

**MOTOR VEHICLE DEALER BOARD
MINUTES
July 16, 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
Deborah Thompson
Chris Hefty
Jason Wagner

MEMBERS ABSENT:

Fred Wegener
Levi Yoder

**SENIOR DIRECTOR OF
ENFORCEMENT:**

Ron Kammerzell

EXECUTIVE SECRETARY:

Bruce Zulauf

LEGAL ASSISTANT:

Leland Bebee

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

Matt Heap
Chris Rouze
Gloria Breenen
Margaret Jungmann
John Opeka
Kaye Kopecky
Eric Hartsough
Bud Heinrich
Brenda Fredricey
Sherry Catalina
Frank Macias

ATTORNEY GENERAL'S OFFICE:

Y.E. Scott
Kit Spaulding

**BUDGET OFFICE:
VISITORS:**

Todd O'Connell, CIADA
Tammi McCoy, CADA
Art Erwin – Christopher's Dodge World
Artur Svyafetsky – Skyy Automotive
Kristina Tolmacheva – Skyy automotive
Barry Lichtman
Jeffrey Freeman

Carl Ruch

President of the Board, Beau Smith, opened the meeting of July 16, 2013, at 9:20 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 or additions to the agenda. There are two Appeals and two Exceptions Hearings scheduled starting at 10 a.m. conflicts Counsel will be available.

Sheriff Wegener will not be present, and our new Board member, Levi Yoder will not be present due to a prior engagement.

Executive Order #A2013107, appoints and reappoints the following:

- For a term expiring June 30, 2014, appoints Levi Yoder of Greeley, CO, Used Motor Vehicle Dealer for a position vacated by Robert Perry.
- For terms expiring June 30, 2016, reappointment of:
 - Beau Smith, New Motor Vehicle Dealer
 - Deborah Thompson, Used Motor Vehicle Dealer
 - Jason Wagner, Public Member at Large

Ms. Kopecky administered the oath to the Board Members.

Board Officers were elected:

- President – Beau Smith
- Vice President – Jason Wagner
- 2nd Vice President – Deborah Thompson

MINUTES

The minutes of the June 18, 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:

- **Proposed Stipulation and Final Agency Order – 5280 Secured Ventures, Inc., d/b/a Valley Motors, Dealer #41819** – Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously.
- **Proposed Stipulation and Final Agency Order – Spradley-Powers, Inc., d/b/a Spradley Chevrolet, Inc., Dealer #59** – Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously.

- **Proposed Stipulation and Final Agency Order – Dale Spradley Motors, Inc., d/b/a Spradley Ford Lincoln, Inc., Dealer #40230** – Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously
- **Proposed Stipulation and Final Agency Order – Dekam Motors, LLC, d/b/a Dekam Motors, Dealer #39639** – Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously
- **Proposed Stipulation and Final Agency Order – Georgia Investments, LLC, d/b/a SmartChoice Auto, Dealer #40340** – Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously
- **Proposed Stipulation and Final Agency Order – Mike Naughton Ford Inc., d/b/a Mike Naughton Ford, Inc., Dealer #40** – Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously

Ms. Scott recused herself and left the room.

Initial Decision – Gustin, Bryan Richard, License #178934 - A motion was made to enter Executive Session for the purpose of discussing disputes that are the subject of pending or imminent litigation pursuant to C.R.S. 24-6-402 (3)(a)(II) including discussion with counsel from the Attorney General’s office regarding Bryan Richard Gustin - passed unanimously.

The Board went into Executive Session at 9:45 a.m.

The Board resumed open meeting at 10:14 a.m.

Kit Spaulding, Conflicts Counsel announced that the Board’s discussions were limited to discussing legal matters relating to Bryan Gustin and his salesperson application #178934.

- **Gustin, Bryan Richard, License #178934** – A motion was made to accept the Findings of Fact, modify the Conclusions of Law, specifically #10, finding rehabilitation has not been proven based on exhibit 6, a fraudulent letter to the Board. The board finds a lack of rehabilitation and unfitness of licensing character citing improper reporting of a conviction to the Board and that the applicant did not accept full responsibility for his crime. Additionally, the Board denies the application on the basis of C.R.S. 12-6-104(3)(g), which requires information submitted to the Board by an applicant to be given fully, faithfully and truthfully – approved unanimously.

The Board took a short break.

Mr. Wagner stated he wished to make another motion regarding **Bryan Richard Gustin, license #178934**. **Ms. Scott recused herself and left the room.** Based upon the information provided, a motion was made to open an investigation into the possibility of unlicensed sales by Bryan Gustin – approved unanimously.

Ms. Scott returned to the room.

Review of the Initial Decision of a Hearing Officer Upon the Filing of Exceptions by the Applicant: Case #MSD 12-189 Jeffrey Michael Freeman, pro se. Applicant, Motor Vehicle Salesperson License #152596. The purpose of the review is to determine what action the Board should take with respect to the Initial Decision.

Jeffrey Michael Freeman, appearing pro se on behalf of the Applicant/Respondent.
Y.E. Scott, Esq. Senior Assistant Attorney General representing the Dealer Board.

There was a joint motion to submit exhibits as this is purely a legal argument. The exhibits are for the Board to take Judicial Notice of. The Board approved the motion.

The Board heard testimony.

A motion was made to enter Executive Session for the purpose of discussing disputes that are the subject of pending or imminent litigation pursuant to C.R.S. 24-6-402 (3)(a)(II) including discussion with counsel from the Attorney General's office regarding Jeffrey Michael Freeman - passed unanimously.

The Board went into Executive Session at 10:50 a.m.

The Board resumed open meeting at 10:59 a.m.

Kit Spaulding, Conflicts Counsel announced that the Board's discussions were limited to discussing legal matters relating to Case #MSD 12-189, Jeffrey Michael Freeman, Salesperson #152596.

A motion was made to adopt the Findings of Fact, Conclusions of Law and the disposition of the case and affirm the Hearing Officers conclusion that the applicant has a mandatory disqualifying conviction for a felony offense, which falls under C.R.S. 12-6-118(7)(a) – approved unanimously.

Review of the Initial Decision of a Hearing Officer Upon the Filing of Exceptions by the Applicant: Case #MSD 12-130 Barry Maurice Lichtman, pro se Applicant, Motor Vehicle Salesperson License #180917. The purpose of the review is to determine what action the Board should take with respect to the Initial Decision.

Barry Maurice Lichtman, 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 adopt the Findings of Fact, Conclusions of Law and the Hearing Officer's decision – approved unanimously.

A motion was made to have the Division send Mr. Lichtman a letter explaining what is needed for the application process, clarifying what he should provide if he chooses to apply again in the future – approved 4-2 (Thompson, Schenden)

Appeal of Denial of Dealership License Application, Case # DLD 13-050. Luis Ruthberto Rios de Jesus d/b/a Boricua Auto Sales, Wholesale Motor Vehicle Dealer #42550. Mr. Rios

de Jesus was not present for his appeal. The Board decided to hear from investigations before proceeding with the appeal.

INVESTIGATION REPORT:

Statistical Reporting – Ms. Rouze informed the Board that we started with 438 cases, 151 new cases were opened and 142 cases were closed for the month, giving the Division a balance of 447 open cases. The Division completed 329 background inquiries.

Affidavits of Probable Cause:

- **Adopt-A-Part, Dealer #41323** - Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Adopt-A-Part, dealer #41323; 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.
- **Five Stars Auto Sales, LLC, Dealer #41610** - Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Five Stars Auto Sales, LLC, dealer #41610; 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.
- **Honaccurate Service & Repair Corp., Dealer #8173** – Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Honaccurate Service & Repair Corp., dealer #8173; 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. Motion amended to allow the Division to make corrections on the Affidavit of Probable Cause correcting the dealership name to Honaccurate Service & Repair Corp. instead of Honaccurate Service & Sales Corporation – approved unanimously.

Appeal of Denial of Dealership License Application, Case # DLD 13-050. Luis Ruthberto Rios de Jesus d/b/a Boricua Auto Sales, Wholesale Motor Vehicle Dealer #42550.

Mr. Rios de Jesus was still not present for his appeal.

Mr. Martin wanted to make a motion to deny the license for failure to appear.

Ms. Scott recused herself.

Ms. Spaulding explained that the notice that goes out to the parties explains that the hearing will go on without them if they fail to appear.

The Board took a half hour lunch break.

The Board resumed at 12:06 p.m.

Appeal of Denial of Dealership License Application, Case # DLD 13-050. Luis Ruthberto Rios de Jesus d/b/a Boricua Auto Sales, Wholesale Motor Vehicle Dealer #42550. This

hearing is being conducted pursuant to the Colorado Administrative Procedure Act, 24-4-105 of the Colorado Revised Statutes.

Mr. Rios de Jesus did not appear.

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

The hearing was conducted.

A motion was made to uphold the Denial – approved unanimously.

BACKGROUND INVESTIGATIONS TEAM

Mr. Heap presented the following:

- **Dealer Applications: Coles Chop Shop #42661** - Motion to approve the application – approved unanimously.
- **Scepter Group, LLC #42610** – Motion to deny the application on the basis of unfitness of financial character and unfitness of licensing character – approved unanimously.

Mr. Heap stopped his presentation to proceed with the scheduled hearing.

Appeal of Denial of Dealership License Application, 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.

Artur Svyatetskiy withdrew his appeal.

Background Investigation Team continued:

- **Salesperson Applications: Chambers, Kyle S. #184844** - Motion to approve a conditional license – failed 2-4 (Hefty, Gebhardt) Motion to deny the license application on the basis of unfitness of criminal character and having been convicted of a misdemeanor under title 18 or any felony – approved 4-2 (Hefty, Gebhardt)
- **Durand, Kenneth C. #177364** - Motion to deny the application on the basis of unfitness of criminal character– approved unanimously.
- **Richmond, John D. #184083** - Motion to deny the license application on the basis of unfitness of criminal character, unfitness of financial character and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.
- **Ruch, Carl D. #28960** – Motion to table the license application until the next Board meeting to determine how the Court of Appeals case will factor in – approved unanimously.

- **Vasquez, Daniel L. #151399** – Motion to deny the license on the basis of unfitness of criminal record and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.

Salesperson Affidavits: Aldridge, Curtis #132705 - Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Aldridge, Curtis, salesperson #132705; that the case be assigned to the Colorado Department of Revenue Hearing Division for a hearing on the merits – approved unanimously.

General Discussion:

Mr. Zulauf initiated a discussion with the Board regarding the Board's fining authority stating he was looking for further guidance. The Board has fining authority of \$10,000 per count by statute. Prior Boards really utilized the full fining authority and there were substantial fines. A review was conducted and the result was the 2007 Sunset bill. The mastery exam came out of Sunset along with statutory language which basically said the Board needs to create a fining matrix.

In 2009, the Board adopted the Complaint Investigation Settlement Process (CISP) Under CISP instead of \$10,000 per count, the fining matrix states the 1st time before the Board, the Board has the ability to cut the fine in half (\$5,000); a second time before the Board in a 2 year period, the fine is \$7,500; above that, it is the full fining authority.

Mr. Zulauf said that when he negotiates a settlement, he does so on the Board's behalf. He stated that the proposed settlement is always presented to the Board for approval or denial. Mr. Zulauf inquired if the Board, in general, was satisfied with the fines he was negotiating.

There was a general discussion about the reoccurring unlicensed sales activity within dealerships and the fines that have been assessed. During the discussion there was also inquires about the final agency orders being placed on the website as a deterrent.

Mr. Zulauf advised the Board that they do have the ability to suspend a license. This is not the same as a summary suspension, but a 1-3 day suspension in lieu of a fine. A graduated fine system was discussed. Mr. Zulauf explained that we already have this in place: \$5,000, \$7,500 and \$10,000 per count. No Board motion was made as it appeared there was consensus to continue to adhere to the status quo on the fines.

There was discussion on the professional salesperson license concept, which would take statutory change. Mr. Zulauf explained how this process may look, if implemented. Mr. Zulauf would like to have a general discussion workshop in September to start discussions on the professional license. It was stated that this should be targeted for the 2015 legislative session. This will give us enough time to get everything in order.

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 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