

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, September 12, 2005

Chairman D.B. Smit called the Dealer Board meeting to order at 11:25 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 Vince Sheehy, David Lacy, Jonathan Blank, Lynn Hooper, Todd Hyman, Wanda Lewark, Chip Lindsay, Hugh McCreight, Jim Mercer, Thomas Moorehead, Pat Patrick, Frank Pohanka, Kevin Reilly, Larry Shelor, Jimmy Whitten and Robert Woodall. (Absent: Carlton Courter and Tommy Woodson). Bruce Gould, Peggy Bailey, Debbie Allison and Vic Hernandez represented the Dealer Board. Jim Gurney and Gerald Slade represented DMV. Rick Walton represented the Attorney General's Office. Alice Weedon acted as Recording Secretary.

The July 11, 2005 meeting summary was approved.

PUBLIC COMMENT

- **Ralph Davis, Deputy Secretary of Transportation.** Mr. Davis spoke on behalf of Governor Warner and Secretary of Transportation, Pierce Homer, and he took the opportunity to welcome the eight new Board members and greetings to the continuing Board members.
- **Presentation by the Community College Workforce Alliance.** Kristy Martin spoke on the programs that are offered at John Tyler Community College and J. Sargeant Reynolds Community College.

STATUTORY COMMITTEE REPORTS

Dealer Practices Committee:

- **Christopher Mallory and Auto Finders of Virginia, LLC.** Chairman Pat Patrick summarized for the Board the discussion held in the Committee meeting regarding Christopher Mallory and Auto Finders of Virginia, LLC. 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. Christopher S. Mallory t/a Auto Finders of Virginia, LLC 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 recommendation of the hearing officer, the Board believes a civil penalty should be levied against Mr. Christopher S. Mallory and Auto Finders of Virginia, LLC. The Board hereby assess a civil penalty in the amount of \$10,500 on Mr. Christopher S. Mallory and Auto Finders of Virginia, LLC for twenty-one violations of Va. Code §46.2-1537.

Hugh McCreight seconded. The motion carried unanimously.

- **Jeffrey Cappo and Victory Nissan of Richmond, Inc.** Chairman Pat Patrick summarized for the Board the discussion held in the Committee meeting regarding Jeffrey Cappo and Victory Nissan of Richmond, Inc. 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. Jeffrey Cappo t/a Victory Nissan of Richmond, Inc. 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 recommendation of the hearing officer, the Board believes a civil penalty should be levied against Mr. Jeffrey Cappo and Victory Nissan of Richmond, Inc. The Board hereby assess a civil penalty in the amount of \$700 on Mr. Jeffrey Cappo and Victory Nissan of Richmond, Inc. for seven violations of Va. Code §46.2-1537.

Vince Sheehy seconded. The motion carried unanimously.

- **John J. Lee and Lee's Auto Sales (Jefferson Avenue location).** Chairman Pat Patrick summarized for the Board the discussion held in the Committee meeting regarding John J. Lee and Lee's Auto Sales. Based on that discussion, Lynn Hooper 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. John J. Lee and Lee's Auto Sales (Dealer # 1134) for alleged violations of Va. Code §46.2-1575 (2), failure to comply subsequent to receipt of a written warning and willful failure to comply with the dealer laws, and §§ 46.2-1550.2 and 46.2-1559 related to issuance and use of temporary tags and record keeping. Mr. Lee received numerous letters, educational efforts and opportunities to comply with the record keeping requirements. Based on due consideration and the recommendation of the hearing officer, the Board believes a civil penalty should be levied against Mr. John J. Lee and Lee's Auto Sales (Dealer # 1143). The Board hereby assesses a civil penalty in the amount of \$4,000 for four violations of Va. Code §§46.2-1550.2 and 46.2-1559 related to issuance and use of temporary tags and record keeping and \$1,500 for three violations of Va. Code §46.2-75(2), failure to comply to a written warning/willful disregard for the dealer laws for civil penalties totaling \$5,500 on Mr. John J. Lee and Lee's Auto Sales (Dealer # 1143).

Pat Patrick seconded. The motion carried unanimously.

- **John J. Lee and Lee's Auto Sales (Warwick Boulevard location).** Chairman Pat Patrick summarized for the Board the discussion held in the Committee meeting regarding John J. Lee and Lee's Auto Sales. Based on that discussion, Mr. Robert Woodall 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. John J. Lee and Lee's Auto Sales (Dealer #2287) for alleged violations of Va. Code §46.2-1575(2), failure to comply subsequent to receipt of a written warning and willful failure to comply with the dealer laws, and §46.2-1529 related to record keeping. Mr. Lee received numerous letters, educational efforts and opportunities to comply with the record keeping requirements. Based on due consideration and the recommendation of the hearing officer, the Board believes a civil penalty should be levied against Mr. John J. Lee and Lee's Auto Sales (Dealer #2287). The Board hereby assesses a civil penalty in the amount of \$1,500 for three violations of Va. Code §46.2-1529 related to record keeping and \$1,500 for three violations of Va. Code §46.2-1575(2), failure to comply to a written warning/willful disregard for the dealer laws for civil penalties totaling \$3,000 on Mr. John J. Lee and Lee's Auto Sales (Dealer #2287);

Lynn Hooper seconded. The motion carried unanimously.

Licensing Committee

Chairman Todd Hyman summarized discussions held and actions that were taken during the Committee Meeting.

- **Michael Stotler, Salesperson.** Chairman Todd Hyman summarized for the Board the discussion held in the Committee meeting regarding Michael Stotler, Salesperson. Based on that discussion, Mr. Larry Shelor made the following motion: Michael Stotler was convicted of five misdemeanors for failing to submit to DMV, sales and use tax; and an informal fact-finding conference was convened in order to determine what action if any the Board should take concerning the salespersons licensed held by Michael Stotler. Based on the evidence and a report of an informal fact finding conference as prepared by a hearing officer, the Motor Vehicle Dealer Board believes that no action should be taken against Mt. Stotler. The Board hereby takes no action concerning the Mr. Stotler's salesperson's license.

Pat Patrick seconded. The motion carried unanimously.

- **Request for Variance in Hours: Signature Auto Sales.** Chairman Todd Hyman summarized for the Board the discussion held in the Committee meeting regarding Signature Auto Sales' request for a variance in hours. Based on that discussion, Mr. Hyman made the following motion: Va. Code Section 46.2-1533 grants authority to the Board to modify the minimum hours requirements as set-out in §46.2-1533, "for good cause". The Board has determined that selling vehicles at wholesale only does not constitute "good cause" and Deborah Crabtree, owner of Signature Auto Sales has requested that this dealership be exempt from the minimum hours requirement as they only sell wholesale. The Board denies the variance request of Signature Auto Sales.

Robert Woodall seconded. The motion carried unanimously.

Advertising Committee

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

Transaction Recovery Fund Committee:

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

- **Michael W. Harlow and Richard Wright and Auto Excellence, Inc.** Chairman David Lacy summarized for the Board the discussion held in the Committee meeting regarding Michael W. Harlow and Richard D. Wright and Auto Excellence, Inc. 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 on the claims 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:

Michael W. Harlow and Richard D. Wright and Auto Excellence, Inc. \$8,394.52

Pat Patrick seconded. The motion carried unanimously.

OLD BUSINESS FROM THE FLOOR

- **Curbstoning Report.** Gerald Slade, Investigator for DMV, gave a brief update on ISO investigations relating to curbstoning since the July Board meeting.

There was no old business from the floor.

NEW BUSINESS

The next meeting will be scheduled for November 14, 2005

- **Executive Director's Report.** Bruce Gould indicated that he has a court case in Orange County relating to a curbstoner. He also indicated that if the new members haven't finished filling out forms, to please get those done. After today's meeting, a Conflict of Interest training session will take place and requested that the new members stay and watch this training session. Rick Walton explained, in brief detail, what the session involves.

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 12:22 p.m.

Meeting Summary
Dealer Practices Committee
Monday, September 12, 2005

Chairman Pat Patrick called the Dealer Practices Committee meeting to order at 8:37 a.m. in Room 702 of the DMV Headquarters Building at 2300 W. Broad Street in Richmond. Present were Committee members Hugh McCreight, Jonathan Blank, Lynn Hooper, David Lacy, Jim Mercer, Thomas Moorehead, Frank Pohanka, Kevin Reilly, Jimmy Whitten and Robert Woodall. Other Board members present: D.B. Smit, Todd Hyman, Vince Sheehy, Wanda Lewark, Chip Lindsay, Larry Shelor. Executive Director Bruce Gould, Peggy Bailey and Debbie Allison represented the Dealer Board. Jim Gurney represented DMV. Rick Walton was present from the Attorney General's Office.

The July 11, 2005 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

- **Update: July Actions.** Peggy Bailey reported on the actions taken at the Dealer Practices Committee meeting on July 11, 2005.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conference:

- **Christopher S. Mallory and Auto Finders of Virginia, LLC.** On June 17, 2005, an informal fact-finding conference was conducted to address the alleged violation of §46.2-1537 (Sales activities by Unlicensed salesperson) against Christopher S. Mallory and Auto Finders of Virginia, LLC. Based on the information provided at the conference, the hearing officer recommended that the Board assess a civil penalty of \$250.00 per violation for a total civil penalty of \$5,250 for the 21 violations.

Motion was made by Lynn Hooper to modify the hearing officer's recommendation and assess a civil penalty of \$500 per violation for a total civil penalty of \$10,500. David Lacy seconded. Mr. Hooper's rationale for the modification is that Mr. Mallory was not forthcoming and was not cooperative in resolving the alleged violations and at the informal conference. The Committee did not believe Mr. Mallory made an effort to comply. The motion carried unanimously.

- **Jeffrey Cappo and Victory Nissan of Richmond, Inc.** On May 18, 2005, an informal fact-finding conference was conducted to address the alleged violations of §46.2-1537 (Sales activities by unlicensed salesperson) against Jeffrey Cappo and Victory Nissan of Richmond, Inc. Based on the information provided at the conference, the hearing officer recommended that a civil penalty of \$300 per violation for a total civil penalty of \$2,100.00 for the 7 violations.

Motion was made by Kevin Reilly to modify the hearing officer's recommendation and assess a civil penalty of \$100 per violation for a total civil penalty of \$700.00. Lynn Hooper seconded. Mr. Reilly's rationale for the modification is that Mr. Cappo fully cooperated and was extremely forthcoming in resolving the alleged violations brought before him and that the violations were an isolated incident. The motion carried unanimously.

- **John J. Lee and Lee's Auto Sales (Jefferson Avenue location).** On July 20, 2005, an informal fact-finding conference was conducted to address the alleged violation of §46.2-1550.2 (Issuance and use of temporary transport plates) and §46.2-1559 (Record keeping), §46.2-1575(2) (Failure to comply with a written warning). Based on the information provided at the conference, the hearing officer recommended that a civil penalty of \$250.00 per violation for a total civil penalty of \$1,000.00 for the 4 violations of §46.2-1550.2, \$250.00 per violation for a total civil penalty for \$1,000.00 for the 4 violations of §46.2-1559 and \$500.00 per violation for a total of \$1,500.00 for the 3 violations of §46.2-1575(2). For a total civil penalty of \$3,500.00.

Motion was made by David Lacy to modify the hearing officer's recommendation and to assess \$11,000.00, which is \$1,000.00 for the 11 violations, the maximum allowed per violation. Hugh McCreight seconded. General discussion followed.

Substitute motion was made by Lynn Hooper to assess a civil penalty of \$500 per violation for a total civil penalty of \$5,500.00. Jonathan Blank seconded. Mr. Lacy's and Mr. Hooper's rationale was that Mr. Lee was unconcerned and made no effort to correct the alleged violations that were brought before him, even after Mr. Lee indicated he would become in compliance, nothing was done. The motion carried unanimously.

- **John J. Lee and Lee's Auto Sales (Warwick Boulevard location).** On July 20, 2005, an informal fact-finding conference was conducted to address the alleged violation of §46.2-1529 (Failure to maintain all required dealer sales activity records) and §46.2-1575(2) (Failure to comply with a written warning). Based on the information provided at the conference, the hearing officer recommended that a civil penalty of \$250 per violation for a total civil penalty of \$750.00 for the 3 violations of §46.2-1529, and \$500 per violation for a total of \$1,500.00 for the 3 violations of §46.2-1575(2). For a total civil penalty assessed of \$2,250.00.

Motion was made by Lynn Hooper to assess \$500 for the 6 violations for a total civil penalty assessed of \$3,000.00. Robert Woodall seconded. Mr. Hooper's rationale is the same as indicated in the Jefferson Avenue location. The motion carried unanimously.

- **Report on Variance Requests (Dealer Hours and Storage of Dealer Records).** Bruce Gould indicated that there were two dealer requests from on-line dealers who want to transact all of their on-line work at a centralized location and both were approved. One dealer requested a temporary closing due to a serious illness and was approved. One dealer requested to keep his records in a state other than Virginia and that was denied per Board policy.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for November 14, 2005.

The meeting adjourned at 9:15 a.m.

Meeting Summary
Dealer Licensing Committee
Monday, September 12, 2005

Chairman Todd Hyman called the Dealer Licensing Committee meeting to order at 9:24 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members Robert Woodall, Wanda Lewark, Chip Lindsay, Kevin Reilly, Vince Sheehy, Larry Shelor and Jimmy Whitten. (Absent: Tommy Woodson) Other Board members present: D.B. Smit, Lynn Hooper, Frank Pohanka, Jim Mercer, David Lacy, Pat Patrick, Jonathan Blank, Thomas Moorehead and Hugh McCreight. Executive Director Bruce Gould, Peggy Bailey, Debbie Allison and Vic Hernandez represented the Dealer Board. Jim Gurney represented DMV. Rick Walton represented the Attorney General's Office.

The July 11, 2005 meeting summary was approved.

PUBLIC COMMENT

- Robert Penn from The Car Ministry indicated that his company gives away cars to the less fortunate. He indicated that at one time, they were allowed to use drive away tags, to transport the vehicles for repairs, inspections, etc. In 1987, DMV granted them permission to use drive away tags. Recently, the Dealer Board indicated to Mr. Penn that the interpretation of a sale of a vehicle is the same as giving one away and currently he does not qualify for any type of dealer tags as a registered non-profit "dealer". Mr. Penn requested that the Board and DMV allow his organization to continue to deliver motor vehicles directly to his clients and that he be given permission to use some type of tag to move vehicles. Consensus of the committee was that Mr. Penn has other options such as working with a licensed dealer; going to the General Assembly to change the law or to re-establish his dealer license.

OLD BUSINESS

- **Update and Discussion: Dealer-Operator Test and Course.** Bruce Gould introduced Leonard Sledge, who gave a power point presentation on how the Community Colleges were going to conduct the Courses for those who want to become Dealer-Operators. At this time, it appears that the Community Colleges and the VIADA will be entering into a partnership to offer the required course beginning in December. An outline of the course curriculum will be ready by the November meeting. Bruce also reported that the new test is ready and it has been forwarded to DMV to format and enter onto the Automated Testing Machines.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conference:

- **Michael Stotler, Salesman.** On April 26, 2005, an informal fact-finding was conducted to address Mr. Stotler's convictions of 5 counts of failure to pay collected taxes to DMV as these convictions relate to §§46.2-1575(6) (The Board may suspend, deny or revoke the license of any person who has engaged in deceptive acts or practices while involved in the business of selling vehicles), (9) (The Board may suspend, deny or revoke the license of any person who has been convicted of any criminal act involving the business of selling vehicles) and (14) (The Board may suspend, deny or revoke the license of anyone who fails to submit to the Department of Motor Vehicles, within 30 days from the date of sale, any application, tax or fee collected for the Department on behalf of a buyer). The hearing officer indicated that Mr. Stotler clearly violated §§46.2-1575(9) and (14), but believes he was not in violation §46.2-1575(6) and he also believes that Mr. Stotler did not intended to harm his customers or to cheat DMV. Based on the information provided at the conference, the hearing officer recommended that the Board should give Mr. Stotler the benefit of the doubt and recommend that he be licensed as a salesperson only.

Motion was made by Kevin Reilly to accept the hearing officer's recommendation and allow Mr. Stotler to be licensed as a salesperson. Larry Shelor seconded. The motion carried unanimously.

- **Request for Variance in Hours: Signature Auto Sales.** Deborah L. Crabtree of Signature Auto Sales requested that the Board grant her a variance to reduce her minimum hours of operation, because they deal with wholesale transactions rather than retail transactions.

Motion was made by Robert Woodall to deny Signature Auto Sales request for a reduction in hours. David Lacy seconded. The motion carried unanimously.

The next meeting was scheduled for November 14, 2005.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The meeting adjourned at 10:59 a.m.

Meeting Summary
Advertising Committee
Monday, September 12, 2005

Chairman Frank Pohanka called the Advertising Committee meeting to order at 11:05 a.m. in Room 702, at DMV Headquarters, 2300 West Broad Street, Richmond, Virginia. Present were Committee members Lynn Hooper, Jonathan Blank, Chip Lindsay, Hugh McCreight, Jim Mercer, Thomas Moorehead, Pat Patrick and Larry Shelor. Other Board members present: D.B. Smit, Kevin Reilly, Robert Woodall, Todd Hyman, David Lacy, D.B. Smit, Vince Sheehy, Wanda Lewark and Jimmy Whitten. Executive Director Bruce Gould, Peggy Bailey, Debbie Allison and Vic Hernandez represented the Dealer Board. Jim Gurney represented DMV. Rick Walton represented the Attorney General's Office.

The July 11, 2005 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

- **Update: July Actions.** Peggy Bailey reported on the actions taken at the Advertising Committee meeting on July 11, 2005.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

The next meeting will be September 12, 2005.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The meeting adjourned at 11:09 a.m.

Meeting Summary
Transaction Recovery Fund Committee
Monday, September 12, 2005

Chairman David Lacy called the Transaction Recovery Fund Committee meeting to order at 11:09 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members: Larry Shelor, Jonathan Blank, Lynn Hooper, Wanda Lewark and Vince Sheehy. (Absent: Tommy Woodson). Other Board members present: D B Smit, Kevin Reilly, Robert Woodall, Todd Hyman, Frank Pohanka, Jim Mercer, Pat Patrick, Chip Lindsay, Tommy Moorehead, Hugh McCreight and Jimmy Whitten. Executive Director Bruce Gould, Peggy Bailey, Debbie Allison and Vic Hernandez represented the Dealer Board. Jim Gurney represented DMV. Rick Walton represented the Attorney General's Office.

The July 11, 2005 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:

- **Michael W. Harlow and Auto Excellence, Inc., and Richard D. Wright.** On August 6, 2004, Michael Harlow entered into a contract to purchase a 1998 Chevrolet Tahoe from Richard (Ricky) Wright, owner/salesperson for Auto Excellence for the total sales price of \$7,900.00, in which Mr. Harlow paid in full with a personal check. Thirty day tags were issued because Mr. Wright indicated that he had not received the title from the previous owner of the vehicle. On September 4, another set of 30 day tags was issued to Mr. Harlow. Mr. Wright indicated that the title should be obtained within a week. In October, another set was issued to Mr. Harlow and it became apparent to him that something was seriously wrong. When the 3rd set of temporary tags expired on November 5, 2004, Mr. Harlow had to park the vehicle and he then contacted the Dealer Board and was in put in contact with Agent Parrish at the Department of Motor Vehicles.

On November 30, 2004, with all the evidence and documentation that had been submitted, Agent Parrish was able to obtain registration and plates on the vehicle for Mr. Harlow with a title held. Mr. Harlow paid all the required DMV fees in order to have the vehicle properly registered in his name. Mr. Harlow was made aware that the vehicle title was being held by AFC, the recorded lien holder for Auto Excellence, Inc. and in speaking with a representative of AFC, they learned that the lien had not been satisfied and the vehicle title belonged to AFC. AFC agreed to let the Harlow's use the vehicle until all the court proceedings and the Dealer Board procedures were completed. At which time, the vehicle would be immediately returned to AFC.

On April 20, 2005, as prior notification, Mr. Harlow submitted to the Dealer Board a Warrant in Debt that had been filed against Richard Wright and Auto Excellence, Inc. for "fraud" in connection with the purchase of the vehicle. On May 20, 2005, the General District Court of Henrico awarded Judgment to Mr. Harlow against Richard Wright and Auto Excellence in the amount of \$8,344.52 plus \$50.00 in costs. On June 28, 2005, Mr. and Mrs. Harlow submitted to the Dealer Board all the required documentation in order to file a claim against the Fund. The vehicle was returned. After carefully reviewing all the documentation and the final judgment order, it is recommended that the Recovery Fund Committee and Board approved \$7,950.00 on Mr. Harlow's claim, which is based on the purchase price (\$7,900.00) of the vehicle and the \$50 for court costs. On August 11, 2005, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer agreed with staff's recommendation and recommended that the Fund pay \$7,950.00.

After further discussion and review of the information provided to the Committee in their notebooks, a motion was made by Larry Shelor to not accept the hearing officer's recommendation and pay the judgment amount of \$8,344.52, plus the \$50 in court cost for a total of \$8,394.52 to Mr. Harlow. Lynn Hooper seconded. The motion passed unanimously.

NEW BUSINESS FROM THE FLOOR

There was no old business from the floor.

The next meeting was scheduled for November 14, 2005.

The meeting adjourned at 11:25 a.m.