

**MOTOR VEHICLE DEALER BOARD
MINUTES
August 15, 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:

John Schenden
Stan Martin
Joe Gebhardt
Deborah Thompson
Jason Wagner
Levi Yoder

MEMBERS ABSENT:

Fred Wegener
Beau Smith
Chris Hefty

**SENIOR DIRECTOR OF
ENFORCEMENT:**

EXECUTIVE SECRETARY:

Bruce Zulauf

LEGAL ASSISTANT:

Leland Bebee

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

Matt Heap
Chris Rouze
Gloria Breedon
Margaret Jungmann
John Opeka
Kaye Kopecky
Eric Hartsough
Bud Heinrich
Brenda Fredricey
Martin Kenney
Cheryl Morrison

ATTORNEY GENERAL'S OFFICE:

Y.E. Scott
Kit Spaulding

BUDGET OFFICE:

Jill Vaughan

VISITORS:

Mary Marvin, CAPSS
Todd O'Connell, CIADA
Tammi McCoy, CADA
Art Erwin – Christopher's Dodge World
Jimmy Brown
Carl Ruch, Tynans/Self

Dean Fabiano, Grand Auto
Michael Dommermuth, Fairfield-Woods

Vice President of the Board, Jason Wagner, opened the meeting of August 15, 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 there were no corrections or additions to the agenda. Conflicts Counsel will be available to assist the Board with legal questions regarding the Initial Decisions. Sheriff Wegener, Chris Hefty and Beau Smith will not be present.

Mr. Zulauf announced that John Opeka has been promoted to supervisor of the Background Investigation Team and Matt Heap will supervise the Complaint Investigation teams.

Mr. Zulauf introduced Lee Yoder, explaining that he will fill the term vacated by Robert Perry, which means Mr. Yoder will have a one year term. Mr. Yoder will fill the position of a Used Motor Vehicle dealer. Mr. Zulauf turned the floor over to Mr. Yoder to give a brief history of himself. Mr. Yoder stated he had been in the car business since 1961 in one way or another. He started out selling gas and working on cars, and then moved into selling them. In 1982, Mr. Yoder found Weld County Garage and traded "equity for expertise". He has gone on to the fun of starting and running Herbies.

MINUTES

The minutes of the July 16, 2013, Board meeting were unanimously approved with a correction to be made to reflect the Board's approval of a motion made to introduce additional exhibits in the Jeffrey Freeman hearing.

BUDGET REPORT

Jill Vaughan presented the Cash Fund Flow Analysis for fiscal year end 2013. Overall revenue collections were \$345,000 more than the projected amount of 2.9 million. Actual expenses were \$59,000 less than the adjusted projected expenditures. Thus, fiscal year 2013 ends with a \$367,000 increase to the cash fund. The cash fund will begin fiscal year 2014 with a fund balance of \$971,000. The 2014 end of year fund balance target figure is \$547,000.

ATTORNEY GENERAL'S OFFICE REPORT

Senior Assistant Attorney General Y.E. Scott presented the following to the Board:

- **Proposed Stipulation and Final Agency Order – Vyacheslav Iskhakov, Salesperson #170726** – Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously.

Ms. Scott said the next item is Camden Motors, LTD. We have a ruling from the Judge and she would like to discuss legal strategy with the Board.

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 Camden Motors, LTD, #40722 - passed unanimously.

The Board entered into Executive Session at 9:15 a.m. and resumed open session at 9:30 a.m.

Ms. Scott announced that the Board's discussions were limited to discussing legal matters relating to Camden Motors, LTD. #40722.

- Camden Motors, LTD – A motion was made to dismiss the case before the Office of Administrative Courts without prejudice and request a hearing before the Board – approved unanimously.

EXECUTIVE SECRETARY'S REPORT

Mr. Zulauf presented the following to the Board:

Ms. Scott and Mr. Opeka recused themselves and left the room. Senior Assistant Attorney General Kit Spaulding was present as Conflicts Counsel.

- **Initial Decision – Brown, Jimmy D. #30325** – Motion to approve a conditional license - withdrawn
 - The Board took a short break to allow staff to discuss the issue
 - Motion to table for 30 days to allow Mr. Zulauf and Mr. Brown to reach a settlement – approved unanimously.
- **Initial Decision – Fabiano, Dean Patrick #183409** – 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 Fabiano, Dean Patrick #183409 - passed unanimously.

The Board entered into Executive Session at 10:05 a.m. and resumed open session at 10:20 a.m.

- **Fabiano, Dean Patrick #183409** – Ms. Spaulding announced that the Board's discussions were limited to discussing legal matters relating to Fabiano, Dean Patrick #183409. Motion to accept the Findings of Fact, Conclusions of Law and modify the recommendation to grant a conditional license for the balance of the Community Corrections sentence with normal conditions, stipulating that Mr. Fabiano must report any arrests, charges or convictions within 10 days – approved unanimously
- **Initial Decision – Halfon, Jonathan David #156922** – Motion to grant a conditional license with a letter from the owner of the dealership and upon transferring employment another letter is required (due to the timing, this is essentially a 45 day license) – approved unanimously.

- **Initial Decision – Mann, Robert Matthew, #152500** – Motion to accept the Findings of Fact, Conclusions of Law and grant a conditional license, conditioned upon a letter from the owner of the dealership and upon changing employers another letter is required – approved 4-1 (Thompson)
- **Initial Decision – Varia, Mark Louis #34138** – Motion to accept the Findings of Fact, Conclusions of Law and modify the recommendations to revoke the license based upon unfitness of criminal character or record and unfitness of financial character or record – approved unanimously

Ms. Scott and Mr. Opeka returned to the room.

BACKGROUND INVESTIGATIONS TEAM

Mr. Opeka presented the following:

Dealer Applications:

- **A & M Auto Sales LLC #42710** - Motion to approve the application – approved unanimously.
- **Rebel Automotive LLC #42665** – Motion to deny the application on the basis of unfitness of financial character – approved unanimously.

Salesperson Applications:

- **Francisco, Eddie #184367** - Motion to approve a license – approved unanimously.
- **Hines, Troy #184359** - Motion to deny the 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.
- **King, Emul #29651** - Motion to approve the license application – approved unanimously.
- **Powell, Jacob #184388** – Motion to table a decision until it can be determined what the “forgery” charge was for – approved unanimously.
- **Price, Julian #178292** – Motion to table a decision to obtain a copy of court records – approved unanimously.
- **Ruch, Carl #28960** – Motion to table a decision to allow counsel and staff time to evaluate the submitted documentation – approved unanimously.
- **Spradley, Tara #162491** – Motion to deny the license on the basis of unfitness of licensing character, unfitness of criminal character and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.

INVESTIGATION REPORT:

Statistical Reporting – Ms. Rouze did not provide the Board with statistics for this month.

Affidavits of Probable Cause:

- **ABC Auto Sales, DL #37515** - Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to ABC Auto Sales, dealer #37515; 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.
- **Bravo Motors, LLC, #42213**- Motion that the Board finds probable based upon the Affidavit of Probable Cause presented to the Board today respective to Bravo Motors, LLC, dealer #42213; AND, that the Board finds that is has objective and reasonable grounds to believe that the public health, safety, and welfare imperatively requires emergency action; AND, that the Board summarily suspend the Licensee’s license, pending proceedings to be promptly instituted before the Colorado Motor Vehicle Dealer Board; AND, that the Board authorize the Attorney General to prepare and serve upon the licensee the Board’s Order of Summary Suspension and other documents required to institute proceedings – approved unanimously.
- **Intermountain Auto Sales, #39178** – Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Intermountain Auto Sales, dealer #39178; 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.
- **Larry H. Miller Liberty Toyota Scion CO Springs, #0095** – Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Larry H. Miller Liberty Toyota Scion CO Springs, dealer #0095; 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.
- **Phil Long Hyundai of Chapel Hills, LLC, #38352** - Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Phil Long Hyundai of Chapel Hills, LLC, dealer #38352; 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.
- **Pro Performance Auto, #41507** - Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today respective to Pro Performance Auto, dealer #41507; 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.
- **Jessie Miranda, Salesperson #162536** – Motion that the Board finds probable cause for a hearing based upon the Affidavit of Probable Cause presented to the Board today

respective to Jessie Miranda, salesperson #162536; AND, that the Board finds that is has objective and reasonable grounds to believe that the public health, safety, and welfare imperatively requires emergency action; AND, that the Board summarily suspend the Licensee's license, pending proceeds to be promptly instituted before the Colorado Department of Revenue Hearing Division; AND, that the Board authorize the Attorney General to prepare and serve upon the licensee the Board's Order of Summary Suspension – approved unanimously.

New Business – The date for the next meeting is Tuesday, September 17th. We will have rulemaking on Thursday, September 26th.

Public Comment – There was no public comment.

The regular meeting of the Motor Vehicle Dealer Board was adjourned at 11:25 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