

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, November 8, 2010

Chairman Rick Holcomb called the Dealer Board meeting to order at 10:28 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. The roll was called and there were 17 Board members present. Present were members Frank Pohanka, Wanda Lewark, Lynn Hooper, T.K. Hughes, David Lacy, Chip Lindsay, Thomas Moorehead, Pat Patrick, Matt Queen, Kevin Reilly, Larry Shelor, Joe Tate, Jimmy Whitten, Robert Woodall, Sally Woodson and Tommy Woodson. (Absent: Henry Jones and Matt Lohr). Executive Director Bruce Gould, Peggy Bailey, Prin Cowan and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's Office. Alice Weedon acted as Recording Secretary.

PUBLIC COMMENT

There was no public comment.

The September 13, 2010 meeting summary was approved.

STATUTORY COMMITTEE REPORTS

Dealer Practices Committee:

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

- **Bird Dogging.** Chairman Kevin Reilly summarized for the Board the discussion held in the committee meeting regarding bird dogging. Based on that discussion, Mr. Reilly made the motion that no changes be made to the current law regarding bird dogging. Frank Pohanka seconded. All in favor: 16 (Hooper, Lacy, Lewark, Lindsay, Moorehead, Patrick, Pohanka, Queen, Reilly, Shelor, S. Woodson, Tate, Whitten, Woodall, T. Woodson and Holcomb). Opposed: 1 (Hughes). The motion carried.

- **Keith Slaydon and Carmart Auto Sales, LLC.** Chairman Kevin Reilly summarized for the Board the discussion held in the committee meeting regarding Keith Slaydon and Carmart Auto Sales, LLC. Based on that discussion, Mr. Reilly 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 Keith Slaydon and Carmart Auto Sales, LLC for alleged violations of VA Code Sections 46.2-1533 (failing to maintain business hours) and 46.2-1575(2) (failure to comply subsequent to receipt of a written warning/willful failure to comply). Based on due consideration, the Board believes a civil penalty should be assessed against Keith Slaydon and Carmart Auto Sales, LLC. The Board hereby assesses a \$500.00 civil penalty against Keith Slaydon and Carmart Auto Sales, LLC; and based on due consideration, the Board believes that Mr. Slaydon's dealership should be re-inspected and that the inspection must be satisfactory.

The Board hereby mandates that a Motor Vehicle Dealer Board field representative re-inspect Mr. Slaydon's dealership by February 8, 2011 and if the inspection is not satisfactory the Board suspends all licenses issued by the Board to Mr. Slaydon 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. Slaydon in running his dealership. The Board mandates that Mr. Slaydon successfully complete the dealer-operator course by February 8, 2011. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Mr. Slaydon by the Board until such time Mr. Slaydon has successfully completed the course.

Joe Tate seconded. The motion carried unanimously.

- **Clarence A. Thomas and Thomas Auto Works.** Chairman Kevin Reilly summarized for the Board the discussion held in the committee meeting regarding Clarence A. Thomas and Thomas Auto Works. Based on that discussion, Mr. Reilly 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 Clarence A. Thomas and Thomas Auto Works for alleged violations of VA Code Sections 46.2-1529 (failure to maintain all dealer records on the premises of the licensed location), 46.2-1548 (dealer plate records required), 46.2-1550 (improper use of or permitting the improper use dealer's license plates), 46.2-1559 (violation of record keeping for temporary tags) and 46.2-1575(2) (failure to comply subsequent to receipt of a written warning). Based on due consideration, the Board believes a civil penalty should be assessed against Clarence A. Thomas and Thomas Auto Works. The Board hereby assesses a \$100.00 civil penalty against Clarence A. Thomas and Thomas Auto Works; and based on due consideration, the Board believes that Mr. Thomas' dealership should be re-inspected and that the inspection must be satisfactory.

The Board hereby mandates that a Motor Vehicle Dealer Board field representative re-inspect Mr. Thomas' dealership by February 8, 2011 and if the inspection is not satisfactory the Board suspends all licenses issued by the Board to Mr. Thomas 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. Thomas in running his dealership. The Board mandates that Mr. Thomas successfully complete the dealer-operator course by February 8, 2011. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Mr. Thomas by the Board until what time Mr. Thomas has successfully completed the course.

Mr. Thomas spoke on his own behalf.

Sally Woodson seconded. The motion carried unanimously.

Licensing Committee

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

- **Mohamed A. Khalifa, Salesperson.** Chairman Kevin Chip Lindsay summarized for the Board the discussion held in the committee meeting regarding Mohamed A. Khalifa. 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 Mr. Mohamed Khalifa for alleged violations of VA Code Sections 46.2-1575(9) (Having been convicted of any criminal act involving the business of selling vehicles) and 46.2-1561 (unlawful issue of a temporary license plate). Based on due consideration, the Board believes a civil penalty should be assessed against Mr. Mohamed Khalifa. The Board hereby assesses a \$500.00 civil penalty against Mr. Mohamed Khalifa and based on due consideration, the Board believes that Mr. Khalifa's salesperson license should be suspended. The Board hereby suspends for 30 days the salesperson licenses issued by the Board to Mr. Khalifa and based on due consideration, the Board believes that successfully completing salesperson certificate test would benefit Mr. Khalifa. The Board mandates that Mr. Mohamed Khalifa successfully complete the salesperson certificate test within 30 days. Failure to successfully complete the test within this time frame will result in a suspension of Mr. Khalifa's salesperson license until such time Mr. Khalifa has successfully completed the test.

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

Frank Pohanka seconded. The motion carried unanimously.

Advertising Committee

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

Transaction Recovery Fund Committee:

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

- **Connie R. Davis and Auto Line of Norfolk, Inc.** Chairman Larry Shelor summarized for the Board the discussion held in the committee meeting regarding Connie R. Davis and Auto Line of Norfolk, Inc. Based on that discussion and the hearing officer's report, Mr. Shelor made the following motion: Pursuant to VA Code Section 46.2-1527.1 et. seq. of the Code of Virginia, which is known as the Motor Vehicle Transaction Recovery Fund ("Fund"), the Board has reviewed and considered a claim submitted for payment from the Fund and based on due consideration and recommendation of the hearing officer, the Board believes the claim should not be payable from the Fund.

Jimmy Whitten seconded. The motion carried unanimously.

- **Balance in the Fund.** Bruce Gould indicated that the Transaction Recovery Fund balance is close to the required minimum. However, there should be enough funds to cover any claims approved at the January Board meeting. For now, there is no need for an assessment on dealers.

OLD BUSINESS

There was no old business.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

NEW BUSINESS FROM THE FLOOR

The next meeting will be scheduled for January 10, 2011.

- **Executive Director's Report.** Bruce Gould indicated that the Dealer Board has hired someone on a temporary basis to cover the work that employee Quessie Harvin does. Quessie is expecting her baby any day now. One of the Legislative proposals for the Dealer Board is to allow the Secretary of Agriculture and Consumer Services to appoint someone to sit in on the Dealer Board meetings in their absence. Agencies that have toll free numbers have been encouraged by the Reform Commission to eliminate this service as a cost savings. Lastly, Bruce indicated that he is on the Agenda for the Governor's Transportation Conference which will be held December 8 through the 10 at the Hotel Roanoke.

Motion was made by Frank Pohanka to eliminate the Dealer Board toll free number for cost effect reasons. T.K. Hughes seconded. The motion carried unanimously.

David Boling found a patron, Delegate Tim Hugo, to introduce two legislative proposals, one being to add transport plates to the Print on Demand. The second would be to allow wholesale auctions to use drive away plates. Rick Holcomb indicated that DMV would gladly support these two proposals.

There being no further business to come before the Motor Vehicle Dealer Board, Chairman Holcomb adjourned the meeting at 11:22 a.m.

Meeting Summary
Dealer Practices Committee
Monday, November 8, 2010

Chairman Kevin Reilly called the Dealer Practices Committee meeting to order at 9:02 a.m. in Room 702 of the DMV Headquarters Building at 2300 W. Broad Street in Richmond. Present were Committee members T.K. Hughes, David Lacy, Wanda Lewark, Chip Lindsay, Thomas Moorehead, Matt Queen, Larry Shelor, Robert Woodall, Sally Woodson and Tommy Woodson. Other Board members present: Lynn Hooper, Frank Pohanka, Jimmy Whitten, Pat Patrick, Joe Tate, Rick Holcomb. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The September 13, 2010 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

Update: Bird Dogging. Bruce Gould indicated that at the September meeting there was a brief discussion on the topic of "bird dogging". It was decided this issue required additional research by the MVDB staff and the staff of the trade associations. The AAMVA does not have any data that will shed any light as to how the 50 states address bird dogging. Mr. Gould polled his peers and VIADA was able to obtain a state-by-state analysis conducted through "StateLaw Counselor".

Reading the analysis for each of the states listed in the StateLaw Counselor research, one would conclude that most states do not prohibit bird dogging. However, a closer examination of the details reveals that many states license brokers who can arrange for a sale of a motor vehicle and receive compensation from either the dealer or the customers. Some states allow, under certain conditions, for a dealer (or any merchant) to compensate a customer (One who previously purchased a car or product from the dealer or merchant) who brings the dealer (merchant) a new customer.

Bruce's poll of other states indicates that some states license brokers who can be compensated for arranging a sale. Some states (And Canadian Provinces) prohibit bird dogging. Research also indicates that for the most part, states that license salespersons prohibit bird dogging. Lastly, research indicates that the military is opposed to the practice of bird dogging.

The conclusion of the MVDB staff is that the laws from state to state can be very different and the interpretation of bird dogging varies. Results of the research are not conclusive as it pertains to how the other 49 states address bird dogging.

The staff recommendation is not to change the current law.

Mike Charapp of VADA and David Boling of VIADA spoke in opposition of changing the laws to allow bird dogging.

Motion was made by T.K. Hughes to keep the law as is. Matt Queen 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 Conferences:

- **Keith Slaydon and Carmart Auto Sales, LLC.** On July 1, 2010, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1533 (failing to maintain business hours) 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. Slaydon attend the Dealer-Operator Course.

Motion was made by T.K. Hughes to accept the hearing officer's recommendation and that a civil penalty of \$100.00 should be assessed and to complete the Dealer-Operator Course within 90 days. Tommy Woodson seconded. The motion carried unanimously.

- **Clarence A. Thomas and Thomas Auto Works.** On September 14, 2010, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1529 (failure to maintain all dealer records on the premises of the licensed location), 46.2-1548 (dealer plate records required), 46.2-1550 (improper use of or permitting the improper use dealer's license plates), 46.2-1559 (violation of record keeping for temporary tags) and 46.2-1575(2) (failure to comply subsequent to receipt of a written warning). Based on the information provided at the conference, the hearing officer recommended that Mr. Thomas complete the dealer-operator course and a civil penalty of \$100 be assessed against Mr. Thomas and Thomas Auto Works.

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

Motion made by Matt Queen to accept the hearing officer's recommendation and that Ms. Thomas' dealership must have a successful inspection within 90 days. T.K. Hughes seconded. The motion carried unanimously.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for January 10, 2011.

The meeting adjourned at 9:44 a.m.

Meeting Summary
Dealer Licensing Committee
Monday, November 8, 2010

Chairman Chip Lindsay called the Dealer Licensing Committee meeting to order at 9:45 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members T.K. Hughes, Pat Patrick, Frank Pohanka, Joe Tate, Jimmy Whitten and Robert Woodall. (Absent: Henry Jones). Other Board members present: Sally Woodson, David Lacy, Rick Holcomb, Wanda Lewark, Thomas Moorehead, Matt Queen, Kevin Reilly, Larry Shelor, Tommy Woodson. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The September 13, 2010 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

- **Update: Dealer-Operator Continuing Education.** Bruce Gould indicated that the community colleges will offer an on-line course and a classroom course. The regulations allow dealer-operators to either complete a course or complete a test. Right now there are 2 vendors who will offer courses and the test will be conducted at DMV Customer Service Centers. It is expected that all will be in place by January. There are approximately 30 dealers that must re-certify in January and approximately 20 to 30 in February. The MVDB staff is in the process of hiring someone full time that will facilitate this process.

OLD BUSINESS FROM THE FLOOR:

There was no old business from the floor.

NEW BUSINESS

- **Mr. Mohamed Khalifa, Salesperson.** On October 20, 2010, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1575(9) (Having been convicted of any criminal act involving the business of selling vehicles) and 46.2-1561 (unlawfully issue of any temporary license plate containing any misstatement of fact, or for any person issuing or using temporary license plates knowingly to insert any false information). Based on the information provided at the conference, the hearing officer recommended that a civil penalty of \$250 be assessed against Mr. Khalifa, suspend his license for thirty (30) days or longer and within those 30 days he must complete a DSD-7 (Application for License), take the written examination for a salesperson, independent dealer-operator or franchise dealer and for the dealership to be inspected aggressively when necessary before he can return to the sales of motor vehicles.

Motion was made by T.K. Hughes to accept the hearing officer's recommendation and given the severity of the offenses, a \$500 civil penalty should be assessed and Mr. Khalifa must re-take the salesperson test. 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 January 10, 2011.

The meeting adjourned at 9:57 a.m.

Meeting Summary
Advertising Committee
Monday, November 8, 2010

Chairman Lynn Hooper called the Advertising Committee meeting to order at 9:58 a.m. in Room 702, at DMV Headquarters, 2300 West Broad Street, Richmond, Virginia. Present were Committee members Matt Queen, Kevin Reilly, Larry Shelor, Joe Tate, Jimmy Whitten, Sally Woodson and Tommy Woodson. (Absent: Matt Lohr). Other Board members present: Thomas Moorehead, Pat Patrick, T.K. Hughes, David Lacy, Rick Holcomb, Wanda Lewark, Chip Lindsay, Robert Woodall. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The September 13, 2010 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

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

The next meeting was scheduled for January 10, 2011.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The meeting adjourned at 9:59 a.m.

Meeting Summary
Transaction Recovery Fund Committee
Monday, November 8, 2010

Chairman Larry Shelor called the Transaction Recovery Fund Committee meeting to order at 9:59 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members: David Lacy, Wanda Lewark, Pat Patrick, Frank Pohanka, Matt Queen and Joe Tate. (Absent: Henry Jones and Matt Lohr). Other Board members present: Rick Holcomb, Sally Woodson, Thomas Moorehead, T.K. Hughes, Kevin Reilly, Chip Lindsay, Lynn Hooper, Jimmy Whitten, Robert Woodall, Tommy Woodson. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The September 13, 2010 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:

- **Connie R. Davis and Auto Line of Norfolk, Inc.** On February 1, 2009, Ms. Davis entered into a "Consignment Agreement" with Auto Line of Norfolk, Inc. to sell her 2007 Nissan Pathfinder, which had a lien with Navy Federal Credit Union (NFCU). According to DMV records, Auto Line sold the 2007 Nissan on May 9, 2009 in the amount of \$17,091.80. Ms. Davis' agreement with Auto Line was to sell her vehicle for \$16,600. Auto Line had paid \$4,000.00 in payments leaving a balance owed in the amount of \$12,600.00.

On May 30, 2009, Ms. Davis then entered into an agreement to purchase a 2008 Dodge Charger from Auto Line, in which Ms. Davis had applied for a loan with NFCU in the amount of \$31,345.76 for the vehicle. She provided Auto Line with a check/draft in the amount of \$8,000.00 and the amount owed to her from the consignment was rolled over into the application for the purchase. The loan application dated April 28, 2009, with NFCU showing a balance of \$31,345.76 plus \$162.45 in interest, plus cash to member of \$8,249.00 equaling amount financed \$39,757.21. Further, Ms. Davis made an agreement that Auto Line would pay \$8,300.00 to NFCU in the amount no less than \$824.88 by the 15th of each month beginning June 15th, but not limited in anyway to an earlier payoff remaining of \$8,300.00.

On June 8, 2009, Ms. Davis sent a letter to Auto Line requesting reimbursement for the total amount owed to NFCU in the amount of \$24,600.00 because she never received the 2008 Dodge Charger and the title was never sent to her recorded lien holder NFCU. On June 30, she filed a complaint with the Dealer Board. Ms. Davis never received the vehicle and NFCU is holding her liable for the loan. At this point she sought legal counsel in order to pursue Auto Line civilly in court.

On July 23, 2010, the Circuit Court of the City of Norfolk awarded Ms. Davis judgment against Auto Line of Norfolk, Inc. in the amount of \$20,900.00 and attorney fees in the amount of \$3,825.00, plus costs incurred. On August 19, 2010, Auto Line's surety bonding company made a settlement with Ms. Davis' legal counsel (Bryan K. Morris, Esquire) and paid \$21,005.00 on Ms. Davis' claim against the dealer's bond. Ms. Davis contacted the Dealer Board to inquire if she could submit a claim against the Fund for the attorney fees which were not covered by the surety bonding company.

On September 1, 2010, Ms. Davis submitted documentation for consideration of payment from the Fund for her attorney fees and court costs. On the judgment claim request form submitted by Ms. Davis she sought reimbursement of \$8,400.00; however, the judgment order only awarded \$3,825.00 in attorney fees and it appeared that the surety bonding company included the costs of \$105.00 in their settlement agreement. The contingency agreement between Ms. Davis and her counsel is not compensable for payment from the Fund. This agreement consists of attorney fees of \$8,360.00, \$89.00 filing fee, \$16.00 service fee, \$40.00 for photocopies and postage which came to \$8,505.00. The Judgment order reflects the Court only awarded \$3,825.00 in attorney fees.

On October 25, 2010, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended payment of \$3,825.00 from the Fund to Ms. Davis.

Motion was made by Joe Tate to deny the claim for failure to comply with § 46.2-1527.4, failure to pre-notify the Board, to allow the Board to intervene. Also, it was determined that § 46.2-1527.5 does not allow for additional payments from the Fund if the surety company has first paid an amount in excess of \$20,000. In this case, the surety bond paid \$21,005.00, thus the Fund is not liable for any more. Frank Pohanka seconded. The motion carried unanimously.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for January 10, 2011.

The meeting adjourned at 10:08 a.m.