at 2300 W. Broad Street in Richmond. Present were Committee members Lynn Hooper, David Lacy, Jim Mercer, Frank Pohanka, Kevin Reilly and Jimmy Whitten. (Absent: Hugh McCreight, Jonathan Blank, Thomas Moorehead and Robert Woodall) Other Board members present: D.B. Smit, Wanda Lewark, Tommy Woodson, Vince Sheehy. Peggy Bailey, Katherine Idrissi, Debbie Allison represented the Dealer Board. Eric Fiske was present from the Attorney General's Office.

The March 13, 2006 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

- **Update: March Actions.** Pat Patrick reported on the actions taken at the Dealer Practices Committee meeting on March 13, 2006.
- **Hearing Resolution.** Mike Charapp presented to the Committee the proposed resolution entitled the "Virginia Motor Vehicle Dealer Board Policy About Action on Adjudicated Cases". The Resolution states:

To conserve its resources so that they can be used in appropriate cases, the Board provides the following guidance to the staff:

When the staff becomes aware of a final judgment or decision involving a licensed dealer resulting from litigation or arbitration, it will seek advice from the Board about the principles to be used in deciding whether or not a formal or informal hearing process should be commenced.

The staff may proceed with out Board advice in those situations where it believes that the dealer's activities (1) pose a danger to the public and (2) are ongoing.

Eric Fiske indicated that he still have additional concerns on this Resolution. He had voiced those concerns at the meeting in Fredericksburg, and those concerns had not been changed by the new proposed resolution. He outlined those concerns for the Board, particularly concerning the effect on the APA process. He also believes that only specific cases will be targeted under this Resolution and it will look like pre-screening of cases. If the Board was inclined to accept the resolution, which he did not recommend, then it needed to have two changes – (1) remove Motor Vehicle Transaction Recovery Fund cases from its scope; and (2) change the word "and" to "or: in the last paragraph.

Motion was made by Kevin Reilly to accept the Resolution with the change of the word "and" to "or" in the last paragraph and to also add the wording in the first sentence "non-transaction recovery fund adjudicated cases" after the word "cases,". Frank Pohanka seconded. The motion carried unanimously.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conference:

- **Amirnassr Balakhanlon and Auto Outlet.** On January 11, 2006 an informal fact-finding conference was conducted to address the alleged violations of VA Code 46.2-1529 (Failure to maintain all dealer records on the premises of the licensed location), 46.2-1550 (Failure to properly limit the use of dealer license plates on vehicles in the dealer's inventory to dealers, their spouses, licensed salespersons and employees of the dealership) and 46.2-1575(2) (Failure to comply subsequent to receipt of a written warning from the Department or the Board). Based on the information provided at the conference, the hearing officer recommended that that no action to be taken against Mr. Balakhanlon and Auto Outlet and no penalties assessed.

Mr. Balakhanlon and his attorney, Robert Caudle, were present and available for questions. Mr. Caudle indicated that they concur with the hearing officer's recommendation. General discussion followed.

Motion was made by Lynn Hooper to reject the hearing officer's recommendation and have Mr. Balakhanlon attend the Dealer Operator 2-day course and pass the test within a 6 month period. Rationale was the concern of Mr. Balakhanlon's pattern of difficulties beginning in 2001. Kevin Reilly seconded. All in favor: 6 (Patrick, Hooper, Pohanka, Reilly, Mercer, Whitten). Opposed 1 (Lacy). The motion carried.

- **Martin Meyers and Beach Auto.** On March 23, 2006 an informal fact-finding conference was conducted to address the alleged violations of VA Code 46.2-1515 (Location to be specified: display of license, change of location), 46.2-1529 (Failure to maintain all dealer records on the premises of the licensed location), 46.2-1575(1) (material misstatement or omission in application for license, dealer's license plates, certificate of dealer registration, certificate of qualification or certificate of title), 46.2-1575(2) (Failure to comply subsequent to receipt of a written warning from the Department or the Board) and 46.2-1575(12) (Leasing, renting, lending or otherwise allowing 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 that for the violation of §46.2-1515 a civil penalty of \$150 be assessed, for the violation of §46.2-1529 a civil penalty of \$150 be assessed, for the violation of §46.2-1575(1) a civil penalty of \$250 be assessed, for the violation of §46.2-1575(2) a civil penalty of \$750 be assessed and for the violation of §46.2-1575(12) a civil penalty of \$500 be assessed with a combined civil penalty being assessed at \$1,800.00

Martin Meyers was present and available to answer any questions.

Motion was made by Jim Mercer to accept the hearing officer's recommendation. The motion failed for a lack of a second.

Motion was made by Pat Patrick to reject the hearing officer's recommendation and to assess a civil penalty of \$2,250.00 and require that Mr. Meyers take and successfully pass the Dealer Operator 2-day course within 6 months. Lynn Hooper seconded. The motion carried unanimously.

- **Brad Kaufman and Custom Auto Sales.** On March 30, 2006 an informal fact-finding conference was conducted to address the alleged violations of VA Code 46.2-1510 (Failure to have an established place of business), 46.2-1533 (Failure to maintain posted business hours), 46.2-1534 (Failure to be identified by a permanent sign visible from the front of the business office) and 46.2-1575(2) (Failure to comply subsequent to receipt of a written warning/willful failure to comply). Based on the information provided at the conference, the hearing officer recommended that Mr. Marshall, MVDB Field Representative, should make follow-up inspections at Custom Auto Sales, also, as a means to more fully understand the significance of an comply with the Virginia Motor Vehicle Dealer Licensing Laws, it was recommended that Mr. Kaufman be required to attend the formal 12 Hour Dealer-Operator Certification Course and in the event that Mr. Kaufman is found not in compliance on the next Dealer Inspection performed by Mr. Marshall, then a civil penalty of \$500 should be assessed against Mr. Kaufman and Custom Auto Sales. Additional infractions of these Code Sections, the dealer receive civil penalties to include a defined period of suspension of the Dealership license.

Motion was made by Kevin Reilly to reject the hearing officer's recommendation and assess a civil penalty of \$1,000 and require that Mr. Kaufman take and successfully pass the Dealer-Operator 2-day course and also have a follow-up inspection. Jim Mercer seconded. The motion carried unanimously.

- **Report on Variance Requests (Dealer Hours and Storage of Dealer Records).** Peggy Bailey reported that Southern Auto Sales and Rentals was approved to keep their records on-line, Records variances have been approved for Drive Time, Hall Auto World, LLC, Regal Used Cars, Royal Auto Credit, Browns Chantilly Dodge and Priority Used Super Center.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for July 10, 2006.

The meeting adjourned at 9:48 a.m.

Meeting Summary
Dealer Licensing Committee
Monday, May 8, 2006

Full Board Vice-Chairman David Lacy called the Dealer Licensing Committee meeting to order at 9:50 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members Wanda Lewark, Kevin Reilly, Vince Sheehy, Jimmy Whitten and Tommy Woodson. (Absent: Todd Hyman, Robert Woodall, Charles Lindsay, Larry Shelor) Other Board members present: D.B. Smit, Lynn Hooper, Frank Pohanka, Jim Mercer, Pat Patrick. Peggy Bailey, Katherine Idrissi, Debbie Allison represented the Dealer Board. Jim Gurney and Gerry Slade represented DMV. Eric Fiske represented the Attorney General's Office.

The March 13, 2006 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

OLD BUSINESS

- **Update: March Actions.** David Lacy reported on the actions taken at the Licensing Committee meeting on March 13, 2006.

NEW BUSINESS

- **Criminal History Check Proposal.** David Lacy reported on giving the Executive Director the authority to pursue a test pilot of criminal history checks with ScreeningOne instead of continuing with the Department of State Police. If the analysis is positive, the Executive Director may enter into an agreement with ScreeningOne to transfer criminal history check function from the Department of State Police to ScreeningOne.

Motion was made by David Lacy to accept the Criminal History Check Proposal. Kevin Reilly seconded. The motion carried unanimously.

Review and Action: Informal Fact-Finding Conference:

- **James Koons and Koon's Used Car Outlet.** On January 5, 2006, an informal fact-finding conference was conducted to address the alleged violation of Va. Code §46.2-1537 (prohibits unlicensed person from selling and being compensated for the sale of a motor vehicle) against James Koons and Koon's Used Car Outlet. Based on the information provided at the conference, the hearing officer recommended that the Board assess a civil penalty of \$75 per violation for each of the 45 sales, which comes to \$3,375 against Mr. Koons and Koon's Used Car Outlet.

Motion was made by Kevin Reilly to not accept the hearing officer's recommendation and assess a civil penalty of \$500 based on the fact that the dealership corrected the errors in a timely manner and was totally cooperative with the Board staff. Jimmy Whitten seconded. The motion carried unanimously.

The next meeting was scheduled for July 10, 2006.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The meeting adjourned at 10:09 a.m.

Meeting Summary
Advertising Committee
Monday, May 8, 2006

Chairman Frank Pohanka called the Advertising Committee meeting to order at 10:10 a.m. in Room 702, at DMV Headquarters, 2300 West Broad Street, Richmond, Virginia. Present were Committee members Jim Mercer, Pat Patrick, and Larry Shelor. (Absent: Jonathan Blank, Chip Lindsay, Hugh McCreight, and Thomas Moorehead). Other Board members present: Kevin Reilly, David Lacy, D.B. Smit, Vince Sheehy, Wanda Lewark. Peggy Bailey, Katherine Idrissi, Debbie Allison represented the Dealer Board. Jim Gurney and Gerry Slade represented DMV. Eric Fiske represented the Attorney General's Office.

The March 13, 2006 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

The next meeting will be July 10, 2006.

NEW BUSINESS FROM THE FLOOR

Advertising Issue: Because there is not a full quorum in this Committee, this Advertising issue will be presented at Full for review and/or action.

The meeting adjourned at 10:12 a.m.

Meeting Summary
Transaction Recovery Fund Committee
Monday, May 8, 2006

Chairman David Lacy called the Transaction Recovery Fund Committee meeting to order at 10:17 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members: Lynn Hooper, David Lacy, Wanda Lewark, Vince Sheehy and Tommy Woodson. (Absent: Jonathan Blank). Other Board members present: Jim Mercer, Pat Patrick, D.B. Smit, Frank Pohanka, Kevin Reilly, Larry Shelor, Jimmy Whitten. Peggy Bailey, Katherine Idrissi, Debbie Allison represented the Dealer Board. Jim Gurney and Gerry Slade represented DMV. Eric Fiske represented the Attorney General's Office.

The March 13, 2006 summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

- **REVIST: Diane M. Danner/Chix Custom Cycles & Edward Mayo & Premier Auto.** At the last Board Meeting, March 13, 2006, the Board approved \$16,182.00 on Ms. Danner's claim against the Fund. However, the \$1,200.00 that was ordered on the behalf of Joseph Lindsay, Guardian ad litem for Edward F. Mayo, Jr. who is incarcerated in the Federal Penitentiary, was not awarded. Counsel was unable to attend the Board meeting and apparently Ms. Danner may have been confused, because although she has not paid Mr. Lindsey the (Guardian ad litem), she is legally obligated to do so because she had to have him appointed in order to proceed. Counsel (Samuel Brown, II) for Ms. Danner has requested the Recovery Fund Committee and Board to consider a supplemental claim for the \$1,200.00 Guardian ad litem's fee.

Motion was made by Lynn Hooper to pay the \$1,200.00. Tommy Woodson seconded. The motion carried unanimously.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conference Results:

- **Karen Thompson and Field Auto City.** On September 6, 2002, Karen Thompson entered into a contract with Field Auto City to purchase a 2002 Mitsubishi for a sales price of \$22,072.00. As part of the transaction, Mr. Thompson also agreed to purchase GAP coverage for the vehicle. The first set of temporary tags expired on October 7, 2002, so the dealership issued her a second set. On November 5, Ms. Thompson returned to the dealership, as the second set of temporary tags were about to expire and she had not received her permanent license plates. Field Auto offered a third set of temporary tags, but Ms. Thompson refused. Field Auto conducted an investigation to determine why the vehicle had not been registered and they informed Ms. Thompson that the vehicle had not been registered because the wrong VIN number was written on the Buyer's Order. To correct this error, Ms. Thompson was required to sign a new Buyer's Order and a new Retail Installment Contract. Field Auto backdated the second Contract to September 7, 2002 and included the \$250 charge fore the GAP policy in the "cash price" of the vehicle, even though it was prepared and signed two months later. Field Auto then provided Ms. Thompson a third set of temporary tags. Sometime after November 5, 2002, Field Auto paid for and obtained a GAP policy on the vehicle for Ms. Thompson from American Auto Guardian, Inc.

On September 13, 2003, Ms. Thompson was involved in an accident. Ms. Thompson's insurance company (State Farm) declared the vehicle a total loss. State Farm paid on the value of the vehicle in the amount of \$10,834.50 to Ms. Thompson's finance company (Mitsubishi Motor Credit) leaving a deficiency on the loan in the amount of \$8,200.00. Ms. Thompson made a claim with American Auto Guardian and learned for the first time that Field Auto had cancelled her GAP policy a few months earlier, without her knowledge or consent. The company further indicated that the cancellation had come in from Field Auto with numerous other and that Field Auto had represented to American Auto Guardian that all of the customers requested cancellations. Because Field Auto had falsely and fraudulently cancelled Ms. Thompson's GAP policy prior to the accident, American Auto Guardian refused her claim for coverage.

When Ms. Thompson contacted the dealership, an employee (Mel Erb) and the General Manager (Mike Chapura) denied that she had GAP insurance on the vehicle. Ms. Thompson then called American Auto Guardian and spoke with the company's agent, Michelle, and she confirmed that a GAP policy had been issued for the vehicle and that the policy would have been in effect at the time of the accident had Field Auto not cancelled the policy in April of 2003. On December 4, 2003, Mr. Chapura called Ms. Thompson and left a recorded message in which he admitted that Field Auto was responsible for the cancellation of her GAP policy and that he was trying to work with American Auto Guardian to have the policy reinstated so that her claim could be paid. Meanwhile, Mitsubishi Motor Credit was calling Ms. Thompson requesting payment of the deficiency balance and informed her that her credit would be affected if she did not pay the note off.

On February 11, 2004, Mr. Chapura informed Ms. Thompson that he was unable to reinstate the GAP and was currently working with the dealership's insurance to cover the claim. He then requested a copy of the statement showing the current balance due and a copy of the accident report. Ms. Thompson was under the impression that Mr. Chapura had taken care of the issue until she was denied a student loan in March, 2004. She contacted Mitsubishi Motor Credit and discovered that they had put a negative credit reference on her credit report because of the unpaid loan balance. On March 25, 2004, she visited the dealership and Mr. Chapura still acknowledged responsibility for the GAP policy being canceled, but informed her that Field Auto would not do anything to assist her.

On December 23, 2004, Hugo Blankingship, attorney on behalf of Karen Thompson, submitted to the Dealer Board a letter of notice that his client had commenced an arbitration claim against Field Auto City, Inc. and that they may have to make a claim against the Motor Vehicle Transaction Recovery Fund (Fund). On January 31, 2005, Arbitration was awarded to Ms. Thompson in the amount of \$23,300.00 against Field Auto City, Inc. for violations of the Virginia Consumer Protection Act, Breach of Contract and Fraud. At the arbitration hearing, Field Auto did not pay the arbitration award, so Ms. Thompson was required to proceed with obtaining a judgment against Field Auto in Circuit Court. On February 26, 2005, the Circuit Court awarded judgment to Ms. Thompson against Field Auto in the amount of \$23,300.00. On January 11, 2006, Mr. Blankingship submitted to the Dealer Board all the required documents in order to file a claim against the Fund.

After carefully reviewing all the documentation and the final judgment order, it was the staff's recommendation that the Recovery Fund and Board approve Ms. Thompson's claim in the amount of \$18,938.40. This amount is based on the \$8,416.40 deficiency loan amount, \$250.00 for GAP policy, \$6,444.00 legal fees through arbitration hearing and \$3,828.00 legal fees to post judgment. On April 11, 2006, an informal fact-finding conference was conducted and based on the information presented at the conference the hearing officer conducting the conference recommended that the Transaction Recovery Fund Committee and the Board members consider approving \$18,938.40 or also to be considered is \$21,938.40, as stated above, but add in \$3,000.00 for credit damage; however, the maximum compensable to the Fund is \$20,000.00 in payment to Ms. Thompson from the Fund.

After further discussion and review of the information provided to the Committee in their notebooks, a motion was made by Lynn Hooper to accept the hearing officer's recommendation under the caveat that the Bond either does or does not have to pay as well. Vince Sheehy seconded. The motion carried unanimously.

- **Randall G. Wheeler, II and Diamond Kar Kare and Vincent Ducote.** On May 23, 2002, Mr. Wheeler negotiated the purchase of a 1998 Honda Prelude from Diamond Kar Kare and Vincent Ducote for the amount of \$18,478.45. As a part of the sales contract, Mr. Wheeler traded-in a 1977 Honda Civic, which the dealer agreed to pay off the existing loan. At the time of the purchase, the dealer had represented that they intended to payoff Mr. Wheeler's old loan when they received the proceeds of the loan from Security National Acceptance Corp (SNAC), its current lien holder. Mr. Wheeler later learned that the loan on his trade-in was never paid off, which damaged his credit for non payment on his previous loan. Diamond never paid off the loan. Either SNAC never paid the dealer the proceeds of the loan or the dealer received the proceeds and misappropriated the funds.

On April 23, 2003, Leonard Bennett, attorney on behalf of Mr. Wheeler, submitted to the Dealer Board a copy of a Motion for Judgment that had been filed against Diamond Kar Kare, Vincent Ducote and SNAC for Count 1: Conversion, Count 2: Fraud/Misrepresentation, Count 3: Violation of the Virginia Consumer Protection Act and Count 4: Breach of Contract. On March 8, 2004 and March 18, 2004, Leonard Bennett submitted to the Dealer Board a Notice and Motion for Default Judgment against Diamond Kar Kare and Vincent Ducote. On June 1, 2004, Mr. Bennett submitted to the Dealer Board the judgment order that was awarded on May 13, 2004 to Randall Wheeler against Diamond Kar Kare and Vincent Ducote. On June 16, the Dealer Board requested the required documentation in order to complete the review process of the claim. October 3, 2005, Mr. Bennett submitted to the Dealer Board a copy of the Retail Installment Sales Contract and copy of the Buyer's Order.

After carefully reviewing all documentation and in determining what amount is compensable from the Fund, staff recommended that the Recovery Fund Committee and Board approve Randall Wheeler's claim in the amount of \$13,046.63. This amount is based on \$10,956.63 balance owed on trade-in, \$2,000.00 for attorney fees and \$90.00 court costs. On April 11, 2006, an informal fact-finding conference was conducted and based on the information presented at the conference the hearing officer conducting the conference recommended that the Transaction Recovery Fund Committee and the Board members consider approving \$13,046.63 or also to be considered, \$23,046.63, based on \$10,956.63 balance owed on the trade-in, \$2,000.00 for attorney fees, \$90.00 court costs and \$10,000 for credit damage; however, the maximum compensable to the Fund is \$20,000 in payment to Mr. Wheeler from the Fund.

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

- **Katrina Halloway and Auto Provider.** On June 23, 2003, Ms. Halloway purchased a 1993 Saturn SL1 from Auto Provider for a purchase price of \$2,500.00. In connection with the purchase, Ms. Halloway traded-in her 1987 Honda Accord and was given an allowance of \$400 plus a \$200 cash down payment. In addition, Ms. Halloway was required to pay a \$100 fee for a credit application. In connection with the purchase, Gail Burnham (financing sales manager) met with Ms. Halloway and completed all the paperwork regarding the 1993 Saturn. Gail Burnham signed Thomas Burnham's name as the licensed salesperson. Gail and Thomas Burnham indicated to Ms. Halloway she had been approved for financing through Arcadia Management and presented her with a signed and completed Retail Installment Contract. They then issued temporary license plates and Ms. Halloway took possession of the vehicle.

On June 25, 2003, Ms. Halloway discovered that the odometer for the vehicle was not operating. She notified the dealer and they indicated that the shop would repair the odometer, but never did. In July 2003, the Burnham's contacted Ms. Halloway and told her that they did not want to finance the vehicle, and requested that she return the vehicle. She refused to return the vehicle, because she believed that she had a valid and binding sales agreement.

On July 16, 2003, the Burnham's contacted the Prince William Country Police Department and claimed that the vehicle had been stolen by Ms. Halloway. Based on these reports, Office white contacted Ms. Halloway and told her to return the vehicle or criminal charges would be filed against her. Officer White indicated he had spoken with the owner of the dealership, who agreed to return Ms. Halloway's down payment and trade-in when she returned the 1993 Saturn. Ms. Halloway returned the vehicle to the dealer that same day and requested her down payment and the return of her trade-in. However, Auto Provider had in fact transferred title of the trade-in on July 2, 2003 in their name. Despite numerous demands, the dealer refused to reimburse Ms. Halloway her down payment of \$600.00.

On July 18, 2003, Gail Burnham, on behalf of herself and Arcadia Management sent a letter to Ms. Halloway claiming that the vehicle had been repossessed due to a default on the promissory note. On April 28, 2004, Ms. Halloway filed this action Gail Burnham, Thomas Burnham, Dumfries Automotive, Inc. and Arcadia Management Inc. On May 25, 2004, Thomas Breeden, attorney for Ms. Halloway, submitted to the Dealer Board as prior notification a Complaint and Demand for Jury Trial that had been filed in the United States District Court against Gail Burnham, Thomas Burnham, Dumfries Automotive, Inc. t/a Auto Provider and Arcadia Management, Inc. On August 30, 2005, the United States District Court awarded judgment to Ms. Halloway against Dumfries Automotive, Inc. t/a Auto Provider in the amount of \$62,512.67. On November 28, 2005, Mr. Breeden submitted to the Dealer Board all the appropriate documentation in order to file a claim against the Motor Vehicle Transaction Recovery Fund. On January 20, 2006, Mr. Breeden submitted the Judgment Order that had been awarded to Ms. Halloway.

After carefully reviewing all documentation and in determining what amount is compensable from the Fund, staff recommended that the Recovery Fund Committee and Board approve Katrina Halloway claim in the amount of \$20,000.00 the maximum allowed from the Fund. On April 24, 2006, an informal fact-finding conference was conducted and based on the information presented at the conference the hearing officer conducting the conference recommended that the Transaction Recovery Fund Committee and the Board members consider approving the maximum allowed of \$20,000 to be paid to Ms. Halloway from the Fund.

After further discussion and review of the information provided to the Committee in their notebooks, a motion was made by David Lacy to accept the hearing officer's recommendation. Lynn Hooper seconded. The motion carried unanimously

NEW BUSINESS FROM THE FLOOR

There was no old business from the floor.

The next meeting was scheduled for July 10, 2006.

The meeting adjourned at 11:03 a.m.