

**MOTOR VEHICLE DEALER BOARD  
MINUTES  
February 19, 2013**

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

<b>BOARD MEMBERS:</b>	John Schenden Jason Wagner Deborah Thompson Fred Wegener Stan Martin Chris Hefty
<b>MEMBERS ABSENT:</b>	Beau Smith Joe Gebhardt Bob Perry
<b>SENIOR DIRECTOR OF ENFORCEMENT:</b>	Ron Kammerzell
<b>EXECUTIVE SECRETARY:</b>	Bruce Zulauf
<b>LEGAL ASSISTANT:</b>	Leland Bebee
<b>DEPT OF REVENUE, AID, ENFORCEMENT DIVISION STAFF:</b>	Chris Rouze Matt Heap Gloria Breedon Margaret Jungmann Ellen Hardman John Opeka Erika Garcia Kaye Kopecky Eric Hartsough Bud Heinrich
<b>ATTORNEY GENERAL'S OFFICE:</b>	Y.E. Scott Kit Spaulding
<b>BUDGET OFFICE:</b>	Jill Vaughan
<b>VISITORS:</b>	Mary Marvin, CAPSS Todd O'Connell, CIADA Tammi McCoy, CADA Art Erwin, Christopher's Dodge World Mike McKinnon Spencer Maloney, The Sharpest Rides DeMarcus Rhodes, Grand Auto

Ty Steerman, Christopher's Dodge World  
Alex Hamrouh, Christopher's Dodge World  
Eugene Fouks, Global Source, LLC

Vice President of the Board, Jason Wagner opened the meeting of February 19, 2013, 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 that there were no corrections or modifications to the agenda. Due to technical difficulties the agenda did not post to the website.

There is an Exceptions Hearing scheduled for 10:00; Kit Spaulding will be available as Conflicts Counsel.

Mr. Zulauf announced that Mr. Smith and Mr. Gebhardt would not be in attendance as they are on vacation.

Mr. Zulauf provided an update on the Electronics Media and Technology Focus group which has met approximately five times. The group primarily looks at advertising rules, but they are also looking at the entire issue of electronic media. The group's primary focus is to look at the new technology out there to determine if statutory or regulatory change is needed. The group will have a report to submit this summer with any recommendations regarding electronic media.

Once that report is done, the Board will need to move into rulemaking. There are new requirements that at least 20% of rulemaking authorities review at least 20% of their rules each year. This has to be done before November month end.

## **MINUTES**

The minutes of the January 15, 2013, Board meeting were unanimously approved.

## **BUDGET**

Mr. Zulauf reminded the Board that they had agreed to a quarterly report, but said the Board would be seeing Ms. Vaughan and Mr. Tremble at the next 2-3 meetings. Fee setting will occur at the April meeting. Mr. Zulauf turned the floor over to Ms. Vaughan.

The Division Cash Flow Analysis reflects the financial position of the Auto Industry Division as of period six for FY13 provided all projections hold true. Second quarter revenue collections were \$77,500 more than the projected amount of \$585,497 and expenses were \$12,867 less than the projection of \$748,511. Total expenditures in the amount of 2.9 million equal actual expenses through period 6 and projected fund activity for the remainder of the year. The end-of-year fund balance for FY13 is projected to exceed the division need by \$242,719. The Division expenditure projections are continually adjusted to reflect budget cuts and restrictions as required by DOR and the Governor's Office.

## **ATTORNEY GENERAL'S OFFICE REPORT**

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

- **Proposed Stipulation and Final Agency Order for Chrome Dome Motors, Inc., #40075** - Motion to accept the Proposed Stipulation and Final Agency Order with a modification of language to read “**original** dealer license” instead of “**new** dealer license” – approved unanimously.

## **EXECUTIVE SECRETARY’S REPORT**

Mr. Zulauf presented the following to the Board:

- **Proposed Stipulation and Final Agency Order & Affidavit – Stucke Motors, Inc., d/b/a Thompson Auto Sales #40018** – Motion to accept the Proposed Stipulation and Final Agency Order– approved unanimously
- **Proposed Stipulation and Final Agency Order & Affidavit – Shapiro Inc., d/b/a Boots Auto Sales #3211** – Motion to accept the Proposed Stipulation and Final Agency Order– approved unanimously.

**Ms. Scott recused herself and left the room.**

- **Initial Decision – Geiselhart, Derek Michael #32385** – Motion to accept the Findings of Fact and Conclusions of Law, modify the recommendations of the Hearing Officer revoke the license – approved unanimously.

**Ms. Scott returned to the room.**

## **BACKGROUND INVESTIGATIONS TEAM**

Matt Heap presented the following:

### **Salesperson Applications:**

- **Maloney, Spencer A. #27565** – Motion to approve a conditional license, conditioned upon a letter from the dealership owner acknowledging the situation, upon change of employment a letter is required from the new dealership – approved 4-1 (Wegener).
- **Rhodes, DeMarcus A. #182964** – Motion to approve a conditional license – motion withdrawn. Motion to table a decision to allow the applicant time to obtain certified court documents – approved unanimously.
- **Steerman, Ty R. #151760** – Motion to approve a license – approved 3-2 (Thompson, Wegener).
- **Coven, Crystal #183377** – Motion to approve a license – approved unanimously.
- **Freiboth, Robert #182786** – Motion to deny the license application on the basis of unfitness of criminal character or record and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.

- **Garcia, Alejandro #183326** - Motion to deny the license application on the basis of unfitness of criminal character or record and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.
- **Kennedy, Peter A. #182193** - Motion to deny the license application on the basis of unfitness of criminal character or record and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.
- **Knapp, David J. #182612** - Motion to deny the license application on the basis of unfitness of criminal character or record and having been convicted of a misdemeanor under title 18 or any felony – approved 4-1 (Martin).
- **Mercado, Mario #183178** - Motion to deny the license application on the basis of unfitness of criminal character or record and unfitness of financial character or record – approved 4-1 (Schenden)
- **Oster, Conrad W. #183967** - Motion to deny the license application on the basis of unfitness of criminal character or record and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.
- **Ray, Tobias Z. #27380** – Motion to deny the license application on the basis of unfitness of criminal character or record and unfitness of financial character or record – approved unanimously.
- **Saenz, Osbaldo H. #183390** - Motion to deny the license application on the basis of unfitness of criminal character or record and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.
- **Shapiro, Michael #183096** – Motion to approve the license application – failed 2-3 (Thompson, Wegener, Hefty). Motion to deny the license application on the basis of unfitness of licensing character or record, unfitness of criminal character or record and having been convicted of a misdemeanor under title 18 or any felony – approved 3-2 (Martin, Schenden)
- **Smith, Patrick D. #183214**- Motion to deny the license application on the basis of unfitness of criminal character or record and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.
- **Weiner, Seth H. #22245** – Motion to approve the license application – approved 4-1 (Wegener)

The Board took a short break to set up for the Exceptions Hearing.

**Case Number OAC – MV2011-0006**

**In Regards: Global Source, LLC, d/b/a G &G Auto Brokers, dealer license #40354**

Ms. Scott advised the Board that it has been mutually agreed upon that we should work this case out and asked that the Hearing be tabled for 30 days to allow this to be settled. A motion was made to table the hearing for 30 days – approved unanimously.

## **INVESTIGATION REPORT:**

Agent in Charge Chris Rouze presented the following:

**Statistical Reporting** – Ms. Rouze informed the Board that we started with 437 cases, 169 new cases were opened and 163 cases were closed for the month, giving the Division a balance of 443 open cases. 328 backgrounds were completed

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

- **DeKam Motors #39639** - Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to DeKam Motors, dealer #39639; that the case be assigned to the Colorado 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.
- **Mike Naughton Ford #59** - Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Mike Naughton Ford, dealer #59; that the case be assigned to the Colorado 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.

### **BOARD DISCUSSION:**

**Unlicensed Sales / Curbing** – Mr. Martin stated he has been approached by multiple people regarding unlicensed sales and curbing. He stated he has been informed of one individual who advertises vehicles for sale and clearly states he is not a dealer and who supposedly received a \$100 ticket last year for unlicensed sales. His concern is that the Board has fined a licensed dealer \$7500 for an “oversight”, but we aren’t doing anything about the unlicensed sales.

Mr. Zulauf explained that unlicensed sales are a huge problem everywhere in this state. The Division has statutory authority to issue criminal summonses in these situations. Mr. Zulauf explained that the Board does not have jurisdiction over unlicensed sales related to curbing. The Board has jurisdiction over licensees and these people are not licensed. When these situations happen, the person or persons who are involved in this activity are committing a criminal act, which is a misdemeanor. When a criminal summons is issued the jurisdiction of that case then transfers to the District Attorney’s Office within each county. Neither the Division, nor the Board has any control over how the District Attorney or the County Court adjudicates the matter.

Mr. Zulauf stated that current staffing does not allow significant time to be allocated to this issue. Currently, there are only 10 Criminal Investigators within the Division for the entire state. He further stated that every Police Department and/or Sheriff’s Office within the state can enforce this law.

Mr. Schenden inquired about what steps could be taken to support the Division with getting additional staff. There was a general discussion about spending authority issues related to staffing.

Mr. Martin suggested a fee for a consumer filing a complaint with the Division and possible arbitration and/or mediation related to the matters. He questioned if this could reduce the work load for Investigation. Mr. Zulauf stated that the push back from consumers wanting to file a complaint would be extreme if a fee was associated. Additionally, it would take statutory and regulatory reform to charge the fee.

There was further discussion regarding curbing and possible remedies. Mr. Zulauf included CIADA into the discussion. Mike McKinnon, Legal Counsel for CIADA explained that the dealers should all start contacting their local law enforcement agencies; going to their city council and county board meetings and pushing them to do something about curbing; notifying Zoning and filing a complaint with the Zoning Department about areas where unlicensed sales are taking place.

**New Business** – There was no further new business.

**Public Comment** – There was no public comment.

The regular meeting of the Motor Vehicle Dealer Board was adjourned at 11:00 a.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