

**MOTOR VEHICLE DEALER BOARD
MINUTES
October 21, 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
Jason Wagner

MEMBERS ABSENT:

Chris Hefty
Deborah Thompson

**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
Eric Teklu
Josh Dexter
Gloria Breeden
Dave Heinrich
Kaye Kopecky
Joe Scalabrini
Rita Pugh
Arleen Criddell-Tapanen

ATTORNEY GENERAL'S OFFICE:

Y.E. Scott
Skip Spear

VISITORS:

Todd O'Connell, CIADA
Tammi McCoy, CADA
Mary Marvin, CAPSS
Art Erwin, Christopher's Dodge World
Mike Picazo
Landis Wheeler, DA Auto Group, Inc.
Leo Shifrin, USWSL
Lynda Atkins, Attorney General's Office
Marc Tull, Marc B. Tull, Attorney at Law

President, Jason Wagner, opened the meeting of October 21, 2014, at 9:05 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. There will be two hearings today and Mr. Skip Spear, Conflicts Counsel, will assist the Board with this process. Ms. Deborah Thompson and Mr. Chris Hefty will not be in attendance today.

Calendar –

- There will be no rulemaking hearing Thursday, October 23, 2014. After considerable discussion based upon the totality of the situation, the Division, Attorney General's office and Mr. Kammerzell, Senior Director of Enforcement, determined that the rulemaking process related to the Hearings Procedures and Disclosure Form was canceled and the process will be started all over again.
- Mr. Zulauf informed the Board to expect a full day on Tuesday, November 18, 2014, as there will probably be an official rulemaking public hearing in regards to Advertising rules. The hearing will be held in addition to the regularly scheduled Board meeting.

The Colorado Department of Revenue's new website launched October 1, 2014. The Division is currently finalizing procedures to begin posting disciplinary actions taken by the Board on the website. Within the next two weeks the disciplinary actions during calendar years 2012, 2013 and 2014 (to date) will be posted to the site. The site will be titled "Motor Vehicle Dealer Board Disciplinary Process".

The Division has begun the implementation of the new software data program. It will take approximately seven (7) months until the program is utilized by Division staff.

Mr. Zulauf introduced three new staff members. Mr. Eric Teklu and Mr. Josh Dexter have been selected as Criminal Investigators and Mr. Joe Scalabrini as the Division's new Business Analyst.

MINUTES

The minutes of the August 19, 2014, Rulemaking meeting and September 16, 2014, Board 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- Wheeler, Landis Jason---** License# 185755
Hearing on June 11, 2014, before Hearing Officer, Jennifer Fellabaum. The Initial Decision recommends a conditional license with specified conditions.

Review the Initial Decision and Determine the Final Order - Motion made to table for 30 days until Conflicts Counsel can review the case – passed unanimously.

Ms. Scott returned to the room.

Mr. Zulauf informed the Board that there have been recommendations on Initial Decisions from the Hearings office that he feels should be discussed in Executive Session with Conflicts Counsel – Motion was made to enter Executive Session – passed unanimously.

Board entered into Executive Session at 9:26 a.m. and Resumed Open Session at 10:00 a.m.

Motion was made to expand the Delegation of Authority and guidelines of administration for the Executive Secretary, Mr. Zulauf, with Attachment A – passed unanimously.

Mr. Zulauf informed the Board that he has been asked from time to time to consider shortening the imposed abeyance time on stipulations from a one-year probationary period to six months and requested the Board's guidance on the matter. The Board decided that the one-year probationary period should remain.

BACKGROUND INVESTIGATIONS TEAM

John Opeka presented the following:

Dealer Applications:

- **General Auto Sale LLC #42975** – Motion to deny the license based on financial character and licensing character – approved unanimously.
- **GLR Motors #42953** – Motion to deny the license based on licensing character – approved unanimously.
- **Los Altos Auto Sales, LLC #43060** – Motion to table the license based on applicant providing proof of required vetting at which time the Division can issue the license – approved unanimously.

Salesperson Applications:

- **Hebert, Sean #187446** – Motion to grant the license – approved unanimously.
- **Hilliard, Devon #187465** – Motion to grant a conditional license based upon applicant providing the standard letter from the employing dealer which includes the normal terms and conditions and a letter from probation officer every three months indicating applicant has complied with the terms of probation – approved 5-1 (Jorgensen opposed).
- **Nutall, Jacob #186375** – Motion to grant the license – approved unanimously.
- **Rodriguez, Jr., Jose #188430** – Motion to deny the license based on financial character, criminal character and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.

Board took a 10 minute break.

**Leonid Shifrin, AKA Leo Shifrin, Salesperson License #170147
Review of Initial Decision Upon Filing of Exceptions by the Applicant
Case #BD 13-010**

Vladimir Shifrin, Esq., appearing on behalf of the Licensee / Respondent.
Y.E. Scott, Esq., Senior Assistant Attorney General, appearing on behalf of the State.

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 Leonid Shifrin – approved unanimously.

The Board went into Executive Session at 11:17 a.m. and Resumed Open Session at 11:41 a.m.

Mr. Franks commented that as Board members, our role is to protect the consumer. He further stated that he had not seen any evidence of rehabilitation on the part of Mr. Shifrin. Mr. Gebhardt concurred.

Motion was made to accept the Findings and Fact and Conclusions of Law, set aside the Hearing Officer's recommendation, and revoke the license – approved unanimously.

**Randal David Robert Ankeney, Salesperson License #186141
Motion to file Objections and Objections to the Applicant's Designation of the Record
Case #SD14-012**

Mark B. Tull, Esq., appearing on behalf of the Applicant/Appellant.
Y.E. Scott, Esq., Senior Assistant Attorney General, appearing on behalf of the State.

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 Randal David Robert Ankeney, Case #SD14-012. – approved unanimously.

The Board went into Executive Session at 12:09 p.m. and Resumed Open Session at 12:20 p.m.

Motion was made to sustain the objection made by the Attorney General's office – approved unanimously.

Mr. Spear mentioned that the Board has some concerns about when, or if, a transcript would be ordered. Ms. Scott stated that there was an agreement that a court reporter designated by Mr. Ankeney or Mr. Tull would be acceptable for transcribing the hearing. To date, the Board has never been notified of who the court reporter is, therefore, a transcript has not been prepared or paid for.

Mr. Tull took a few moments to confer with his client.

Mr. Tull stated he and his client have decided to waive the transcript of the Hearing in front of the Hearing Officer and proceed strictly on legal arguments.

The Board then had discussions with Ms. Scott and Mr. Tull related to scheduling of the filing of exceptions. Mr. Tull stated that he filed his exceptions several months ago and Ms. Scott responded that she had asked for an extension of time until a determination of what the record was and what was going to happen in relation to the transcript. Ms. Scott requested an additional 30 days to file a response to Mr. Tull's exceptions.

Motion was made to give the Attorney General's office thirty (30) days to prepare a response to the exceptions – approved unanimously.

The Exceptions Hearing was set for December 16, 2014.

A motion was made to have the Attorney General's office response to the exceptions filed by November 21, 2014 and Mr. Tull's reply brief due by the 1st of December – approved unanimously.

INVESTIGATION REPORT

Chief of Investigations Chris Rouze presented the following:

Statistical Reporting – Ms. Rouze informed the Board that we started with 436 cases, 165 new cases were opened and 134 cases were closed for the month, giving the Division a balance of 467 open cases. There were 380 background inquiries performed.

Affidavits of Probable Cause:

- **All Import Auto, DL #3280** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to All Import Auto, Dealer #3280; 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.
- **J&J Auto Sales, LLC, DL #39196** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to J&J Auto Sales, LLC, Dealer #39196; 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.
- **Murray BMW of Denver, DL #42748** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Murray BMW of Denver, Dealer #42748; 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.
- **Nexcar, DL #42797** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Nexcar, Dealer #42797; 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 recused himself and left the room.

- **O’Meara Volkswagen of Thornton, DL #42815** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to O’Meara Volkswagen of Thornton, Dealer #42815; 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.

- **Scarpa Motors, Ltd., DL #42707** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Scarpa Motors, Ltd., Dealer #42707; 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.
- **STS Automotive, Inc. DL #41151** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to STS Automotive, Inc., Dealer #41151; and that the license be summarily suspended and that the case be assigned to the 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.

New Business – No New Business

Public Comment – No Public Comment

The regular meeting of the Motor Vehicle Dealer Board was adjourned at 2:00 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