

MOTOR VEHICLE DEALER BOARD

MINUTES

May 19, 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:

Leland Bebee

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

Chris Rouze
Matt Heap
Martin Kenney
John Opeka
Gloria Breeden
Cheryl Morrison
Dave Heinrich
Kaye Kopecky
Erika Garcia
Hollie Harlan
Wendy Spaulding
Arleen Criddell-Tapanen

ATTORNEY GENERAL'S OFFICE:

Y.E. Scott
Skip Spear
Randall Cherry

VISITORS:

Mikhascil Skuratovich, Auto Budget Group
LLC
Gary Espinosa
Laurie Green, Rods Cars
Rick Yob, Town's Country
Christopher B. West, Mile High Harley
Davidson

Rodney Long, Rods Cars, Inc.
Bill Jones
Todd O'Connell, CIADA
Tim Jackson, CADA
Tammi McCoy, CADA
Art Erwin, Christopher's Dodge World
Brenden Garcia, Spradley Auto Network (Chevy)

President, Jason Wagner, opened the meeting of May 19, 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 or corrections to the agenda. Mr. Zulauf announced the promotion of Gloria Breeden to Supervisory Compliance Investigator and introduced Hollie Harlan, the Division's new Licensing Specialist.

Executive Director Brohl accepted the fee schedule submitted by the Board for fiscal year 2016. The new fee schedule has been posted to the website. Skip Spear, conflicts counsel, will advise the Board on the Timothy J. Jones case and give legal advice in Executive Session. The Attorney General's office will discuss, in Executive Session, matters in relation to Board member interactions with non-Board members concerning specific topics and a Petition for Declaratory Order.

There will be a formal Rulemaking hearing on Thursday, June 25, 2015.

HB15 -1089 – Registration of Kei Vehicle for Use on the Public Roadways – Mr. Zulauf informed the Board that this legislation has been postponed indefinitely. The bill will probably be brought back during next year's legislative session.

MINUTES

The minutes of the April 21, 2015 meeting were approved unanimously.

EXECUTIVE SECRETARY'S REPORT

Ms. Scott recused herself and left the room.

Mr. Zulauf presented the following to the Board:

1. Initial Decision – Jones, Timothy, J. Motor Vehicle Salesperson License #21142

A motion was made to enter into Executive Session pursuant to C.R.S. 24-6-402 (3)(a)(II) for the purpose of receiving legal advice from Assistant Attorney General, Skip Spear, acting as Conflicts Counsel regarding the matter of Timothy J. Jones – approved unanimously.

The Board went into Executive Session at 9:25 a.m. and Resumed Open Session at 10:10 a.m.

Mr. Hefty made a motion to reverse the hearing officer's conclusions; specifically, where she finds that CRS 12.6.118(5) is not violated by aggravated theft of a motor vehicle. The facts as stated in the charging document show that not only is motor vehicle theft related to the automobile industry but this theft was from an automobile dealer and, therefore, motor vehicle theft is a crime that is related to the automobile industry – passed unanimously.

Mr. Hefty moved to affirm the hearing officer's conclusion that Mr. Jones has demonstrated unfitness of financial character due to the non-payment of back taxes – passed unanimously.

Mr. Hefty moved to suspend the Motor Vehicle Salesperson license of Timothy J. Jones indefinitely – passed unanimously.

Mr. Hefty moved to impose a civil penalty of \$1,000.00 against Mr. Jones, \$500.00 of which can be held in abeyance and dismissed if Mr. Jones pays his back taxes in one year. \$500.00 shall be due in 30 days, the additional \$500.00 due in 13 months if Mr. Jones does not pay his back taxes – passed unanimously.

Mr. Hefty moved to have Mr. Zulauf execute a final order reflecting the decision of the Board – passed unanimously.

Ms. Scott returned to the room.

2. Petition for Declaratory Order – D.E. Foeller Sales, Inc.

Motion was made to enter Executive Session at this time to seek legal counsel for a specific legal question regarding Declaratory Orders and Rulemaking pursuant to C.R.S 24-6-402(3)(a)(II) and §13-90-107 C.R.S.; specifically related to those items – passed unanimously.

The Board went into Executive Session at 10:20 a.m. and Resumed Open Session at 11:18 a.m.

Mr. Franks made a motion that the Board refrain from issuing a Declaratory Order regarding the D.E. Foeller petition. The Board advises the parties to refer to §12-6-102 C.R.S. in regard to selling automobiles in Colorado – passed unanimously.

ATTORNEY GENERAL’S REPORT

Ms. Y.E. Scott presented the following to the Board:

- **Proposed Policy No. 15-001** – It is the policy of the Colorado Motor Vehicle Dealer Board that no Board member shall individually communicate with any non – board member regarding any matters pending or currently being considered before the Board. This policy applies to all matters including, but not limited to, applications for licenses, disciplinary matters, and the rulemaking process once the notice of the first stakeholder meeting has been issued.

Ms. Thompson made a motion to adopt Policy No. 15-001 – passed unanimously.

There was a general discussion of the new Policy.

EXECUTIVE SECRETARY’S REPORT (cont’d.)

Mr. Zulauf presented the following to the Board:

Mr. Endter recused himself and left the room.

- 3. Proposed Stipulation and Final Agency Order – Emich Volkswagen, Dealer #39444** – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously.

Mr. Endter returned to the room.

- 4. Proposed Stipulation and Final Agency Order – Wheel City Auto Finance Centers, Dealer #42660** – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously.

Ms. Scott recused herself and left the room.

- 5. Amended Initial Decision – Hall, Korey, Shane Motor Vehicle Salesperson License #26538**

Motion was made to grant a conditional license – motion failed 6-2 (Hefty, Brownlee for) (Gebhardt, Thompson, Jorgensen, Martin, Franks and Endter opposed).

Motion made to deny the license based on unfitness of financial character and unfitness of licensing character – passed 6-2 (Hefty, Brownlee opposed).

Ms. Scott returned to the room.

BACKGROUND INVESTIGATIONS TEAM

John Opeka presented the following to the Board:

Dealer Applications:

- **Heaven Auto Sale Inc. #43221** – Motion to grant the license – approved unanimously.

Mr. Hefty recused himself and left the room.

- **Kollman Auto Sales #43234** – Motion to grant the license – approved unanimously.

Mr. Hefty returned to the room.

Salesperson Applications:

- **Angus, Kadeem #189740** – 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.
- **Boumghar, Islam #190056** – 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.
- **Bulcha, Daniel #189778** – Motion to grant the license – approved 7-1 (Hefty opposed).
- **Darsey, John #188918** – 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.

- **Driscoll, Neil #130754** – Motion to deny the license based on unfitness of criminal character , unfitness of licensing character and having been convicted of a misdemeanor under title 18 or any felony – approved 7-1 (Jorgensen opposed).

Mr. Endter recused himself and left the room.

- **Espinosa, Gary #182807** – Motion to deny the license based on unfitness of criminal character, unfitness of licensing character – approved unanimously.

Mr. Endter returned to the room.

- **Garcia, Brenden #183608** – Motion to grant the license – approved unanimously.
- **Green, William #189683** – Motion to deny the license based on unfitness of criminal character and unfitness of financial character – approved 6-2 (Franks, Hefty opposed).
- **Jagiello, Joseph #190075** – 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.
- **James, Caleb #169548** – Motion to grant the license – approved unanimously.
- **Jeffries, Joshua #189593** – Motion to deny the license based on unfitness of criminal character, unfitness of financial character and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.
- **Mackie, Marc #34158** – Motion to deny the license based on unfitness of criminal character, unfitness of financial character, unfitness of licensing character and having been convicted of a misdemeanor under title 18 or any felony – approved 7-1 (Franks opposed).
- **Reynolds, Charles #176341** – Motion to deny the license based on unfitness of criminal character, unfitness of licensing character, material misstatement and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.
- **Smith, Joshua #189679** – Motion to grant the license – approved 7-1 (Hefty opposed).
- **West, Christopher #28784** – Motion to grant the license – approved 7-1 (Hefty opposed).
- **Williams, Errexson #29012** – Motion to grant the license – approved 7-1 (Hefty opposed).
- **Ybarra, Raymond #33395** – Motion to table for 30 days for applicant to provide more information and extend the temporary license – approved 5-3 (Gebhardt, Thompson and Martin opposed).
- **Yob, Richard #189818** – Motion to grant conditional license based upon applicant providing the standard letter from the employing dealer which includes the normal terms and conditions – approved unanimously.

Board took a 5 min break.

INVESTIGATION REPORT

Mr. Heap presented the following to the Board:

Statistical Reporting – Mr. Heap informed the Board that we started with 447 cases, 181 new cases were opened and 199 cases were closed for the month, giving the Division a balance of 429 open cases. There were 351 background inquiries performed.

Affidavits of Probable Cause:

- **Essex Motors, LLC, DL #36393** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Essex Motors, LLC, Dealer #36393; 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.
- **Family Auto Brokers, LLC, DL #42515** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Family Auto Brokers, LLC, Dealer #42515; 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.
- **Phil Long Hyundai of Motor City, LLC, DL #38161** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Phil Long Hyundai of Motor City, LLC, Dealer #38161; 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.
- **Quality Motors, DL #7765** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Quality Motors, Dealer #7765; 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.
- **Top Notch Auto Sales, LLC, DL #38162** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Top Notch Auto Sales, LLC, Dealer #38162; 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.

Ms. Scott recused herself and left the room.

- **Rod's Cars Inc., DL #8062** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Rods Cars Inc., Dealer #8062; 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.

Ms. Scott returned to the room.

New Business – Mr. Martin announced that Todd O’Connell, Executive Director of CIADA, was named national Executive Director of the Year by NIADA.

Public Comment – No Public Comment

The regular meeting of the Motor Vehicle Dealer Board was adjourned at 1:05 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