

**Meeting Summary**  
**Motor Vehicle Dealer Board**  
**Monday, May 11, 2009**

Vice-Chairperson Wanda Lewark called the Dealer Board meeting to order at 12:00 p.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. The roll was called and there were 13 Board members present. Present were members Jonathan Blank, Lynn Hooper, Henry Jones, David Lacy, Chip Lindsay, Thomas Moorehead, Kevin Reilly, Vince Sheehy, Joe Tate, Jimmy Whitten, Robert Woodall and Tommy Woodson. (Absent: D.B. Smit, Frank Pohanka, Todd Haymore, Pat Patrick and Larry Shelor). Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Wanda Neely and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office. Alice Weedon acted as Recording Secretary.

**PUBLIC COMMENT**

The March 9, 2009 meeting summary was approved.

David Boling indicated that he does not support Continuing Education On-line. He indicated that "anyone" can sit in front of a computer for someone who is designated to take the course. There is no proof or monitoring system on who is studying on-line and taking the test on-line. He feels that class room study and testing is a guarantee on who's studying and who's taking test.

**STATUTORY COMMITTEE REPORTS**

**Dealer Practices Committee:**

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

- **John Donovan, Extreme Suzuki, LLC and Advantage Sales & Leasing.** Chairman Kevin Reilly summarized for the Board the discussion held in the committee meeting regarding John Donovan, Extreme Suzuki, LLC and Advantage Sales & Leasing. Based on that discussion, Mr. Reilly made the motion to table this issue until the July meeting. Mr. Donovan was encouraged to provide evidence that he has made all of his customers "whole".

Henry Jones seconded. The motion carried unanimously.

- **Variance in Hours: Keith H. Fontaine & Timeless Auto Sales & Service.** Chairman Kevin Reilly summarized for the Board the discussion held in the committee meeting regarding Keith H. Fontaine & Timeless Auto Sales & Service. Based on that discussion, Mr. Reilly made the following motion: In accordance with the authority given to the Board to modify the minimum hours requirements as set-out in § 46.2-1533, that Keith H. Fontaine & Timeless Auto Sales & Service (dealer #6946) be granted a variance from the requirement of being opened for business at least 10 hours per week between the hours of 9:00 am and 5:00 pm, Monday through Friday provided that the dealership be open from 5:00 to 9:00 pm Monday through Friday and 10:00 am to 6:00 pm on Saturday. This variance shall be in effect through June 30, 2010.

Robert Woodall seconded. The motion carried unanimously.

## Licensing Committee

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

- **Update: Continuing Education Regulations.** Chairman Chip Lindsay summarized for the Board the discussion held in the committee meeting regarding Continuing Education Regulations. Based on that discussion, Mr. Lindsay made the motion to go forward with the next step of the regulatory process.

Lynn Hooper seconded. The motion carried unanimously.

- **Ryan K. Eskandari and Metropolitan Imports of Woodbridge, Inc. T/A Auto Gallery.** Chairman Chip Lindsay summarized for the Board the discussion held in the committee meeting regarding Mr. Ryan K. Eskandari and Metropolitan Imports of Woodbridge, Inc. T/A Auto Gallery. Based on that discussion, Mr. Lindsay 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 Ryan K. Eskandari of Metropolitan Imports of Woodbridge, Inc. T/A Auto Gallery for alleged violations of VA Code Sections 46.2-1575(9) (having been convicted of any criminal act involving the business of selling vehicles). Based on due consideration, the Board believes a civil penalty should be assessed against Ryan K. Eskandari of Metropolitan Imports of Woodbridge, Inc. T/A Auto Gallery. The Board hereby assesses a \$500 civil penalty against Ryan K. Eskandari of Metropolitan Imports of Woodbridge, Inc. T/A Auto Gallery.

Kevin Reilly seconded. The motion carried unanimously.

- **Joseph T. Byrum.** Chairman Chip Lindsay summarized for the Board the discussion held in the committee meeting regarding Mr. Joseph T. Byrum. Based on that discussion, Mr. Lindsay made the following motion: Under the authority granted by the Motor Vehicle Dealer Board, the executive director denied the application for a motor vehicle dealer and salesperson's license as submitted by Mr. Joseph T. Byrum for alleged violations of VA Code Sections 46.2-1575(4) (defrauding any retail buyer, to the buyer's damage, or any other person in the conduct of the licensee's or registrant's business) and (6) (having used deceptive acts or practices), (14) (Failure to submit to the Department, within thirty days from the date of sale, any application, tax, or fee collect for the Department on behalf of a buyer). Mr. Byrum appealed the denial and requested an informal fact-finding conference; and 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. Byrum and based on due consideration, the Board believes that Mr. Byrum's application for a motor vehicle dealer and salesperson's license should be approved provided he provides the Board's executive director with satisfactory evidence that all of his customers have received titles; he has forwarded to DMV all fees collected on behalf of his customers; that he successfully completes the dealer-operator course and that he pays a \$250 civil penalty. The Board hereby approves the application for a motor vehicle dealer and salespersons license submitted by Mr. Joseph T. Byrum provided he meets the conditions enumerated in the preceding paragraph.

Jonathan Blank seconded. The motion carried unanimously.

- **Benjamin C. Waters.** Chairman Chip Lindsay summarized for the Board the discussion held in the committee meeting regarding Mr. Benjamin C. Waters. Based on that discussion, Mr. Lindsay 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 adopted a resolution at its September 2008 meeting to assess a \$500 civil penalty and revoke all licenses and certificates issued to Benjamin C. Waters for alleged violations of VA Code Sections 46.2-1539 (inspections of vehicles required, in specific, safety inspection requirements, 46.2-722 (altered or forged license plates or decals, use as evidence of knowledge, in the case 30 day tags) and 46.2-1575(2) (failure to comply with the law after receiving a written warning), (6) (having used deceptive acts or practices) and (13) (having been convicted of a felony). Mr. Waters appealed the Board's September 2008 decision 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 Benjamin C. Waters and based on due consideration, the Board believes a civil penalty should be assessed against Benjamin C. Waters. The Board hereby assesses a \$500 civil penalty against Benjamin C. Waters.

Henry Jones seconded. The motion carried unanimously.

- **Wafi S. Akbary.** Chairman Chip Lindsay summarized for the Board the discussion held in the committee meeting regarding Mr. Wafi S. Akbary. Based on that discussion, Mr. Lindsay 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 adopted a resolution at its November 2008 meeting to assess a \$1,000 civil penalty and revoke all licenses and certificates issued to Mr. Wafi S. Akbary for violations of VA Code Sections 46.2-1575(2) (failure to comply subsequent to receipt of a written warning from the Board or any willful failure to comply with the Dealer laws), 46.2-1575(4) (defrauding any retail buyer, to the buyer's damage, or any other person in the conduct of the licensee's or registrant's business) and 46.2-1575(6) (having used deceptive acts or practices). Mr. Akbary has paid the civil penalty and appealed the revocation 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 Mr. Wafi S. Akbary and based on due consideration, the Board believes that Mr. Akbary's motor vehicle salesperson's license should be revoked/application to transfer be denied. The Board hereby revokes/denies the transfer application for a salespersons license as submitted by Mr. Wafi S. Akbary.

Henry Jones seconded. The motion carried unanimously.

### Advertising Committee

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

### Transaction Recovery Fund Committee:

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

- **John Michel and Auto Express of Manassas, Inc. and Tracy Gaskins and Auto Express of Manassas, Inc.** Vice-Chairman Henry Jones summarized for the Board the discussion held in the Committee meeting regarding John Michel and Auto Express of Manassas, Inc. and Tracy Gaskins and Auto Express of Manassas, Inc. Based on that discussion and the recommendations in these cases, Mr. Jones made the following motion: 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 a claim 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 denied and not payable from the Fund. The Board hereby denies the following claims and payments amount subject to compliance by the claimant with statutory requirements:

<b>John Michel and Auto Express of Manassas, Inc.</b>	<b>\$6,861.00</b>
<b>Tracy Gaskins and Auto Express of Manassas, Inc.</b>	<b>\$7,362.28</b>

Jonathan Blank seconded. The motion carried unanimously.

### **OLD BUSINESS**

#### **OLD BUSINESS FROM THE FLOOR**

- **General Assembly.** Bruce Gould indicated there was a bill clarifying what's known as spot delivery. By July 1, 2010, dealers will be required to change the language on their buyer's orders on conditional sales. An article will be included in the next issue of Dealer Talk.

### **NEW BUSINESS**

#### **NEW BUSINESS FROM THE FLOOR**

- **Executive Director's Report.** Bruce Gould recognized Hugh McCreight as retiring from the motor vehicle sales business and the Board and announced his new career. Mr. McCreight will be sharing the responsibility of running an Art Gallery with his wife.

The next meeting will be scheduled for July 13, 2009.

There being no further business to come before the Motor Vehicle Dealer Board, Vice-Chairperson Lewark adjourned the meeting at 12:27 p.m.

**Meeting Summary**  
**Dealer Practices Committee**  
**Monday, May 11, 2009**

Chairman Kevin Reilly called the Dealer Practices Committee meeting to order at 8:39 a.m. in Room 702 of the DMV Headquarters Building at 2300 W. Broad Street in Richmond. Present were Committee members Jonathan Blank, David Lacy, Wanda Lewark, Chip Lindsay, Thomas Moorehead, Vince Sheehy, Robert Woodall and Tommy Woodson. (Absent: Larry Shelor). Other Board members present: Henry Jones, Lynn Hooper, David Lacy, Joe Tate. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Wanda Neely and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office.

The March 9, 2009 meeting summary was approved.

**PUBLIC COMMENT**

There was no public comment.

**OLD BUSINESS**

**Update: March Actions.** Peggy Bailey reported on the actions taken at the Dealer Practices Committee meeting on March 9, 2009.

**OLD BUSINESS FROM THE FLOOR**

There was no old business from the floor.

**NEW BUSINESS**

**Review and Action: Informal Fact-Finding Conference:**

- **John Donovan, Extreme Suzuki, LLC and DRS Remarketing, LLC T/A Advantage Sales & Leasing.** On March 10, 2009, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Sections 46.2-1575(4) (Defrauding any retail buyer), (6) (having used deceptive acts or practices and (9) (having been convicted of any criminal act involving the business of selling vehicles. Based on the information provided at the conference, the hearing officer recommended that the Board revoke all the licenses of John Donovan, return DMV property and assess a civil penalty of \$1,000.00 for each violation of (4), (6) and (9) for a total civil penalty of \$3,000.00.

Mr. Donovan was present and spoke on his own behalf. Mr. Donovan indicated that he made all the consumers whole, with the exception of one and he was in the process of resolving that issue.

Motion was made by Jonathan Blank to accept the hearing officer's recommendation. David Lacy seconded. There was discussion indicating how they could revoke a license that doesn't exist any more, because Mr. Donovan is out of business and currently does not hold a license. Therefore, Jonathan Blank adjusted his motion to reflect that "if" Mr. Donovan had a license, it should be revoked.

Substitute motion was made by Chip Lindsay to reduce the civil penalty to \$500 because Mr. Donovan was attempting to completely resolve all issues involved and took full responsibility in making 11 out of 12 of the consumers affected in this case whole. Robert Woodall seconded. The discussion turned to ensuring that all the consumers affected should be made whole and proof be presented at the July meeting. No action taken on this motion.

Substitute motion made by Chip Lindsay to table this issue to the July meeting giving Mr. Donovan the opportunity to resolve this issue and provide proof. Robert Woodall seconded. All in favor: 7 (Reilly, Woodson, Lewark, Lindsay, Moorehead, Sheehy, Woodall). Opposed: 2 (Blank and Lacy). The motion passed.

- **Variance in Hours: Keith H. Fontaine & Timeless Auto Sales & Service.** Mr. Fontaine teaches Automotive Technology at Martinsville High School. As a teacher, he is not able to leave school until 4:00 p.m. For the last two years, the Board has granted Mr. Fontaine a variance to maintain the hours of 5:00 p.m. to 9:00 p.m., Monday through Friday and Saturday, 10:00 a.m. to 6:00 p.m. This schedule would satisfy the “20 hours per week minimum”; however, it would not fulfill the minimum of 10 hours between 9:00 a.m. and 5:00 p.m., Monday through Friday. Mr. Fontaine has requested that the Board grant a variance for another year.

Motion was made by Jonathan Blank to approve Mr. Fontaine and Timeless Auto Sales & Service’s variance in hours. Robert Woodall seconded. The motion carried unanimously.

#### **NEW BUSINESS FROM THE FLOOR**

- **Insurance on Dealer Tags.** Bruce Gould indicated that, as part of the inspection process, MVDB field representatives ensure that all dealer tags are properly insured. Further, with the current state of the economy we are seeing more dealers who are either under insured or have no insurance at all, for example, recently it was discovered that a particular dealership had 68 dealer plates but only insured 7. The law requires that every plate be insured. The dealer stated that if one of his plates was involved in an accident, the tag would be covered because it could be identified as one of the “7” insured. Upon hearing this, the dealer’s insurance was canceled. The dealer is scheduled for an informal fact-finding conference with the Board. Bruce Gould suggested that staff take some action against dealers who were under insured/not insured and asked the Committee for their thoughts. It was the consensus of the Committee to put an article in Dealer Talk reminding the dealers that each plate must have insurance and also when the field representatives go on inspections, have them check the plate inventory and ensure that they have insurance that covers all of the dealer’s plates and keep track of results and report back at the next meeting.

The next meeting was scheduled for July 13, 2009.

The meeting adjourned at 9:36 a.m.

**Meeting Summary**  
**Dealer Licensing Committee**  
**Monday, May 11, 2009**

Chairman Chip Lindsay called the Dealer Licensing Committee meeting to order at 9:37 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members Lynn Hooper, Henry Jones, Joe Tate, Jimmy Whitten and Robert Woodall. (Absent: Pat Patrick and Frank Pohanka). Other Board members present: Vince Sheehy, Thomas Moorhead, David Lacy, Kevin Reilly, Wanda Lewark, Jonathan Blank, Tommy Woodson. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Wanda Neely and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office.

The March 9, 2009 meeting summary was approved.

**PUBLIC COMMENT**

There was no public comment.

**OLD BUSINESS**

- **Update: Dealer-Operator Continuing Education.** Bruce Gould indicated that Stage 1 of the regulatory process is complete and once the Board gives the green light to proceed, he can enter into Stage 2 (Proposed Regulations) of the Regulatory process. He also indicated that the regulations provide a means for continuing education under the requirement to become "recertified". With recertification, there is better recognition of a goal achieved and something beyond merely taking a course. Currently, upon passing the dealer-operator test, the applicant receives a "Certificate of Qualification". In other words, the applicant has become a "certified" dealer-operator. The proposed regulations establish a time limit for this certification and one must "recertify" every three years in order to continue to hold a valid "Certificate of Qualification." The expiration date would be the last day of the month that they received their original certification. The recertification application fee would be \$25 and be paid directly to the course provider. In addition to the recertification application fee, course providers would be able to charge applicants a course fee of no more than \$250.

Motion was made by Henry Jones to go forward with Stage 2 of the Continuing Education Regulations/Recertification process. Robert Woodall seconded. The motion carried unanimously.

- **Mr. Jay Martin.** Mr. Martin addressed the Committee and Full Board at the March Board meeting. In 1999, the Board levied a \$5,000 civil penalty on Mr. Martin. Mr. Martin claims that he paid the \$5,000 civil penalty at a DMV Customer Service Center in 2001 or 2002. We have no indication/anything on file that shows he paid the \$5,000 at that time. He paid us \$5,000 a year ago in order to get his salesperson's license. His primary evidence is a letter from DMV stating that he will not be able to renew his driver's license and that his vehicle registration will be revoked unless he paid the \$5,000. Mr. Martin's evidence that he paid the penalty is the fact that he has a driver's license and cars registered in his name.

At the March Board meeting, the Licensing Committee discussed this situation and voted not to authorize a “reimbursement” of \$5,000 as Mr. Martin requested. The committee did not see sufficient evidence to show that Mr. Martin has paid the \$5,000 civil penalty twice. Since the March Board meeting, Mr. Martin has found a receipt showing that he paid a \$30 reinstatement fee at the Altivista DMV in February if 2001. He believes this receipt is further evidence that he must have paid the \$5,000 civil penalty. As stated before, the committee still does not see sufficient evidence to show that Mr. Martin has paid the \$5,000 civil penalty twice.

Mr. Martin was present and spoke on his own behalf. No further action was taken in this matter.

#### **OLD BUSINESS FROM THE FLOOR:**

There was no old business from the floor.

#### **NEW BUSINESS**

##### **Review and Action: Informal Fact-Finding Conference:**

- **Ryan K. Eskandari and Metropolitan Imports of Woodbridge, Inc. T/A Auto Gallery.** On March 24, 2009, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Sections 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 the Committee and Full Board assess a civil penalty of \$500.00.

Motion was made by Robert Woodall to accept the hearing officer’s recommendation. Lynn Hooper seconded. The motion carried unanimously.

- **Joseph T. Byrum.** On April 15, 2009, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Section 46.2-1575(4) (defrauding any retail buyer, to the buyer’s damage, or any other person in the conduct of the licensee’s or registrant’s business) and (6) (having used deceptive acts or practices), (14) (Failure to submit to the Department, within thirty days from the date of sale, any application, tax, or fee collect for the Department on behalf of a buyer). Based on the information provided at the conference, the hearing officer recommended to the Committee and Full Board that Mr. Byrum be allowed to have his license restored under the following conditions: (1) he may be licensed when all of the complaints/plaintiffs proper titles, registration, etc. are restored, (2) he must submit quarterly inspections and random inspections by MVDB Field Representatives and (3) pay a \$1,000 civil penalty.

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

Motion was made by Joe Tate to accept the hearing officer’s recommendation with the exception that Mr. Byrum take the dealer-operator course. Henry Jones seconded.

Substitute motion was made by Lynn Hooper to modify Mr. Tate’s motion by reducing the civil penalty to \$250 because Mr. Byrum has made every attempt to make all of his consumers whole again. Thomas Moorehead seconded. The motion carried unanimously.

## Review and Action: Formal Hearings:

- **Benjamin C. Waters.** Historical overview leading up to the formal hearing: On June 3, 2008, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Sections 46.2-1539 (inspections of vehicles required, in specific, safety inspection requirements), 46.2-722 (altered or forged license plates or decals) in this case 30 day tags and 46.2-1575(2) (failure to comply with the law after receiving a written warning), (6) (having used deceptive acts or practices) and (13) (having been convicted of a felony). At the September 8, 2008 Dealer Board Committee and Full Board Meeting, the Committee adopted a resolution to assess a civil penalty of \$500 for violations of the above said Code Sections and all licenses and certificates issued by the Board to Mr. Benjamin C. Waters be revoked. On January 22, 2009, Mr. Waters faxed his appeal for a formal hearing to Bruce Gould. On February 11, 2009, a formal hearing was conducted to address the alleged violations as mentioned above. Based on the information provided at the conference, the hearing officer recommended that the Board assess a civil penalty of \$500 and revoke all licenses issued to Mr. Benjamin C. Waters.

Motion was made by Lynn Hooper to accept the hearing officer's recommendation. Henry Jones seconded. The motion carried unanimously.

- **Wafi S. Akbary.** Historical overview leading up to the formal hearing: On September 9, 2008, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Sections 46.2-1575(2) (failure to comply with the law after receiving a written warning), (4) (defrauding any retail buyer, to the buyer's damage, or any other person in the conduct of the licensee's or registrant's business) and (6) (having used deceptive acts or practices). At the November 10, 2008 Dealer Board Committee and Full Board Meeting, the Committee adopted a resolution to assess a civil penalty of \$1,000 for violations of the above said Code Sections and all licenses and certificates issued by the Board to Mr. Wafi S. Akbary be revoked. On December 12, 2008, Mr. Akbary faxed his appeal for a formal hearing to Bruce Gould; however, on March 10, 2009 during his formal hearing, he paid his \$1,000 civil penalty. On March 10, 2009, a formal hearing was conducted to address the alleged violations as mentioned above. Based on the information provided at the conference, the hearing officer recommended that the Board that Mr. Akbary's application to transfer his salesperson's license be approved and hold Mr. Akbary's own words quote "any mistake in the future, I will surrender my license for the rest of my life." unquote.

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

Motion was made by Joe Tate to deny Mr. Akbary's application due to the severity of his violations. Lynn Hooper seconded. The motion carried unanimously.

## NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for July 13, 2009

The meeting adjourned at 11:08 a.m.

**Meeting Summary**  
**Advertising Committee**  
**Monday, May 11, 2009**

Chairman Lynn Hooper called the Advertising Committee meeting to order at 11:08 a.m. in Room 702, at DMV Headquarters, 2300 West Broad Street, Richmond, Virginia. Present were Committee members Jonathan Blank, Kevin Reilly, Vince Sheehy, Joe Tate, Jimmy Whitten and Thomas Woodson (Absent: Todd Haymore and Larry Shelor). Other Board members present: Henry Jones, David Lacy, Wanda Lewark, Chip Lindsay, Thomas Moorehead, Robert Woodall. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Wanda Neely and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office.

The March 9, 2009 meeting summary was approved.

**PUBLIC COMMENT**

There was no public comment.

**OLD BUSINESS**

**OLD BUSINESS FROM THE FLOOR**

There was no old business from the floor.

**NEW BUSINESS**

The next meeting was scheduled for July 13, 2009.

**NEW BUSINESS FROM THE FLOOR**

There was no other new business from the floor.

The meeting adjourned at 11:09 a.m.

**Meeting Summary**  
**Transaction Recovery Fund Committee**  
**Monday, May 11, 2009**

Vice-Chairman Henry Jones called the Transaction Recovery Fund Committee meeting to order at 11:26 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members: Jonathan Blank, David Lacy, Wanda Lewark and Joe Tate. (Absent: Todd Haymore, Larry Shelor, Pat Patrick and Frank Pohanka). Other Board members present: Vince Sheehy, Thomas Moorehead, Kevin Reilly, Chip Lindsay, Lynn Hooper, Jimmy Whitten, Robert Woodall and Thomas Woodson. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Wanda Neely and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office.

The March 9, 2009 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:**

- **John Michel and Auto Express of Manassas, Inc.** On October 22, 2004, Mr. Michel entered into a contract with Auto Express of Manassas, Inc for the purchase of a 1993 Volkswagen Corrado for the price of \$4,900.00. In addition, the dealership collected \$154.47 for state and local taxes, \$41.50 for title and registration, \$249.00 processing fee making the total purchase price of \$5,344.97. Mr. Michel made a down-payment of \$750.00 on the purchase leaving a balance owed on delivery in the amount of \$4,844.97. In connection with the sales transaction, Mr. Michel was sold an Extended Service Contract in the amount of \$1,300.00 and completed a Buyer's Order indicating that the sale was "As Is" and that the mileage was 65,684. On October 27, 2004, Mr. Michel financed the remaining balance of the purchase through a Retail Installment Contract. He financed \$5,891.97 with the finance charges of \$1,620.77 making the total amount financed of \$7,522.74.

On November 19, 2004, while Mr. Michel was driving the vehicle, it caught fire and as a result the vehicle was declared a total loss. At that time, Mr. Michel learned that the vehicle actually had 157,000 miles and the odometer had been tampered with. In August of 2005, Mr. Michel filed a lawsuit against Auto Express of Manassas, Inc. in the US District Court/Alexandria division for numerous claims.

Upon motion by Auto Express, the matter was referred to arbitration. During arbitration, the parties reached a “Mutual Release, Settlement, and Non-Disclosure Agreement.” In that agreement, Auto Express agreed to pay Mr. Michel \$30,000 (six monthly installments of \$5,000) and in return, Mr. Michel agreed to waive “any aspects or claims contained in the Complaint” and agreed that he “release, discharge, indemnified and agreed to hold harmless Auto Express from any and all actions, causes, claims and any other cause of action” arising out of the facts of this case. The arbitration was dismissed as was the lawsuit. Auto Express only made one payment of \$5,000 and then defaulted on their agreement.

In July of 2007, Mr. Michel brought a lawsuit in the Circuit Court of Prince William County and alleged he was not suing on the underlying claims that he had raised in the federal case, but rather he was suing on breach of contract (the settlement agreement) to pay the entire \$30,000. On July 9, 2007, the Dealer Board received from Mr. Michel’s counsel (Thomas Breeden) the complaint regarding his client’s possible claim against the Transaction Recovery Fund. On July 10, 2007, the staff sent a letter to Mr. Breeden acknowledging his client’s claim against the Fund and requested additional information in order to complete the review process. On July 16, 2007, Mr. Breeden submitted to the Dealer Board all the additional information requested.

Historically, the Dealer Board staff presents a recommendation to the parties prior to an Administrative hearing. In this case, it appears that Mr. Michel’s claim meets part of the requirements of the Va. Code § 46.2-1527.3. Counsel for Mr. Michel complied with the requirements of § 46.2-1527.4 and the amount of the claim on the request form is within the monetary limits of § 46.2-1527.5. On April 14, 2009, an informal fact-finding conference was conducted and Mr. Breeden presented exhibits at the informal fact-finding conference. Based on the information provided at the conference, the hearing officer recommended that the Board consider payment of \$6,861. This amount was derived as follows: \$233.00; \$4,716.00 in legal fees; \$112.00 cost of insurance and \$1,800.00 for loss of use for the Volkswagen.

Motion was made Joe Tate to deny the claim, because the Transaction Recovery Fund does not pay on complaints based on a breach of contract (not paying on the arbitration agreement). Jonathan Blank seconded. The motion carried unanimously.

- **Tracy Gaskins and Auto Express of Manassas, Inc.** On August 1, 2005, Mr. Gaskins entered into a contract with Auto Express for the purchase of a 2001 Honda Accord, for sales price of \$14,080.00. In addition, the dealership collected the DMV fees of \$429.87, \$249.00 processing fee and a warranty for \$1,150.00 making the total purchase price of \$15,950.00. In connection with sales transaction, Auto Express obtained an extension of credit for Mr. Gaskins and then Auto Express completed a Retail Installment Contract and disclosed a down payment of \$1,000.00; however, Mr. Gaskins did not actually make this payment. On August 4, 2005, Mr. Gaskins returned the vehicle to Auto Express and advised the dealer that he did not believe it was honest to tell a prospective finance company he had made a down payment of \$1,000 when in fact he had not made it all. He then requested that the transaction be cancelled and that he be released from the deal. Auto Express accepted the return of the vehicle; however, they failed to advise the finance company (HSBC Auto Finance) that they had received the vehicle back. After Mr. Gaskins returned the vehicle to Auto Express and cancelled the transaction, Auto Express titled and registered the vehicle in his name with the Department of Motor Vehicles.

On July 13, 2006, Thomas Breeden, attorney for Mr. Gaskins, filed a complaint against Auto Express of Manassas, Inc. and HSBC Auto Finance in the US District Court/Alexandria Division. The allegations of the complaint consisted of violations of Truth in Lending Act, Violations of Article 9 of Uniform Commercial Code, Cancellation of Debt/Rescission, Conversion, Violation of Federal Credit Repair Organization Act, Equal Credit Opportunity Act and FTC Holder Rule & HSBC's liability under the contract and on August 3, 2006, the Dealer Board received the complaint that had been filed. On August 15, 2006, the Dealer Board staff sent a letter to Mr. Breeden acknowledging the complaint and requested additional information. The matter was referred to arbitration between Tracy Gaskins, Auto Express and HSBC Auto Finance, Inc. During arbitration, the parties reached a "Mutual Release, Settlement, and Non-Disclosure Agreement". In the agreement, Auto Express agreed to pay HSBC the total sum of \$12,000.00. The reduced payoff amount was to be paid in full within ten (10) days. Further Auto Express agreed to pay Mr. Breeden on behalf of Mr. Gaskins, settlement monies in the amount of \$6,000, no later than six (6) months from the date of the settlement.

On March 21, 2007, the parties reported to the Court that the case had been settled. Afterwards, Auto Express had partially defaulted on the Settlement Agreement. Mr. Gaskins then filed a complaint against Auto Express in the Circuit Court of Prince William County, which was later transferred to the Fairfax County Circuit Court. On November 18, 2008, the Circuit Court of Fairfax awarded Tracy Gaskins judgment against Auto Express in the amount of \$6,862.00 in attorney fees and \$500.28 in court costs for a breach of contract.

Historically, the Dealer Board staff presents a recommendation to the parties prior to an Administrative hearing. It appeared to staff that Mr. Gaskin's claim meets in part the requirements of the Va. Code § 46.2-1527.3. Counsel for Mr. Gaskins complied with the requirements of § 46.2-1527.4. On April 14, 2009, an informal fact-finding conference was conducted and Mr. Breeden presented exhibits at the informal fact-finding conference. Based on the information provided at the conference, the hearing officer recommended awarding Mr. Gaskins the sum of the Fairfax judgment of \$6,862.00 attorney fees, and \$500.28 court cost for a total of \$7,362.28.

Motion was made by Jonathan Blank to deny the claim because the Fund cannot pay on claims based on breach of contract theory and this claim also involved "Mutual Release and Settlement Agreement", which in essence, the claimant waived any right to collect on the judgment. 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 July 13, 2009

The meeting adjourned at 11:59 a.m.