

Meeting Summary
Motor Vehicle Dealer Board
Monday, September 9, 2013

Chairman Rick Holcomb called the Dealer Board meeting to order at 11:37 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. The roll was called and there were 12 Board members present. Present were members Andy Alvarez, Ted Bailey, Roy Boswell, Lynn Hooper, Art Hudgins, Brian Hutchens, Wanda Lewark, Thomas Moorehead, George Pelton, Joe Tate and Tommy Woodson. (Absent: Ronald Kody, Chip Lindsay, Matt McQueen, Kevin Reilly, Jimmy Whitten, Rodney Williams and Sally Woodson). Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Ann Majors, Wanda Neely and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office. Alice Weedon was the recording secretary.

PUBLIC COMMENT

There was no public comment.

The July 8, 2013 meeting summary was approved.

STATUTORY COMMITTEE REPORTS

Dealer Practices Committee:

Chairman Tommy Woodson summarized discussions held and actions that were taken during the Committee Meeting.

- **Blue Ridge Auto Sales and Abdul A. Nahibkhil.** Based on the evidence and a report of an informal fact-finding conference as prepared by a hearing officer, the Motor Vehicle Dealer Board assessed a civil penalty of \$8,000 and mandated that Mr. Nahibkhil's dealership should be the subject of a satisfactory inspection and if the inspection was not satisfactory, then all licenses and certificates issued by the Board to Mr. Nahibkhil would be suspended until he does have a satisfactory inspection. Mr. Nahibkhil appealed the Board's decision and requested a formal hearing that was conducted on June 18, 2013; and based on the evidence and a report of an formal hearing as prepared by a hearing officer, the Motor Vehicle Dealer Board assessed a civil penalty of \$8,000; mandated that Mr. Nahibkhil's dealership should be the subject of a satisfactory inspection and if the inspection was not satisfactory, then all licenses and certificates issued by the Board to Mr. Nahibkhil would be suspended until he does have a satisfactory inspection and required that Mr. Nahibkhil successfully complete the dealer-operator class. Mr. Nahibkhil requested that the Board reconsider the decision it made at its July, 2013 meeting. Brian Hutchens made the following motion: Based on due consideration, the Board believes a civil penalty should be assessed against Blue Ridge Auto Sales and Abdul A. Nahibkhil. The Board hereby assesses a \$3,500 civil penalty against Blue Ridge Auto Sales and Abdul A. Nahibkhil; and based on due consideration, the Board believes that Mr. Nahibkhil's dealership should be re-inspected by October 25, 2013 and that the inspection must be satisfactory and that all licenses and certificates issued by the Board to Mr. Nahibkhil should be revoked if the inspection is not satisfactory. The Board hereby mandates that a Motor Vehicle Dealer Board field representative re-inspect Mr. Nahibkhil's dealership by October 25, 2013 and if the inspection is not satisfactory the revokes all licenses and certificates issued by the Board to Mr. Nahibkhil; and based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Nahibkhil in running his dealership. The Board mandates that Mr. Nahibkhil successfully complete the dealer-operator course by October 25, 2013. Failure to successfully complete the course by this date will result in the

revocation of all licenses and certificates issued to Mr. Nahibkhil by the Board until such time Mr. Nahibkhil has successfully completed the course.

Roy Boswell seconded. All in favor: 9 (Holcomb, Alvarez, Bailey, Boswell, Hudgins, Hutchens, Lewark, Pelton, Woodson). Opposed: 3 (Joe Tate, Thomas Moorehead, Lynn Hooper). The motion carried.

- **U Wanna Car and Maurice Jennings.** Tommy Woodson 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 U Wanna Car and Maurice Jennings for alleged violations of VA Code Sections 46.2-1510, 46.2-1529, 46.2-1532, 46.2-1548 and 46.2-1550. Based on due consideration, the Board believes a civil penalty should be assessed against U Wanna Car and Maurice Jennings. The Board hereby assesses a \$1,250 civil penalty against U Wanna Car and Maurice Jennings; and based on due consideration, the Board believes that Mr. Jennings' dealership should be re-inspected and that the inspection must be satisfactory and that all licenses and certificates issued by the Board to Mr. Jennings should be suspended until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative. The Board hereby mandates that a Motor Vehicle Dealer Board field representative re-inspect Mr. Jennings' dealership and if the inspection is not satisfactory the Board suspends all licenses and certificates issued by the Board to Mr. Jennings until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative.

George Pelton seconded. The motion carried unanimously.

- **The Boulevard Car Lot and Brenda Lewis.** Tommy Woodson 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 The Boulevard Car Lot and Brenda Lewis for alleged violations of VA Code Sections 46.2-1528, 46.2-1529 and 46.2-1575(2). Based on due consideration, the Board believes a civil penalty should be assessed against The Boulevard Car Lot and Brenda Lewis. The Board hereby assesses a \$1,000 civil penalty against The Boulevard Car Lot and Brenda Lewis; and based on due consideration, the Board believes that Ms. Lewis' dealership should be re-inspected and that the inspection must be satisfactory and that all licenses and certificates issued by the Board to Ms. Lewis should be suspended until such time as she has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative. The Board hereby mandates that a Motor Vehicle Dealer Board field representative re-inspect Ms. Lewis' dealership and if the inspection is not satisfactory the Board suspends all licenses and certificates issued by the Board to Ms. Lewis until such time as she 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 Ms. Lewis in running her dealership. The Board mandates that Ms. Lewis successfully complete the dealer-operator course by March 9, 2014. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Ms. Lewis by the Board until such time Ms. Lewis has successfully completed the course.

George Pelton seconded. The motion carried unanimously.

- **Jim's Used Cars and James S. Crewey.** Tommy Woodson 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 Jim's Used Cars and James S. Crewey for alleged violations of VA Code Sections 46.2-1539, 46.2-1550 and 46.2-1575(2); Based on due consideration, the Board believes a civil penalty should be assessed against Jim's Used Cars and James S. Crewey. The Board hereby assesses a \$5,000 civil penalty against Jim's Used Cars and James S. Crewey; and based on due consideration, the Board believes that Mr.

Crewey's dealership should be re-inspected and that the inspection must be satisfactory and that all licenses and certificates issued by the Board to Mr. Crewey should be suspended until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative. The Board hereby mandates that a Motor Vehicle Dealer Board field representative re-inspect Mr. Crewey's dealership and if the inspection is not satisfactory the Board suspends all licenses and certificates issued by the Board to Mr. Crewey until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative. Based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Crewey in running his dealership. The Board mandates that Mr. Crewey successfully complete the dealer-operator course by March 9, 2014. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Mr. Crewey by the Board until what time Mr. Crewey has successfully completed the course.

Lynn Hooper seconded. The motion carried unanimously.

- **Aberdeen Auto Brokers, LLC and Johnnie Ray Barnes.** Tommy Woodson 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 Aberdeen Auto Brokers, LLC and Johnnie Ray Barnes for alleged violations of VA Code Sections 46.2-1529, 46.2-1539, 46.2-1548, 46.2-1550, 46.2-1550(2), 46.2-1559, 46.2-1575(2), 1575(10) and 1575(14). Based on due consideration, the Board believes civil penalty should be assessed against Aberdeen Auto Brokers, LLC and Johnnie Ray Barnes. The Board hereby assesses a \$5,500 civil penalty against Aberdeen Auto Brokers, LLC and Johnnie Ray Barnes; and based on due consideration, the Board believes that Mr. Barnes' dealership should be re-inspected and that the inspection must be satisfactory and that all licenses and certificates issued by the Board to Mr. Barnes should be suspended until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative. The Board hereby mandates that a Motor Vehicle Dealer Board field representative re-inspect Mr. Barnes dealership and if the inspection is not satisfactory the Board suspends all licenses and certificates issued by the Board to Mr. Barnes until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative.

Joe Tate seconded. The motion carried unanimously.

- **Little Man's Auto, Inc. and Charles R. Mullins.** Lynn Hooper made a motion to table this issue to the November meeting to give Mr. Mullins the opportunity to correct some issues that were made prior to him taking over the business from his Father.

Joe Tate seconded. The motion carried unanimously.

Licensing Committee

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

- **Ahmad Z. Abassi, Salesperson Applicant.** Joe Tate made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Ahmad Z. Abassi for alleged violations of VA Code Sections 46.2-1575 (6), (8) and (13). Based on due consideration, the Board believes Mr. Abassi's license application should be approved. The Board hereby approves Ahmad Z. Abassi's application for a salesperson license.

Art Hudgins seconded. The motion carried unanimously.

- **Samad Jafari, United Imports Company, Ltd.** Joe Tate made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Samad Jafari, United Import Co., Inc for alleged violations of VA Code Sections 46.2-1575 (1) and (9). Based on due consideration, the Board believes that all licenses and certificates issued by the Board to Mr. Jafari should be revoked. The Board hereby revokes all licenses and certificates issued by the Board to Mr. Jafari.

Tommy Woodson seconded. The motion carried unanimously.

Advertising Committee

Full Board Vice-Chairman Lynn Hooper summarized discussions that were held during the Committee Meeting.

Transaction Recovery Fund Committee

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

- **Kenneth & Sarah Honeycutt & Select Auto Sales and Senovia G. Bryant and Auto Depot, Inc.** Chairman Lynn Hooper summarized for the Board the discussion held in the committee meeting regarding Kenneth & Sarah Honeycutt and Select Auto Sales and Senovia G. Bryant and Auto Depot, Inc. Based on that discussion and the recommendations in this case, Mr. Hooper made the following motion: Pursuant to VA Code Section 46.2-1527.1 et. seq. of the Code of Virginia, which is known as the Motor Vehicle Transaction Recovery Fund ("Fund"), the Board has reviewed and considered the claims submitted for payment from the Fund and based on due consideration and recommendation of the hearing officer, the Board believes the following claim should be payable from the Fund:

Kenneth & Sarah Honeycutt and Select Auto Sales	\$12,000.00
Senovia G. Bryant and Auto Depot, Inc.	\$7,559.00

Joe Tate seconded. The motion carried unanimously.

OLD BUSINESS

2014 Legislative Proposals. Bruce Gould indicated that per the Board's direction an omnibus legislative proposal with 6 different features has been prepared and submitted to the Office of the Secretary of Transportation: 1) Transfer the registration of out-of-state dealers who sell vehicles at Virginia wholesale auctions from DMV to MVDB; 2) MVDB Board Composition – remove Agriculture and Consumer Services (VDACS) member and add a second citizen/consumer member. VDACS no longer handles consumer complaints. This function was moved to the Office of the Attorney General; 3) Transaction Recover Fund – Increase fee for new dealers and foreign Registrants. The current fees have not been adjusted since the TRF was established in the mid 1980s. The current fee for new dealers is \$250 per year for three years. The proposal adjusts that fee to \$350; 4) The Code sets the maximum fees the Board may charge for most licenses and certificates. The Board must promulgate regulations to set the actual fees. This process usually takes about 18 months. The proposal would exempt the Board from the requirement to promulgate fee regulations; 5) Fees for

dealer licenses and certificates – increase upper limits; and 6) Require that a licensed salesperson be on-duty during a dealers' business hours. Part of the process is to ask impartial agencies and constituents for opinion, letters were sent to DMV, Agriculture and Consumer Services, VADA and VIADA. No objections so far, VADA questioned if it would be possible to appoint someone from Consumer Office at AG's Office – research indicates that since the Attorney General is elected and they are our legal counsel, this might not be possible. Asked the Attorney General if proposal is constitutional and "legal" and answer was yes. Package with justification was sent to Secretary's.

Strasburg Issue. Rick Holcomb indicated that he would like for Bruce and the trade associations to discuss and look into the on-going problems with Strasburg and to come up with a solution. General discussion followed.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

There was no new business.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

Executive Director's Report. Bruce Gould indicated that the Board appointments have not been completed. He will be attending the meeting of his peers in Baltimore. The per diem is above allowed; however, there were no objections. The vacant field representative position has been advertised and over 100 applications have been received. Virtual servers are still a work in progress. The office automated systems are being upgraded as well. Constant Contact is being used for e-mail notices and Dealer Talk going out to the dealer community via e-mail. The Internet Task Force will be organized soon.

The next meeting will be scheduled for November 4, 2013.

There being no further business to come before the Motor Vehicle Dealer Board, Chairman Holcomb adjourned the meeting at 12:43 p.m.

Meeting Summary
Dealer Practices Committee
Monday, September 9, 2013

Chairman Tommy Woodson called the Dealer Practices Committee meeting to order at 9:00 a.m. in Room 702 of the DMV Headquarters Building at 2300 W. Broad Street in Richmond. Present were Committee members Ted Bailey, Thomas Moorehead and Joe Tate. **A quorum was not present; therefore, only a consensus could be made on the issues on the agenda.** (Absent: Ron Kody, Chip Lindsay, Matt McQueen, Kevin Reilly, Jimmy Whitten, Rodney Williams and Sally Woodson). Other Board members present: Andy Alvarez, Art Hudgins, Brian Hutchens, Roy Boswell, Rick Holcomb, Lynn Hooper, Wanda Lewark, George Pelton. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Ann Majors, Frank McCormick and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The July 8, 2013 meeting summary could not be approved, due to the fact that a quorum was not present. The summary will be presented at the November 4, 2013 meeting.

PUBLIC COMMENT

There was no public comment.

Hearing Officer Changes. Per the request of the Board at its July meeting, Board staff developed a Hearing Officer Report template. Carmen Batiste and Bruce Gould presented this template for the hearing officer's to use when producing their Informal Fact-Finding Conference and Formal Hearing reports.

OLD BUSINESS

- **Reconsideration: Blue Ridge Auto Sales, Inc. and Abdul A. Nahibkhil.** At the July 8, 2013 Full Board meeting, the Members reviewed and considered the facts and evidence and the report of a formal hearing that was conducted on June 18, 2013. Based on the evidence, the Board assessed a civil penalty of \$8,000, required that a satisfactory inspection be conducted and that all licenses and certificates issued by the Board to Mr. Nahibkhil be suspended until such time a satisfactory inspection had been conducted and it was also mandated that Mr. Nahibkhil successfully complete the dealer-operator course by January 8, 2014. Failure to successfully complete the course by this date would result in a suspension of all licenses and certificates issued to Mr. Nahibkhil by the Board.

On August 15, 2013, Bill Lehner, counsel for Mr. Nahibkil, filed a Notice of Appeal to the Circuit Court in order to stay within the administrative proceeding; however, he indicated that he did not represent Mr. Nahibkhil at the formal hearing and was not obtained until shortly after the July meeting. The dealer had planned to present his explanations and appear before the Board at the July meeting; however, he was detained in Roanoke and could not get to the meeting. Mr. Lehner has reviewed the dealer's explanations and he believes they have merit and is of the opinion that the Board would have acted differently in setting the penalties had the dealer been able to get to the Board meeting and be heard. Therefore, Mr. Lehner has asked the Board to reconsider its decision.

Bill Lehner, attorney for Mr. Nahibkhil, and Mr. Nahikbil were present and Mr. Lehner spoke on behalf of his client. Mr. Nahibkhil responded to questions posed by the members.

Consensus: Recommendation would be a satisfactory re-inspection within 60 to 90 days, to complete the 2 day Dealer-Operator course within 45 days and possible reduction of the civil penalty. Should the dealer fail the inspection, immediate suspension of all licenses.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conferences:

- **U Wanna Car and Maurice Jennings.** On June 27, 2013, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1510 (Established place of business), 46.2-1529 (Dealer Records), 46.2-1532 (Odometer disclosure statements), 46.2-1548 (Transferable license plate), 46.2-1550 (Use of dealer plates). Based on the information provided at the conference, the hearing officer recommended assessing a civil penalty of \$1,250 and all licenses and certificates of dealer qualification be suspended until the civil penalty is paid. He also recommended that the dealership be satisfactorily inspected as soon possible.

Matthew J. Ling, attorney for Mr. Jennings and Mr. Jennings were present and Mr. Ling spoke on behalf of his client. Mr. Jennings spoke on his own behalf as well.

Consensus: To accept the hearing officer's recommendation.

- **The Boulevard Car Lot and Brenda Lewis.** On June 11, 2013, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1528 (Examination or audit of licensee; costs), 46.2-1529 (Dealer records) and 46.2-1575(2) (Any willful failure to comply with a written warning). Based on the information provided at the conference, the hearing officer recommended assessing a civil penalty of \$4,000, her dealership should be re-inspected and be billed for the cost of the inspection and that Ms. Lewis should be required to successfully complete the Dealer-Operator Course.

Consensus: To vote in Full Board on what action to take.

- **Jim's Used Cars and James S. Crewey.** On June 21, 2013, an informal fact-finding conference was conducted to address the alleged violations VA Code Sections 46.2-1539 (Inspection of vehicles required), 46.2-1550 (Use of dealer's license plates) and 46.2-1575(2) (Failure to comply with a written warning). Based on the information provided at the conference, the hearing officer recommended assessing a civil penalty of \$5,000, the dealership be re-inspected at the Board's discretion and that Mr. Crewey should be required to successfully complete the Dealer-Operatory Course.

Consensus: To accept the hearing officer's recommendation.

- **Aberdeen Auto Brokers, LLC and Johnnie Ray Barnes.** On August 12, 2013, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1529 (Dealer records), 46.2-1539 (Inspection of vehicles required), 46.2-1548 (Transferable license plates), 46.2-1550 (Use of D-tags), 46.2-1550(2) (Transport tag record of use and issuance), 46.2-1559 (Records to be kept by dealers for inspection), 46.2-1575(2) (Failure to comply with written warning), 1575(10) (Possessing titles which have not been completely and legally assigned to dealer) and 1575(14) (Failure to submit fees to DMV within 30 days). Based on the information provided at the conference, the hearing officer recommended assessing a civil penalty of \$5,500, all licenses and certificates be revoked and suspend sales staff that are currently employed at Auto Depot and that they should be called in to a conference regarding their practices while employed at Aberdeen Auto Brokers.

Consensus: To accept the hearing officer's recommendation.

- **Little Man's Auto, Inc. and Charles R. Mullins.** On June 20, 2013, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1530 (Buyers Order), 1530 (8) (The amount of any sales and use tax, title fee, uninsured motor vehicle fee...or any other fee required by law for which the buyer is responsible that the dealer has collected. 1530 (9) (The net balance due at settlement), 46.2-1539 (Inspection of vehicles required), 46.2-1542 (Temporary registration) and 46.2-1575 (2) (Willful failure to comply with a written warning). Based on the information provided at the conference, the hearing officer recommended revocation of all licenses and qualifications issued to Mr. Mullins and Little Man's Auto, Inc. and assess a civil penalty of \$13,000.

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

Consensus: To possibly table this issue to the November meeting. Discuss more in Full Board.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for November 4, 2013

The meeting adjourned at 10:57 a.m.

**Meeting Summary
Dealer Licensing Committee
Monday, September 9, 2013**

Vice-Chairman Joe Tate called the Dealer Licensing Committee meeting to order at 10:57 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members Andy Alvarez, Roy Boswell, Art Hudgins, Brian Hutchens and Wanda Lewark. (Absent: Jimmy Whitten and Sally Woodson) Other Board members present: Ted Bailey, George Pelton, Thomas Moorehead, Rick Holcomb, Lynn Hooper, Tommy Woodson. Executive Director Bruce Gould, Frank McCormick, Peggy Bailey, Prin Cowan, Ann Majors and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The July 8, 2013 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR:

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conferences:

- **Ahmad Z. Abbasi, Salesperson Applicant.** On June 27, 2013, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1575 (6) (Deceptive acts or practices), (8) (Having been convicted of any fraudulent act in connection with the business of selling vehicles) and (13) (Having been convicted of a felony). Based on the information provided at the conference, the hearing officer recommended issuing Mr. Abbasi a salesperson's license.

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

Motion was made by Wanda Lewark to accept the hearing officer's recommendation to issue Mr. Abbasi a salesperson's license. Art Hudgins seconded. The motion carried unanimously.

- **Samad Jafari, United Import Co., Inc.** On June 13, 2013, an informal fact-finding conference was conducted to address the alleged violations of 46.2-1574 (Acts of officer, directors, partners and salesperson, 46.2-1575 (6) (Deceptive acts or practices), 1575 (8) (having been convicted of any fraudulent acts in connection with the business of selling motor vehicles), 1575 (9) (having been convicted of any criminal act involving the business of selling motor vehicles and 1575 (13) (having been convicted of a felony). Based on the information provided at the conference, the hearing officer recommended that Mr. Jafari have his license and qualifications to sell vehicles in the Commonwealth of Virginia revoked.

John Russell, attorney for Mr. Jafari, spoke on behalf of his client.

Motion was made by Wanda Lewark to revoke all licenses. 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 November 4, 2013.

The meeting adjourned at 11:08 a.m.

Meeting Summary
Advertising Committee
Monday, September 9, 2013

Full Board Vice-Chairman Lynn Hooper called the Advertising Committee meeting to order at 11:09 a.m. in Room 702 of the DMV Headquarters, 2300 West Broad Street, Richmond, Virginia. Present were Committee members Andy Alvarez, George Pelton and Tommy Woodson. **A quorum was not present.** (Absent: Ron Kody, Chip Lindsay, Matt McQueen, Kevin Reilly, Rodney Williams and Sally Woodson). Other Board members present: Art Hudgins, Brian Hutchens, Roy Boswell, Rick Holcomb, Thomas Moorehead, Joe Tate, Wanda Lewark and Ted Bailey. Executive Director Bruce Gould, Peggy Bailey, Frank McCormick, Prin Cowan, Ann Majors and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The July 8, 2013 meeting summary could not be approved due to the fact that a quorum was not present. The summary will be presented at the November Board meeting.

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 November 4, 2013.

NEW BUSINESS FROM THE FLOOR

The meeting adjourned at 11:09 a.m.

Meeting Summary
Transaction Recovery Fund Committee
Monday, September 9, 2013

Chairman Lynn Hooper 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: Andy Alvarez, Ted Bailey, Roy Boswell, Art Hudgins, Brian Hutchens and Thomas Moorehead. (Absent: Matt McQueen, Kevin Reilly). Other Board members present: Tommy Woodson, Rick Holcomb, Joe Tate, Wanda Lewark and George Pelton. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Frank McCormick, Ann Majors and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The July 8, 2013 summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

Tabled Issue from the July 8, 2013 Board meeting:

- **Kenneth & Sarah Honeycutt and Select Auto Sales.** In October, 2011 Sarah Honeycutt contacted Marcus Kline by telephone to discuss the purchase of an automobile. Marcus Kline, a licensed salesperson for Select Auto Sales recommended that Sarah Honeycutt purchase a 2004 Mazda RX8 from Select Auto Sales. Marcus Kline informed Sarah Honeycutt that Select Auto Sales had the vehicle since July, 2011, that it had no problems, and that the vehicle ran great. Because Sarah Honeycutt was in Virginia Beach she indicated that she would rely on his representations that the vehicle was in good working condition. Select Auto Sales and Sarah Honeycutt agreed to a purchase price of \$11,995.00 on the vehicle. In connection with the purchase Ms. Honeycutt traded-in a 1995 Ford Mustang and was given an allowance of \$5,000.00 towards the purchase.

On November 3, 2011, Kenneth Honeycutt; co-purchaser of the vehicle, travelled to Select Auto Sales and signed the Buyer's Order for the purchase. Mr. Honeycutt paid Select Auto Sales the balance due (\$7,376.80) with proceeds from a loan through Mosiac Federal Credit Union. Mr. Honeycutt was not provided with a Buyer's Guide disclosing the status of the warranty and there was no Buyer's Guide posted on the vehicle. Marcus Kline, the salesperson for Select Auto Sales delivered the vehicle to Sarah Honeycutt in Richmond, Virginia on November 3, 2011. At the time of delivery, Marcus Kline and Sarah Honeycutt signed the Buyer's Order for the purchase and Sarah Honeycutt delivered the 1995 Ford Mustang (as her trade-in) to Marcus Kline. Sarah Honeycutt was not provided with a Buyer's Guide disclosing the status of the warranty for the vehicle and there was no Buyer's Guide in or on the vehicle.

On Saturday, November 5, 2011 the “Check Engine Light” came on the vehicle. The following day, Sarah Honeycutt took the vehicle to AutoZone to have the engine light diagnosed. AutoZone indicated that there was a problem with the catalytic converter. On Monday, November 7, 2011 Sarah Honeycutt reported the problem to Marcus Kline, the salesperson for Select Auto Sales. At which time, Marcus Kline told her to take the vehicle to a Mazda dealership. Sarah Honeycutt took the vehicle to Cavalier Mazda in Chesapeake, Virginia to have the problem diagnosed. Cavalier Mazda told her that there was a problem with the catalytic converter and that the engine problems would have been obvious to any mechanic that started the vehicle. (Sarah Honeycutt paid \$100.00 for the diagnosis). On November 26, 2011, Ken and Sarah Honeycutt purchased a catalytic converter for \$292.00 and had it installed at a cost of \$50.00. However, this did not fix the problem. Sarah Honeycutt then paid \$130.00 to have the vehicle towed to Treadquarters in Virginia Beach to have the vehicle examined. Treadquarters diagnosed multiple engine problems with the vehicle and performed a tune up at a cost of \$250.00; however this did not fix the problems. Treadquarters estimated that it would cost approximately \$5,000.00 to repair the vehicle. After learning the multiple engine problems, Sarah Honeycutt reported the problems with the vehicle to the salesperson, Marcus Kline who did not take any action.

Kenneth Honeycutt drove to Select Auto Sales and requested copies of their files regarding the vehicle. Select Auto Sales provided Mr. Honeycutt a copy of the file which included a Buyer’s Guide, which indicated the vehicle, was marked “As Is-No Warranty”. The Buyer’s Guide was signed “Sarah Honeycutt” dated November 3, 2011. However, it is believed that an agent for Select Auto Sales forged Sarah Honeycutt’s name. Kenneth and Sarah Honeycutt unsuccessfully attempted to resolve the problems with the vehicle, in which Select Auto Sales refused to pay for repairs or to refund the purchase price in exchange for the return of the vehicle. The vehicle is inoperable and is stored at Treadquarters in Virginia Beach.

On March 27, 2012, Kenneth and Sarah Honeycutt filed suit against GE Tolliver Enterprises, LLC and Marcus Kline in the Rockingham General District Court for actual and punitive damages for actual/constructive fraud, willful violations of Va. Consumer Protection Act and breach of contract. On September 11, 2012, the Rockingham General District Court awarded Kenneth and Sarah Honeycutt judgment against GE Tolliver Enterprises, LLC and Marcus Kline in the amount of \$25,000.00, plus \$70 in costs and \$6,298.00 in attorney fees. After trial Select Auto Sales’ owner Gary Tolliver, promised that he would pay the judgment if he were given time to refinance his real estate. The Honeycutt’s agreed to postpone the scheduled debtor’s interrogatories in order to give Mr. Tolliver time to make payment and to deal with his health problems. Marcus Kline’s interrogatories was conducted in November, 2012 and Mr. Tolliver’s interrogatories was conducted in January, 2013, at which time he informed the Honeycutt’s that he was unable to satisfy the judgment. On March 8, 2013, Grant Penrod, for the Honeycutt’s submitted to the Dealer Board documentation for consideration of payment from the Motor Vehicle Transaction Recovery Fund (Fund).

On March 14, 2013, the Dealer Board staff acknowledged receipt of the Honeycutt’s possible claim against the Fund and requested additional documentation regarding their claim. On April 9, 2013, Mr. Penrod, on behalf of the Honeycutt’s, submitted a letter with the requested documentation regarding his client’s claim against the Fund. In counsel letter, he indicated that the Honeycutt’s and Marcus Kline have reached a settlement. The Honeycutt’s and Mr. Kline agreed that he would pay them \$10,000, representing the punitive damages portion of the judgment and the additional attorney fees incurred by the Honeycutt’s, in exchange for Kline being released from the judgment and pursue the remaining claim against GE Tolliver Enterprises, LLC t/a Select Auto Sales against the Fund. In support of the claim, Mr. Honeycutt’s affidavit reflects his out-of-pocket expenses in connection with the vehicle purchase is \$13,079.41.

On May 16, 2013 the Dealer Board received "Notice of Chapter 7, Bankruptcy Case, Meeting of Creditors regarding GE Tolliver Enterprises, LLC t/a Select Auto Sales. The Dealer Board staff contacted Mr. Penrod to inquire if he had been notified of Gary Tolliver's bankruptcy. On May 20, 2013, Mr. Penrod submitted a letter to the Dealer Board that he had communicated with the bankruptcy trustee, William Callahan and confirmed that Gary Tolliver's bankruptcy does not affect his client's collection against GE Tolliver Enterprises, LLC because the LLC did not file for the bankruptcy. Counsel enclosed copies of the emails to and from Mr. Callahan. In addition, Mr. Penrod provided copies of the Garnishment Disposition and the Notice of Satisfaction of judgment as to Marcus Kline only.

Even though, counsel did not provide prior notification, pursuant to §46.2-1527.4, after carefully reviewing all the documentation, board staff believes the Honeycutt's claim meets the criteria for payment from the Fund. Further, pursuant to Va. Code §46.2-1527.5, which states that the maximum claim of one judgment creditor against the Fund based on an unpaid final judgment arising out of any loss or damage by reason of a claim submitted under §46.2-1527.2 or §46.2-1527.3 involving a single transaction shall be limited to \$25,000.00 regardless of the amount of the unpaid final judgment of one judgment creditor. Therefore, given the facts and code sections governing the Fund, the Dealer Board staff is recommending that the Recovery Fund Committee and Full Board approve the Honeycutt's claim against the Fund in the amount of \$18,368.00, this amount is based on the judgment award of \$25,000.00 minus \$10,000 punitive damages paid by Kline, the attorney fees of \$6,298, costs of \$70.00 and minus \$3,000 received in the sale of the vehicle. [\$25,000 - \$10,000 = \$15,000 +\$6,298 + \$70 = \$21,368 minus \$3000 = \$18,368]

On June 24, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended payment from the fund in the amount of \$18,368.00. The members discussed the issue of counsel not providing prior notification, pursuant to §46.2-1527.4.

Grant Penrod, attorney for Mr. and Mrs. Honeycutt, was present and spoke on behalf of his clients. He agrees with the staff recommendation of \$18,368.00 from the Fund.

Eric Fiske spoke on his research of this case. In his findings, the maximum allowed from the Fund is \$25,000. A salesperson agreed to pay the Honeycutt's \$10,000, which leaves a balance of \$15,000. Then the Honeycutts sold the vehicle for \$3,000, which now leaves a balance of \$12,000, which is compensatory from the Fund.

Motion was made by Lynn Hooper to pay \$12,000.00 from the Fund to the Honeycutts. Brian Hutchens seconded. The motion carried unanimously.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conference Results:

- **Senovia G. Bryant and Auto Depot, Inc.** On September 2, 2010, Senovia Bryant entered into a contract with Auto Depot, Inc. for the purchase of a 2005 Cadillac Escalade with a base price of \$15,980.00 plus a \$199.00 processing fee making the total vehicle price of \$16,179.00. As part of the purchase, Senovia Bryant made a down payment of \$8,000.00, traded-in a 2003 Ford Explorer and was given a gross allowance of \$3,500.00, with a balance owed of \$5,023.30 leaving the net trade-in of minus \$4,523.30 for a total purchase price of \$20,702.30. On September 10, 2010, Auto Depot

advised Ms. Bryant that the financing for the purchase of the vehicle had not been approved and that she needed to sign a new contract with different terms, when the actual contract allowed a cancellation of the purchase and contract. On September 24, 2010, Ms. Bryant signed a second contract with Auto Depot to purchase the 2005 Cadillac Escalade. Ms. Bryant made an additional \$6,000.00 down payment for a total payment of \$14,000.00 on the second contract.

Auto Depot financed the remaining balance of the purchase of the 2005 Cadillac with Ms. Bryant. As part of the sales transaction, Ms. Bryant purchased an extended warranty for \$1,486.25 and Ms. Bryant received a "We Owe" certificate from Auto Depot for a front grill and floor mats for the vehicle and \$15.00 gas money.

On September 27, 2010 through October 8, 2010, Ms. Bryant returned to Auto Depot to have the "We Owe" items accomplished. Auto Depot advised Ms. Bryant they would contact her when the repairs could be done. Auto Depot never accomplished the repairs and she returned to her home in New York. On October 6, 2010, Ms. Bryant received notification that her Installment Sales Contract, had been sold by Auto Depot to Automotive Services Finance, Inc. From the moment of the assignment of the sale of the contract, Auto Depot had no legal interest in Ms. Bryant's vehicle. On December 19, 2010, two men claiming to be "The Marshalls" arrived at Ms. Bryant residence to repossess her vehicle at the unlawful direction of Auto Depot. The men stated that she would not have to pay a towing fee if she gave them the keys to the vehicle. She gave them the keys and the men took possession of her vehicle. On December 20, 2010, Ms. Bryant contacted Auto Depot and was advised that she had to pay more than \$8,000.00 to have her vehicle returned in addition to fees and costs of repossession.

On December 21, 2010, Ms. Bryant mailed Auto Depot a certified bank check in the amount of \$10,000.00 to cover all expenses for her vehicle. Initially, Auto Depot refused to tell Ms. Bryant where her vehicle was located until December 31, 2010, in which they advised her that the vehicle was being held by Get It Back Recovery, LLC in Brooklyn, New York. Ms. Bryant went to Get It Back Recovery, LLC and was advised that she had to pay an additional \$1,715.00 to the business in order to obtain the vehicle, even though she had already paid all the fees to Auto Depot. Ms. Bryant complied and then found that her vehicle was inoperable and had to have the vehicle towed to her residence. In January, 2011, Ms. Bryant discovered that her transmission was inoperable and took the vehicle to a dealership for repair under her warranty. She was advised that Auto Depot had never paid the warranty company. Ms. Bryant was forced to pay \$1,802.31 out of pocket for the repair in spite of having paid Auto Depot for an extended warranty.

In March, 2011, Ms. Bryant was stopped by the police during a routine traffic stop and the officer informed her that the license plates on her vehicle were still registered to the vehicle she had traded-in to Auto Depot when she purchased the 2005 Cadillac Escalade. On April 29, 2011, Ms. Bryant paid the Virginia Department of Motor Vehicles \$581.12 to register and title her vehicle, in spite of having paid the dealer for the same service as part of the purchase price. Ms. Bryant then sought legal counsel in order to pursue Auto Depot civilly in court for her monetary loss.

On June 19, 2012, Gary Abbott, attorney for Senovia Bryant filed a "Warrant in Debt" in the General District Court for the City of Norfolk against Auto Depot. On August 10, 2012, Robert G. Byrum, Esquire sent a letter to Gary Abbott, Esquire advising him that he had been retained to represent Auto Depot and requested the pleadings in this matter in advance as he was previously scheduled to be in Suffolk on a contested case on August 20, 2012. On November 14, 2012, the General District Court for the City of Norfolk awarded Senovia Bryant judgment against Auto Depot for multiple violations (breach of contract, willful violations of the Virginia Consumer Protection Act and fraud during the

course of the consumer transaction). The Court awarded judgment for a total award of \$18,000.00 which included [actual damages of \$6,000.00 and \$12,000.00 in punitive damages], plus \$59.00 in costs and attorney fees in the amount of \$1,500.00.

On June 20, 2013, Robin Abbott, on behalf of Senovia Bryant, submitted to the Dealer Board documentation for consideration of reimbursement for her client's claim against the Motor Vehicle Transaction Recovery Fund (Fund). On June 25, 2013, the Dealer Board staff acknowledged receipt of Senovia Bryant's possible claim against the Fund. Pursuant to § 46.2-1427.4, the Dealer Board did not receive any prior notification of the claim however, pursuant the Va. Code §46.2-1527.3, judgment was awarded in the Commonwealth of Virginia.

After carefully reviewing all the documentation, staff believes that Ms. Bryant's claim meets the criteria for payment from the Fund in the amount of \$7,559.00, which is based on the actual damages in the amount of \$6,000.00, costs in the amount of \$59.00 and attorney fees in the amount of \$1,500.00.

On June 24, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended payment from the fund in the amount of \$7,559.00. The members discussed the issue of counsel not providing prior notification, pursuant to §46.2-1527.4.

Motion was made by Andy Alvarez to accept the hearing officer's recommendation. Art Hudgins seconded. The motion carried unanimously.

NEW BUSINESS FROM THE FLOOR

The next meeting was scheduled for November 4, 2013.

The meeting adjourned at 11:37 a.m.