

**MOTOR VEHICLE DEALER BOARD
MINUTES
January 15, 2009**

The regular meeting of the Dealer Board was held at the Department of Revenue offices, Lakewood, Colorado. The following persons were present:

BOARD MEMBERS:

Jeff Carlson
Robert Feder
Philip Harris
Jim Reitz
Eva Wilson
Jim Varner

MEMBERS ABSENT:

John Medved
Lisa Schomp

**DEPT OF REVENUE,
SENIOR DIRECTOR OF ENFORCEMENT**

Matt Cook

EXECUTIVE SECRETARY:

Bruce Zulauf

LEGAL ASSISTANT:

Leland BeBee

**DEPT OF REVENUE,
AID, ENFORCEMENT
DIVISION STAFF**

Gloria Breeden
Sherry Colborg
Eric Hartsough
Bud Heinrich
Margaret Jungmann
Joe Kelley
Kaye Kopecky
Chris Rouze
Jerry Smith

ATTORNEY GENERAL'S OFFICE:

Claudia Brett Goldin
Brendon Reese

BUDGET OFFICE:

Curtis Tremble
Jill Vaughan

VISITORS:

Dave Cooper
Frances Garza
Connie Hatch
John Kronenberger, CIADA
Mary Marvin
Michael Massa
Tammy McCoy, CADA
Kenneth Reiner
Teresea Sena

OPENING STATEMENT:

President Jeff Carlson opened the January 15, 2009, 9:10 a.m., regular Motor Vehicle Dealer Board meeting. A change was made to the Business Agenda. Mr. Tremble and Ms. Vaughn were moved to a later time in the agenda.

MINUTES:

The minutes of the December 11, 2008 meeting were unanimously approved by five of the board members. Mr. Reitz abstained as he did not attend the December meeting.

EXECUTIVE SECRETARY: Board Procedures Update

Mr. Zulauf updated the board on board procedures. He noted that one issue that remained was to get legal expenses under control as they have been high. This has been due to the changes in AG representation. He stated that just prior to the transition period there was a backlog in cases that were as old as 1.5 years. Mr. Zulauf has been working with Ms. Goldin on this problem. Ms. Goldin acquired additional staff to catch up on these cases. They are very close to being caught up and have done an excellent job, but as a result the division has incurred additional legal expenses. That being said, the division has been discussing moving toward negotiating some of these cases in house.

Mr. Cook has been encouraging the Executive Secretary to move toward negotiating stipulations in house, prior to sending a case to a hearing. The board would of course have final authority. Mr. Zulauf distributed part of the new regulations (3 page document) that cover the division's right to review cases in house. Regulation 12-6-104 (4) was a former interpretive rule that was effective 1/1/08. Mr. Zulauf reviewed the regulation, in particular page two, paragraph 5 regarding the things that the board can do when a division brings an affidavit. In particular the board can direct the Executive Secretary to execute stipulated dispositions. He noted that we have the internal expertise to negotiate some of these cases, which can help to speed up the process, prevent us from getting backlogged and save on legal costs. Mr. Zulauf referred to the updated statutes and new regulations that are now posted on the division website. Copies will be distributed at the next meeting.

As a result, when Investigations presents cases with affidavits of probable cause, there will be a recommendation to direct the Executive Secretary to enter into negotiated stipulations, on some cases. Mr. Zulauf mentioned that the division has taken upon itself to begin negotiations on a few cases. The AG's office has assisted with these initial cases, in particular offering guidance with some of the language.

In addition, the matrix that was adopted a year ago will be presented in February, with some recommended revisions. From that point forward the matrix will be the basis for the division's negotiations.

Ms. Wilson expressed concerns regarding the timing of the negotiations. There was discussion about how long negotiations have taken in the past and what reasonable time frames could be for future negotiations. The general discussion centered on a 90 day time period being acceptable. It was decided that this is something that could be addressed in the matrix.

ATTORNEY GENERAL'S OFFICE:

AG Claudia Goldin introduced AG Brendon Reese. Mr. Reese will be assuming responsibility of General Counsel for the Board. AG's office is currently working on this transition. The AG's office will be working with Mr. Zulauf to provide template stipulations and procedures to assist the division to work on settlements without crossing the line into "practice of law."

Stipulations:

- **Masters Collection, #2248** - Motion was unanimous to let the stipulation stand.

Ms. Wilson expressed concern regarding how long a case is open and pending, in particular this case. Ms. Goldin announced a tracking system that they are instituting to track how long a case is open and active, and in the AG's office without being filed and litigated. This will help to keep closer track of cases so as to prevent this situation in the future.

With regards to Masters Collection, Mr. Carlson urged that correspondence be sent clarifying that the board is not the venue for compensatory action; however, the board did take action on the license as required. Ms. Goldin stated they will coordinate with the division.

- **Holiday RV, #8649 and Holiday RV South, #37920** - Ms. Goldin recommended that the Board go into Executive Session for attorney client advice.
- **Richland Auto Plaza, #6567** – Proposed stipulation - Surrender of license. Unanimous to accept the proposed stipulation.
- **Gabino Nieto, #153026** – A motion was made to accept stipulation granting a restricted Salesperson license. Ms. Wilson was not in favor of the stipulation due to paragraph three being too broad and it should therefore be entirely stricken. Mr. Zulauf explained that the intent of paragraph three (because we went over the 30 days, the hearing officer decision stands) was that one year from now, when Mr. Nieto renews, the board cannot take the same action on *this single charge*. Ms. Goldin noted that the second sentence does allow it to be considered if he has any other criminal charges. The Nieto case was tabled for Executive Session discussion.
- **Ricky Bailey, #29713** - Remanded to Executive Session
- **R & L Auto Sales #38870** – Motion to accept stipulation to dismiss case and flag the record with a board hold in case of re-application. The motion was unanimous.
- **Aspen Shine, Inc. #4589** – A motion was made to accept stipulation to dismiss case and flag the record with a board hold in case of re-application. The motion was unanimous.
- **LPS Auto Sales #37056** – Motion to accept stipulation. The motion passed 5-1.

Ms. Wilson requested that the original notices be provided in the future. Ms. Goldin noted that they will be provided going forward.

10: 05 a.m. - Mr. Varner moved that the board enter into Executive Session, pursuant to C.R.S. 24-6-402(3)(a)(II), and C.R.S. 24-6-402 (3)(a)(III), to discuss with Counsel:

Holiday RV, #8649

Holiday RV South, #37920

Gabino Nieto, #153026

Ricky Bailey, #29713

The motion to move into Executive Session was unanimous.

10:45 a.m. - The regular Dealer Board meeting resumed.

- **Holiday RV South, #37920** – Motion to ratify the interim stipulation Approved unanimously.
- **Holiday RV, #8649** – Motion to give guidance to AG on this case and the Holiday RV South case. Approved unanimously.
- **Gabino Nieto, #153026** – Motion to send stipulation back to the AG’s office for reconfiguration and to review for jurisdictional issues; and to allow Mr. Zulauf to sign a revised stipulation and to clear the prior motions. The motion passed unanimously.
- **Ricky Bailey, #29713** – Motion to not approve the stipulation and referred back to the AG’s office to explore the jurisdictional issues, rework the stipulation in accordance with their advice and to allow Mr. Zulauf to sign any stipulation that is brought forward by the AG’s office. Approved unanimously.

EXECUTIVE SECRETARY’S REPORT:

(11:00 a.m.)

Mr. Zulauf presented:

Case Status Report – This was a joint effort between AG’s office, Mr. Bebee, investigations, and licensing. The report is getting closer to being caught up. Recommendation was made by Mr. Carlson to add an aging of the days a case has been in our office.

Spreadsheet of Cases Referred to Hearing Officer, ALJ and Board – Mr. Bebee works on this report during the month. One case may be missing, the report to be updated next time.

Fines Imposed and Received Log – Ms. Rouze is in charge of this report. It is updated monthly. The Board reviewed the LPS stipulation and agreed that the fine that was imposed is collectable and will be added to this report in that manner.

Mr. Zulauf reported that Mr. Heinrich, Mr. Bebee, and Ms. Rouze met with Central Collections recently to review mechanisms for collection efforts. Particularly discussed were those items that had been thought to not be collectible; however which may now be turned over to such agencies that are charged with collections.

Mr. Zulauf announced that items 4-8 are new initial decisions, all within the 30 day window, and therefore he would be asking for a motion to “Reserve Right to Review.”

11:06 a.m. - Mr. Brendon Reese recused himself as he had been the attorney that handled these matters.

- **Donald B. Crisp #21639** – Reserve Right to Review, unanimously approved.
- **Cary Jay Wentz #34256** - Reserve Right to Review, unanimously approved.
- **Hector Oliver Vargas #173097** - Reserve Right to Review, unanimously approved.
- **Patricia Rose Bennett #162692** - Reserve Right to Review, unanimously approved.
- **Atanacio Villarauel #172357** - Reserve Right to Review, unanimously approved.
- **Peter A. Thome #172706** – The Board Reserved the Right to Review on November 13, 2008, the Initial Decision of Hearing Officer Elizabeth Kelly, was a recommendation for Denial of Application pursuant to 12-6-118 (7) (a), C.R.S. due to felony conviction. **Motion to adopt the Initial Decision.** Unanimously approved.

Mr. Carlson asked if there was any way that we could advise the Hearing Officers of when the board meetings were scheduled so that there wouldn't be such a long time delay between cases being heard and board decisions being made. He asked if it was possible to accommodate this somehow going forward. Mr. Bebee stated that the scheduling is set ahead of time – yearly. He advised Mr. Carlson that at that time, when it was set, there was some consideration with regard to the board meetings process; however, there are variables that come into play that affect this. Mr. Bebee noted that he would express Mr. Carlson's concerns to the Hearing Officers nevertheless.

Mr. Brendon Reese returned to the dealer board meeting.

Addendum to Executive Secretary's Report

- **Bonns Used Cars #8760** – Stipulation and Agreement – An affidavit was presented to the Board on November 13, 2008. Mr. Bonn has voluntarily surrendered his license and there are some victims in the case. The stipulation was negotiated primarily by the AID office. Mr. Smith, from the AG's office, assisted the Division with the language of the stipulation. Several board members expressed that the stipulation be amended to include fines and that the stipulation language be modified to include that “this individual engaged in fraudulent behavior” or that the “Board has found fraud.” This would make opening the bond easier. Mr. Carlson asked that Ms. Rouze find the status of the titles.

A motion was made to amend the stipulation to:

1. Add a specific paragraph indicating that the board is making a specific “Finding of Fraud” with regards to this agreement by the Respondent.
2. That the voluntary surrender of license document and voluntary admission documents from August 6, 2008, be incorporated into this stipulation and

agreement by a specific reference in either paragraph 14 or in an additional paragraph.

3. And that paragraph 8 be amended to read the payment of \$6,000 should be deferred and payable only if the respondent applies for a new license, but a \$1,000 fine is assessed immediately for each of the four counts of fraud listed in paragraph 4, and that Mr. Bonn be contacted by the division with regards to stipulation to see if it is acceptable.

The motion was approved unanimously by the Board.

INVESTIGATION REPORT:

Agent in Charge, Chris Rouze presented the following reports:

Statistical Reporting
Criminal Filing Log
Criminal Filing Summary
Warning Notice Summary

Affidavits of Probable Cause:

Antoune Leasing & Sales #4340 – The board reviewed the Affidavit of Probable Cause. A motion was made to allow the Executive Secretary to enter into stipulated negotiations prior to a hearing before an ALJ; if those negotiations fail, then set this for a hearing before an ALJ, based on the Affidavit of Probable Cause. The motion was amended to reflect a 90 day period to obtain a stipulation. Motion was unanimous.

Broadway Dodge, Inc., # 185 - The board reviewed the Affidavit of Probable Cause. A motion was made to allow the Executive Secretary to enter into stipulated negotiations prior to a hearing before an ALJ; if those negotiations fail, then set this for a hearing before an ALJ. The Executive Secretary is granted 30 days to negotiate settlement. The motion was unanimous - based on the Affidavit of Probable Cause.

Express Auto Sales, Inc. #36348 - The board reviewed the Affidavit of Probable Cause. A motion was made to allow the Executive Secretary to enter into stipulated negotiations prior to a hearing before an ALJ; if those negotiations fail, then set this for a hearing before an ALJ. The motion was unanimous - based on the Affidavit of Probable Cause.

Falcon Motors, LLC # 39792 - The board reviewed the Affidavit of Probable Cause. A motion was made to summarily suspend the license based upon the public health, safety and welfare imperatively requires emergency action, and that there was willful; deliberate violations. The motion was unanimous (5). Mr. Feder left the meeting earlier.

Ms. Wilson requested that in the future the board be provided with a one page summary of board actions and or licensee history.

Fleet/Lease, Inc., #39055 - The board reviewed the Affidavit of Probable Cause. A motion was made to allow the Executive Secretary to enter into stipulated negotiations prior to a hearing before an ALJ; if those negotiations fail, then set this for a hearing before an ALJ. The motion was unanimous (5) based on the Affidavit of Probable Cause.

Additionally, a motion was made that the division be directed to investigate Ben O'Neal, (who is currently with Fleet Lease) Inc. for unlicensed sales based upon the Affidavit of Probable Cause for Fleet Lease, Inc. The motion was unanimous.

Holiday RV South–

Ms. Goldin asked for further clarification on Holiday RV South. Ms. Goldin wanted to know if the board authorized Mr. Zulauf to sign stipulations on the board's behalf. It was recommended that an emergency meeting would be initiated before a final stipulation.

LICENSING REPORT:

Kaye Kopecky, Licensing Manager presented the following reports to the Board:

Dealer and Wholesale Applications Approved for December 2008.
Licensing Statistics – December 2008
Dealer Licensing Activity Comparison Report
Salesperson Licensing Activity Comparison
Portal Applications

The following Dealer Applications were presented to the Board:

- **Abe's Complete Auto Service LLC** – Withdrawn. To be presented at next meeting.
- **Coupe Auto LLC** –

Motion was made to approve the license with an 80% ownership of Ms. Garza and 20% ownership of Ms. Sena. Based on this, the division can approve the license and work to make these arrangements. The motion was unanimous.

- **Reiner Investments** – Motion was made to approve the license. Unanimous.

The following Salesperson Applications were presented to the Board.

- **Ted Frank Atencio** – Motion was made to deny license. Denied, 4-1.
- **Matthew Burgermeister** – Motion was made to deny for non-disclosure and criminal character. Unanimous (5).
- **Jeffrey Ramos** – Motion was made to deny for failure to disclose and criminal character. Unanimous (5).

Ms. Kopecky informed the Board there were:

181 Backgrounds processed in December 2008.
21 Disclosed
0 Failed to Disclose.

PUBLIC COMMENT:

There was not any public comment.

RULEMAKING

Senate Bill 08-151 the rules are in effect as of December 31, 2008.

BUDGET:

Mr. Curtis Tremble presented the December budget reports. It was noted that revenue was down by 40K. Mr. Reitz asked for an explanation. Mr. Zulauf explained that the division is down 450+/- Salespeople; however Dealers appear to be steady (only 13 down). Mr. Tremble projected that we will be out of money in February '09. Mr. Tremble also noted that we are on an upswing as we are seeing increases in collections projected. He anticipates increases in January and February. We appear to be in the low point of the fiscal year. Mr. Heinrich discussed his activity reports in detail. Mr. Cook discussed that he and Mr. Zulauf have been reviewing the budget and are being fiscally responsible and offered insight on the issues we are facing, which is not unique to this industry. Mr. Tremble offered to perform additional research to find out where the deficiencies lie. He will provide this at the next upcoming meeting.

NEW BUSINESS:

There was not any new business.

The regular meeting adjourned at 1:12 p.m.

(Note: The Minutes of the Motor Vehicle Dealer Board Meeting summarize the contents of the meeting. They are not verbatim transcripts, but are based principally upon the digital recording of the meeting and upon the later collaboration of staff attendees to ensure that the summary faithfully captures the matters before the Board and the actions the Board took. The digital recording of the meeting is a permanent record of the Board, retained in the electronic filing system of the Auto Industry Division, and is available as a resource for review, as needed).

Bruce Zulauf
Executive Secretary