

MOTOR VEHICLE DEALER BOARD MINUTES

March 19, 2019

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

BOARD MEMBERS:

Carrie Baumgart
Ramona Graves Bode
Lucky Heggs
John Linton
Steven Perkins
Jason White

MEMBERS ABSENT:

Fletcher Flower
Matthew Porter
Michael Widhalm

SENIOR DIRECTOR OF ENFORCEMENT:

Corey Amend

EXECUTIVE SECRETARY:

Bruce Zulauf

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

Chris Rouze
Chris Hartman
Gloria Breedon
John Opeka
Frank Agos
Josh Dexter
Steve Koenig
Jim Osborn
Hunter Helton
Beth Spellerberg
Arleen Criddell Tapanen

ATTORNEY GENERAL'S OFFICE:

Brad Jones, General Counsel
Skip Spear, Conflicts Counsel

VISITORS:

Art Erwin, Christopher's Dodge Ram
Michael Dommermuth, CADA – Fairfield & Woods
Matthew Groves, CADA
Tim Jackson, CADA
David Seligman, Towards Justice
Mike Landis, US PIRG
Todd O'Connell, CIADA
Michael McKinnon, Esq.

President, Steven Perkins, opened the meeting of March 19, 2019 at 9:00 a.m. Mr. Perkins turned the floor over to Executive Secretary, Bruce Zulauf.

AGENDA REVIEW AND ANNOUNCEMENTS

Mr. Zulauf informed the Board there were no changes to the agenda as posted. Messrs. Flowers, Porter and Widhalm will not be in attendance today.

There will be an open discussion of DR Form 2434 and a Board discussion of the drafted Best Practices for Boards and Commissions policy. Senior Assistant Attorney General, Skip Spear will appear as Conflicts Counsel to present the NEZ, Ltd Final Agency Order for the Board's perusal.

LEGISLATIVE UPDATE

HB19-1163 – Reduce Regulatory Burden Rules On Businesses – This bill was postponed indefinitely.

MINUTES

The minutes of the February 19, 2019 meeting were approved 5-0-1 (Mr. Perkins as Chair voted) (Mr. Heggs abstains).

EXECUTIVE SECRETARY REPORT

Mr. Jones recused himself and left the room. Mr. Spear appeared as Conflicts Counsel.

- **Proposed Final Order – NEZ, Ltd, LLC, D/B/A “NEZ, Ltd, “Applicant, License Number 44255** – Motion to accept the Order and deny the license – approved 4-1-1 (Mr. Linton opposed) (Mr. Heggs abstains).

Mr. Zulauf presented the following to the Board:

- **Initial Decision – Jose Urvano Aviles, Motor Vehicle Salesperson License #188810** – Motion was made to accept the Findings of Fact, Conclusions of Law and revoke the license – approved unanimously.

Mr. Jones returned to the room.

- **Proposed Stipulation and Final Agency Order – Steamboat Motors, LLC #8871** – Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously.
- **Proposed Stipulation and Final Agency Order – R & D Motors, LLC #42529** – Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously.
- **Proposed Stipulation and Final Agency Order – O’Meara Volkswagen of Thornton #42815** – Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously.
- **Proposed Stipulation and Final Agency Order – Choice One Motors, LLC #39714** – Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously.

BACKGROUND INVESTIGATIONS TEAM

Ms. Breeden presented the following to the Board:

Dealer Applications:

- **Accurate Japanese Repair, Inc. #44415** – Motion to grant the license – approved unanimously.
- **O'Malley's Auto Service #44351** – Motion to grant the license – approved unanimously.

Salesperson Applications:

- **Burch, Christopher Aaron #663597** – Motion to deny the license based on unfitness of licensing character, unfitness of financial character and unfitness of criminal character – approved unanimously.
- **Glapion, Thomas #661909** – Application pulled for further review.
- **Wiggins, Derek L. #664297** – 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 4-1 (Mr. White opposed).

INVESTIGATIONS REPORT

Ms. Hartman presented the following to the Board:

Statistical Reporting – Ms. Hartman informed the Board that we started with 265 cases, 137 new cases were opened and 125 cases were closed for the month, giving the Division a balance of 277 open cases. There were 413 background inquiries performed.

Affidavits of Probable Cause:

- **Barton Auto Sales, DL #2405** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Barton Auto Sales, Dealer #2405; 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. 44-20-104 – approved unanimously.
- **Custom Auto Sales LLC, DL #40014** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Custom Auto Sales LLC, Dealer #40014; 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. 44-20-104 – approved unanimously.

The Board moves to investigate, through the Division Director, potential allegations and violations committed by licensed dealer, AWS Wholesale, license number 43597 pursuant to C.R.S. 44-21-04 (3) (f) (I) whether there were any violations under the terms and provisions of part 1 of article 20 of Title 44 – passed unanimously.

The Board moves to investigate, through the Division Director, potential allegations and violations committed by licensed dealer, SV&T Investments, license number 38040 pursuant to C.R.S. 44-21-04 (3) (f) (I) whether there were any violations under the terms and provisions of part 1 of article 20 of Title 44 – passed unanimously.

- **Daltons Autos Inc., DL #37586** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Daltons Autos Inc., Dealer #37586; 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. 44-20-104 – approved unanimously.
- **Phil Long ValuCar LLC, DL #43265** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Phil Long ValuCar LLC, Dealer #43265; 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. 44-20-104 – approved unanimously.
- **YSC Motors, DL #43820** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to YSC Motors, Dealer #43820; 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. 44-20-104 – approved unanimously.

Board took a 10 minute break.

Open Discussion – Request to Address the Board by Gupta Wessler PLLC – Regarding Regulation 44-20-104(3)(I) & Form DR2434

Mr. Michael Landis and Mr. David Seligman addressed the Board on behalf of a coalition of nonprofit consumer-advocacy and public-interest organizations to request the Board reconsider the retroactive-fee language as a policy matter and amend the language so that fees do not begin until the consumer is made aware that he/she has to return a vehicle. A lengthy discussion followed.

Messrs. O’Connell and McKinnon representing CIADA and Messrs. Dommermuth and Groves representing CADA expressed their support of the language used in Regulation 44-20-104 (3) (I), Form DR2434 and C.R.S. 44-20-104, which authorizes and empowers the Board to prescribe form(s) to be used as part of a contract for the sale of a motor vehicle.

A motion was made to re-Agenda this discussion in 60 days – passed unanimously.

Board Discussion – HB 18-1198 – Best Practices for the Motor Vehicle Dealer Board – Policy #19-001 (Draft)

Mr. Jones distributed a draft of Board Policy #19-001 and provided a brief history of HB 18-1198. A motion was made to accept Motor Vehicle Dealer Board Policy #19-001 – passed unanimously.

New Business – Mr. O’Connell informed the Board that a wholesale license bill has been drafted to mirror the other licenses. There are sponsors and the bill is moving forward.

Mr. Perkins expressed concern that Carvana, an on-line used car dealer, is unlicensed and actively advertising as a dealer in the state of Colorado. A lengthy discussion followed.

Public Comments – None

The meeting of the Motor Vehicle Dealer Board was adjourned at 12:15 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