

# MOTOR VEHICLE DEALER BOARD

## MINUTES

August 19, 2014

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  
Michael Jorgensen  
Stan Martin  
Deborah Thompson  
Jason Wagner

**MEMBERS ABSENT:**

Chris Hefty

**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  
Dave Heinrich  
Cheryl Morrison  
Kaye Kopecky  
Erika Garcia  
Rita Pugh  
Arleen Criddell-Tapanen

**ATTORNEY GENERAL'S OFFICE:**

Y.E. Scott  
Skip Spear  
Will Allen

**VISITORS:**

Todd O'Connell, CIADA  
Tammi McCoy, CADA  
Mary Marvin, CAPSS  
Art Erwin, Christopher's Dodge World  
Randall Cherry, First Assistant Attorney  
General

Benjamin Shemony, Ralph Schomp BMW  
Craig Joyce, Kuni Lexus (outside counsel)  
Shawn Evans, Kuni Lexus  
Gregg Stone, Kuni Lexus  
Johan Rico, J & R Auto Sales LLC

President, Jason Wagner, opened the meeting of August 19, 2014, at 9:09 a.m. Mr. Wagner turned the floor over to Executive Secretary, Bruce Zulauf.

## **AGENDA REVIEW AND ANNOUNCEMENTS**

Mr. Zulauf informed the Board there was one addition to the agenda. The addition was made to the Attorney General's Report, which will be discussed in Executive Session regarding *United States District Court 14-CV-00841 Donald E. Fymbo v. The State of Colorado, Denver Auto Dealer Licensing Board*.

Mr. Zulauf informed the Board they could possibly move forward with publication of two rules that will be discussed during rulemaking workshop, which will immediately follow the regular meeting.

Mr. Spear, of the Attorney General's office, will be in attendance to advise Board members of his findings regarding the Corey Shane Hall matter, which will be presented in the Executive Secretary's report.

It appears the new website should be able to provide a platform to accommodate previous requests for Board actions to be made available for the viewing public. The Division will keep the Board updated with new developments.

Mr. Zulauf announced the promotion of Martin Kenney to the supervisory position of Criminal Investigator II.

## **MINUTES**

The minutes of the July 15, 2014 Board meeting were approved unanimously with a correction to be made on page 5, third bullet down "Summit View Motors", the second sentence should read "General" Counsel not "Conflicts" Counsel.

## **ATTORNEY GENERAL'S REPORT**

Ms. Y.E. Scott distributed two scripts for Board members to use, going forward, when entering and exiting an Executive Session.

Ms. Scott turned the floor over to Will Allen of the Attorney General's office to address the suit filed by Donald Fymbo in U.S. District Court involving numerous parties including the Motor Vehicle Dealer Board.

- *United States District Court 14-CV-00841 Donald E. Fymbo v. The State of Colorado, Denver Auto Dealer Licensing Board* – Motion was made to enter Executive Session at this time to discuss with counsel pending or imminent court action involving the Board as a party pursuant to C.R.S. 24-6-402(3)(a)(II); specifically, the Fymbo case – passed unanimously.

The Board entered into Executive Session at 9:17 a.m. and resumed Open Session at 9:32 a.m.

Mr. Will Allen, as attorney for the Board, attested the only matter discussed while electronic recording was off, was related to privileged attorney/client communication.

## **EXECUTIVE SECRETARY'S REPORT**

Mr. Zulauf presented the following to the Board:

- **Proposed Stipulation and Final Agency Order – Adopt-A-Part, Dealer #41323** – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously.
- **Proposed Stipulation and Final Agency Order – Discount Cars, Dealer #39160** – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously.
- **Proposed Stipulation and Final Agency Order – Milehightrailers.com, Dealer #37365** – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously.
- **Proposed Stipulation and Final Agency Order – Centennial Chrysler Jeep, Dealer #41044** – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously.
- **Proposed Stipulation and Final Agency Order – Alrashed Auto Sales LLC, Dealer #41005** – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously.
- **Proposed Stipulation and Final Agency Order – Alrashed, Badar, Salesperson #174416** – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously.
- **Proposed Stipulation and Final Agency Order – Truck Town Motors LLC, Dealer #41075** – Motion to approve the Proposed Stipulation and Final Agency Order – approved unanimously.

Ms. Scott, Messrs. Cherry and Franks recused themselves and left the room.

Mr. Skip Spear, Conflicts Counsel with the Attorney General’s office shared his findings with the Board regarding the matter of Corey Shane Hall.

- **Proposed Board Order – Hall, Corey Shane – Motor Vehicle Salesperson License #26538** – Motion to approve the Proposed Board Order, remanding case, with instructions to Hearing Officer – approved unanimously.

Ms. Scott, Messrs. Cherry and Franks returned to the room. The Board took a 5 minute break.

## **BACKGROUND INVESTIGATIONS TEAM**

John Opeka presented the following:

### **Dealer Applications:**

- **A&A Auto Connection #42912** – Motion to deny the license based on unfitness of financial character – (5-2, Franks, Martin opposed).
- **Better Cars #42798** – Motion to grant the license – approved unanimously.
- **Credible Auto Sales #42974** – Motion to grant the license – approved unanimously.
- **Import Motors LLC #43014** – Motion to grant the license – (4-3, Thompson, Gebhardt and Jorgensen opposed).

- **J and R Auto Sales LLC #43015** – Motion to deny the license based on unfitness of financial character – approved unanimously.

### **Salesperson Applications:**

- **Bateman, Richard #169517** – Motion to grant the license – approved unanimously.
- **Baumgartner, Landon #187907** – 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.
- **Cerros, Saul #186897** – 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.
- **Choibat, Chintushig #187373** – Motion to grant the license – (6-1, Jorgensen opposed).
- **Cruikshank, James #180793** – Motion to deny the license based on unfitness of licensing character, unfitness of criminal character, material misstatement and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.
- **Dorrance, Jason #181315** – Motion to deny the license based on unfitness of criminal character, failure to disclose and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.
- **Elsplas, Dale #155380** – Motion to deny the license based on unfitness of financial character and failure to comply under §12-6-118 (5) (c) – approved unanimously.
- **Gantert II, Thomas #187571** – Motion to grant the license – (6-1, Jorgensen opposed).
- **Gardner, William #157538** – Motion to grant the license – approved unanimously.
- **Hererra-Macias, Emilio #172612** – 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.
- **James, Jordan #178838** – Motion to grant conditional license based upon applicant providing the standard letter from the employing dealer which includes the normal terms and conditions – (6-1, Jorgensen opposed).
- **Lee, Robin #187726** – Motion to deny the license based on 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.
- **Nguyen, Man #187696** – Motion to grant the license – approved unanimously.
- **Pevey, Sherisse #187600** – Motion to grant the license – approved unanimously.
- **Ramos, Jeffrey #123874** – Motion to deny the license based on unfitness of financial character, unfitness of criminal character, unfitness of licensing character, and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.

- **Shemony, Benjamin #187563** – Motion to grant the license – approved unanimously.
- **White, Paul #187260** – Motion to table for 30 days – approved unanimously.
- **Zendejas, Juan #187832** – 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.

The Board took a 10 minute break.

## **INVESTIGATION REPORT:**

Chief of Investigations Chris Rouze presented the following:

**Statistical Reporting** – Ms. Rouze informed the Board that we started with 432 cases, 156 new cases were opened and 157 cases were closed for the month, giving the Division a balance of 420 open cases. There were 346 background inquiries performed.

### **Affidavits of Probable Cause:**

- **1<sup>st</sup> Choice Motors, DL #4208** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to 1<sup>st</sup> Choice Motors, Dealer #4208; 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.
- **Christopher’s Dodge World, Inc., DL #2366** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Christopher’s Dodge World, Inc., Dealer #2366; and that the case be assigned to the Colorado Motor Vehicle Dealer Board 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.
- **Ghent Chevrolet Cadillac, DL #142** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Ghent Chevrolet Cadillac, Dealer #142; 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. Brownlee recused himself and left the room.

- **Kuni Lexus of Greenwood Village, DL #40283** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Kuni Lexus of Greenwood Village, Dealer #40283; 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. Brownlee returned to the room.

- **Mile High Honda, DL #765** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Mile High Honda, Dealer #765; 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.
- **Motor Cars of Denver, DL #1248** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Motor Cars of Denver, Dealer #1248; 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.
- **Nations Auto, Inc., DL #4655** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Nations Auto, Inc., Dealer #4655; 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.
- **Molstad, Carol L., SP #171667** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Molstad, Carol L., Salesperson #171667; and that the case be assigned to the Colorado Department of Revenue, Hearings Division 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.
- **Kuni Lexus of Greenwood Village, DL #40283** – Motion was made to enter Executive Session at this time to discuss with counsel pending or imminent court action involving the Board as a party pursuant to C.R.S. 24-6-402(3)(a)(II) and to receive settlement guidance from the Board – passed unanimously.

**New Business** – No New Business.

**Public Comment** – No Public Comment.

The regular meeting of the Motor Vehicle Dealer Board was adjourned at 1:45 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