

**MOTOR VEHICLE DEALER BOARD  
MINUTES  
June 18, 2013**

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

**BOARD MEMBERS:**

Beau Smith  
John Schenden  
Stan Martin  
Joe Gebhardt  
Fred Wegener  
Deborah Thompson

**MEMBERS ABSENT:**

Chris Hefty  
Jason Wagner

**SENIOR DIRECTOR OF  
ENFORCEMENT:**

**EXECUTIVE SECRETARY:**

Bruce Zulauf

**LEGAL ASSISTANT:**

Leland Bebee

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

Matt Heap  
Gloria Breeden  
Margaret Jungmann  
John Opeka  
Erika Garcia  
Kaye Kopecky  
Eric Hartsough  
Bud Heinrich  
John Opeka

**ATTORNEY GENERAL'S OFFICE:**

Y.E. Scott  
Skip Spear

**BUDGET OFFICE:  
VISITORS:**

Todd O'Connell, CIADA  
Tammi McCoy, CADA  
Phil Root – Coyote Motorsports  
Brian Root – Coyote Motorsports  
Mike Kennedy  
Peter Kennedy  
Jihad Salameh  
Jim Timerman – Universe Auto Brokers  
Daniel Czyszczonek – Universe Auto Brokers  
Mike McKinnon

Lori Church – CADA Intern  
Tony Musso – Suss Buick/GMC  
Stanislav Stoyanov – Express Auto  
James a. Malsam – JM Motors  
Art Erwin – Christopher’s Dodge World  
Artur Svyafetsky – Skyy Automotive  
Kristina Tolmacheva – Skyy Automotive

President of the Board, Beau Smith, opened the meeting of June 18, 2013, at 9:08 a.m. Mr. Smith turned the floor over to Executive Secretary Bruce Zulauf.

## **AGENDA REVIEW AND ANNOUNCEMENTS**

Mr. Zulauf informed the Board that there were no corrections to the agenda. There are two appeals scheduled back to back and Conflicts Counsel will be available.

Mr. Wagner is on vacation. Mr. Kammerzell, Ms. Rouze and Mr. Hefty will not be in attendance today. We do have a quorum.

Mr. Zulauf announced that the Boards and Commissions have all of the applications for the Board seats and he anticipates the Governor will make an announcement by the end of the month.

The Salesperson application is on line. He thanked the associations for their assistance with educating the industry. July 1<sup>st</sup> is the implementation date. He stated he has been looking over some of the incoming applications and he is pleased. Mr. Zulauf informed the Board that any application with court documents that are not certified will be rejected. He did inform the Board that he felt they would appreciate the “explanation” portion of the application.

## **MINUTES**

The minutes of the May 16, 2013, Board meeting were unanimously approved.

## **ATTORNEY GENERAL’S OFFICE REPORT**

Y.E. Scott did not have any Stipulations to present.

## **EXECUTIVE SECRETARY’S REPORT**

Mr. Zulauf presented the following to the Board:

Mr. Zulauf stated that there were 5 items having to do with a dealer by the name of Coyote Motorsports. The principals from Coyote Motorsports are present with their attorney Mr. McKinnon. Coyote Motorsports had two dealer licenses, a franchise dealer license and a powersports license. The issues began with what appeared to be management type disagreements and disagreements about controlling shares. A civil suit was filed, but ultimately they failed to renew the dealer licenses. When they failed to renew the licenses, they stayed in business so they were then selling without a license. They contacted Mr. McKinnon to help resolve their issues and get them back into compliance.

Mr. Zulauf pointed out that when the 30 day grace period expires the Board loses their jurisdiction. There is nothing for the Board to discipline. Mr. Zulauf said he could have, but chose not to criminalize this matter. The Division could have written criminal summons for the principals and possibly the salespeople. Instead, Mr. Zulauf negotiated the stipulations with Mr. McKinnon to resolve the issue.

The proposed stipulations are identical. To assist in relicensure the stipulations negotiated state that the respondent agrees, in lieu of the filing of criminal charges by the Auto Industry Division, to restore jurisdiction to the Board during the period of time the respondent conducted business in an unlicensed capacity.

Mr. Zulauf asked the Board for a motion to accept the concept of the respondent giving back jurisdiction to the Board explaining procedurally we need to accept the concept then go to affidavits of probable cause, then come back to the stipulations. If the Board fines probable cause and accepts the stipulations, then we can move forward to the proposed applications that Mr. Heap will present.

Motion made that the Board accept the concept of the Board taking back jurisdiction – approved unanimously.

Supervisor Investigator Matt Heap presented the following affidavits of probable cause:

- **Coyote Motorsports, LLC, Dealer #36965** – Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Coyote Motorsports, LLC, dealer #36965; 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.
- **Coyote Motorsports, LLC, Powersports Dealer #40608** – Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Coyote Motorsports, LLC, Powersports dealer #40608; 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. 12060194 – approved unanimously.

Mr. Zulauf presented the following:

- **Proposed Stipulation and Final Agency Order & Affidavit – Coyote Motorsports, LLC, Dealer #36965** – Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously.
- **Proposed Stipulation and Final Agency Order & Affidavit – Coyote Motorsports, LLC, Powersports Dealer #40608** – Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously.

Mr. Heap presented the dealer application:

- **Coyote Motorsports LLC #42647** – Motion to approve the license application – approved unanimously.

Mr. Zulauf continued with the Executive Secretary's Report.

Ms. Scott recused herself and left the room.

- **Initial Decision – Gustin, Bryan Richard, License #178934** – Motion to table discussion while Mr. BeBee finds the file and the letter submitted with the application – approved unanimously.
- **Initial Decision – Kennedy, Peter Allen, License #182139** – Motion to approve the license application – approved 3-2 (Wegener, Thompson)
- **Initial Decision – Musso, Joseph Anthony, License #182658** – Motion to approve a conditional license, conditioned upon a letter from the dealership owner confirming knowledge of the situation - approved unanimously.
- **Initial Decision – Gustin, Bryan Richard, License #178934** – Motion to grant a conditional license – defeated 2-3 (Wegener, Gebhardt, Martin) Motion to table a decision until discussion with conflicts counsel at the July Board meeting – approved unanimously.

The Board took a 10 minute break.

Ms. Scott returned to the room.

Skip Spear appearing as conflicts counsel.

**Appeal of Denial of Dealership License Application, Case #DLD13-033 Skyy Automotive, Applicant/Respondent #42552** pursuant to a Notice of Denial dated 3-28-13. This hearing is being conducted pursuant to the Colorado Administrative Procedure Act, 24-4-105 of the Colorado Revised Statutes.

Artur Svyateskiy, appearing pro se on behalf of the Applicant/Respondent.

Y.E. Scott, Esq. Senior Assistant Attorney General representing the Dealer Board.

Mr. Svyateskiy asked the Board for a continuance until the July board meeting to allow him time to make copies of his presentation. Motion made to approve a continuance – approved unanimously.

**Appeal of Denial of Dealership License Application, Case #DLD13-032 JM Motors d/b/a JM Motors, Applicant/Respondent #42556** pursuant to a Notice of Denial dated 3-28-13. This hearing is being conducted pursuant to the Colorado Administrative Procedure Act, 24-4-105 of the Colorado Revised Statutes.

James Malsam, appearing pro se on behalf of the Applicant/Respondent.

Y.E. Scott, Esq. Senior Assistant Attorney General representing the Dealer Board.

The Board heard testimony.

A motion was made to uphold the denial of the license on the basis of unfitness of financial character – approved unanimously.

A motion was made to uphold the denial of the license – approved unanimously.

## **BACKGROUND INVESTIGATIONS TEAM**

Mr. Heap presented the following:

- **Dream Car Leasing and Sales Inc. #42612** – Motion to deny the application on the basis of unfitness of financial character and financial fitness and unfitness of licensing character – approved unanimously.
- **Express Auto LLC #42632** – Motion to deny the application on the basis of unfitness of financial character – approved unanimously.
- **Majestic Motors LLC #42598** - Motion to approve the license application – approved unanimously.
- **N.A.K. Auto #42579** - Motion to deny the application on the basis of unfitness of financial character– approved unanimously.
- **Universe Auto Brokers Inc. #42574** - Motion to approve the license application – approved unanimously.
- **Salesperson Applications: Bilek, Vratislav #183940** – Motion to approve the license application – approved 5-1 (Wegener).
- **Divis, Brian K. #184114** – Motion to deny the license on the basis of unfitness of criminal character, failure to disclose and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.
- **Lee, Sherman Y #183981** - Motion to approve the license application – approved unanimously.
- **Noble, Nathan A. #178634** – Motion to approve the license application – approved unanimously.
- **Romero, Angel #134861** – Motion to deny the license application on the basis of unfitness of criminal character – approved unanimously.
- **Samu, Rick L. #34455** – Motion to deny the license application on the basis of unfitness of licensing character and prior board action – approved unanimously.

## **INVESTIGATION REPORT:**

**Statistical Reporting** – Mr. Heap informed the Board that we started with 428 cases, 178 new cases were opened and 168 cases were closed for the month, giving the Division a balance of 438 open cases.

**Affidavits of Probable Cause:**

- **Bob Penkhus Volkswagen Inc., #41284** - Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Bob Penkhus Volkswagen Inc., dealer #41284; 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.
- **United Auto, LLC, #41940** - Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to United Auto, LLC, dealer #41940; 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.

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

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

The regular meeting of the Motor Vehicle Dealer Board was adjourned at 11:43 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