

**MOTOR VEHICLE DEALER BOARD
MINUTES
February 17, 2015**

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

BOARD MEMBERS:

Anthony Brownlee
Robert Endter
Justin Franks
Joseph Gebhardt
Chris Hefty
Michael Jorgensen
Stan Martin
Deborah Thompson
Jason Wagner

MEMBERS ABSENT:

**SENIOR DIRECTOR OF
ENFORCEMENT:**

Ron Kammerzell

EXECUTIVE SECRETARY:

Bruce Zulauf

**LEGAL ASSISTANT:
DEPT OF REVENUE,
AID, ENFORCEMENT
DIVISION STAFF:**

Chris Rouze
Matt Heap
Martin Kenney
John Opeka
Cheryl Morrison
Chris Clements
Dave Heinrich
Kaye Kopecky
Joe Scalabrini
Erika Garcia
Brenda Berens
Arleen Criddell-Tapanen

ATTORNEY GENERAL'S OFFICE:

Y.E. Scott

VISITORS:

Todd O'Connell, CIADA
Tammi McCoy, CADA
Tim Jackson, CADA
Art Erwin, Christopher's Dodge World
Eric Hartsough, Dealer Services
Robert Fenton, CSADA
Bob Penkhus, Bob Penkhus Automotive
Mark Striegnitz, Mark's Auto Sales

President, Jason Wagner, opened the meeting of February 17, 2015 at 9:10 a.m. Mr. Wagner turned the floor over to Executive Secretary, Bruce Zulauf.

AGENDA REVIEW AND ANNOUNCEMENTS

Mr. Zulauf informed the Board there were no additions and corrections to the agenda. There will be an open discussion of the Dealer Handling fee as it pertains to advertising.

Mr. Zulauf updated the Board on Rulemaking. The rules currently under review are 12-6-104 (3) (k) and 12-6-118 (3) (v) involving Disclosure Form 2434 sales contract and rejection of financing. The 3rd stakeholder meeting is scheduled for Tuesday, February 24, 2015. The minutes and audio recording will be available on the website.

Preliminary Fee Setting discussions will begin at the next Board meeting on March 17, 2015. The Board's recommendations will have to go to the Executive Director's Office no later than the first week of May. Mr. Zulauf introduced Chris Clements, the Division's new Criminal Investigator in the Colorado Springs office.

MINUTES

The minutes of the January 20, 2015 meeting were approved unanimously.

DEALER HANDLING FEE – ADVERTISING

Mr. Zulauf reminded the Board that during the last rulemaking hearing, Rule 13 was promulgated. In accordance with Rule 13, D&H was never allowed to be charged outside of the advertised price. He further stated that there are methods to handle D & H correctly; namely,

- 1. Do not charge D&H on an advertised price;**
- 2. Include D&H in advertised price or;**
- 3. A+B=C;**
 - **A (Advertised Price) +**
 - **B (D & H) =**
 - **C Final Advertised Price (all listed together in similar sized font).**

Mr. Bob Penkhus of Penkhus Automotive and Mr. Mark Striegnitz of Mark's Auto Sales addressed the Board with their concerns regarding dealer's handling of D&H in their advertising. Mr. Zulauf informed the Board that he will designate two criminal investigators dedicated to handling advertising cases. An open discussion among the group concerning D&H followed.

Mr. Jorgensen made a motion to have the Executive Secretary draft a communication from the Board, for their review at the next meeting, to all licensed dealers in the state regarding D&H and that the Executive Secretary make recommendations to the Motor Vehicle Dealer Board for appropriate fines and/or corrective action, including suspension of business – passed unanimously.

The Board took a 10 minute break.

LEGISLATIVE UPDATE

HB 1089 – Registration of Kei Vehicle For Use on the Public Roadways – Ms. Rouze has drafted technical notes regarding potential conflicts between the proposed legislation and current laws and regulations in Title 12.

SB 15-090 – Temporary Registration Document Standards – This legislature could have an impact on dealers in regards to where the temporary permit is positioned on the vehicle.

Mr. Zulauf will keep the Board posted of all changes and updates as they occur.

ATTORNEY GENERAL’S REPORT

Ms. Scott informed the Board that there are three cases set for hearing in March.

EXECUTIVE SECRETARY’S REPORT

Mr. Zulauf presented the following to the Board:

- 1. Proposed Stipulation and Final Agency Order – Murray BMW of Denver, Dealer #42748**
– Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously.
- 2. Proposed Stipulation and Final Agency Order – O’Meara Volkswagen of Thornton, Dealer #42815**
– Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously.
- 3. Proposed Stipulation and Final Agency Order – Nexcar a/k/a Excello Motors, LLC, Dealer #42797**
– Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously.

BACKGROUND INVESTIGATIONS TEAM

John Opeka presented the following to the Board:

Dealer Application:

- **LA Auto Sales LLC #43188** – Motion to deny the license based on failure to disclose, unfitness of financial character, unfitness of criminal character and 12-6-118 (3) (d) – approved unanimously.

Salesperson Applications:

- **Berning, Mark #25302** – Motion to deny the license based on unfitness of financial character, unfitness of criminal character and previous board action – approved 7-1 (Hefty opposed).

- **Carleton, William #189453** – Motion to grant the license – approved unanimously.
- **Lancaster, Eric #167307** – Motion to deny the license based on unfitness of financial character – approved unanimously.

Mr. Jorgensen left the meeting.

- **Root, Cynara #189507** – Motion to deny the license based on unfitness of financial character, unfitness of criminal character and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.
- **Ruiz, Paul #27180** – Motion to deny the license based on unfitness of financial character and amended to add unfitness of criminal character – approved unanimously.
- **Whittington, Michael #184181** – Motion to deny the license based on unfitness of criminal character and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.

Mr. Hefty recused himself and left the room.

- **Wilson, Brett #189234** – Motion to grant a conditional license based upon applicant providing the standard letter from the employing dealer which includes the normal terms and conditions – approved unanimously.

Mr. Hefty returned to the room.

INVESTIGATION REPORT

Chief of Investigations Chris Rouze presented the following to the Board:

Statistical Reporting – Ms. Rouze informed the Board that we started with 430 cases, 127 new cases were opened and 169 cases were closed for the month, giving the Division a balance of 388 open cases. There were 209 background inquiries performed.

Affidavits of Probable Cause:

Mr. Endter recused himself and left the room.

- **Emich Volkswagen, DL #39444** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Emich Volkswagen, Dealer #39444; and that the case be assigned to the Office of Administrative Courts for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations pursuant to C.R.S. 12-6-104 – approved unanimously.

Mr. Endter returned to the room.

- **Freund Sales Company, DL #2331** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Freund Sales Company, Dealer #2331; and that the case be assigned to the Office of Administrative Courts for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations pursuant to C.R.S. 12-6-104 – approved unanimously.
- **McManus Motors, DL #42901** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to McManus Motors, Dealer #42901; and that the case be assigned to the Office of Administrative Courts for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations pursuant to C.R.S. 12-6-104 – approved unanimously.
- **Wheel City Auto Finance Centers, DL #42660** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Wheel City Auto Finance Centers, Dealer #42660; and that the case be assigned to the Office of Administrative Courts for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations pursuant to C.R.S. 12-6-104 – approved unanimously.
- **Westly A. Cox, SP #185068** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Westly A. Cox, Salesperson #185068; and that the case be assigned to the Colorado Department of Revenue, Hearings Division for a hearing on the merits – approved unanimously.

New Business – No New Business

Public Comment – No Public Comment

The regular meeting of the Motor Vehicle Dealer Board was adjourned at 12:05 p.m.

(Note: The Minutes of the Motor Vehicle Dealer Board summarize the contents of the meeting. They are not verbatim transcripts and 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