

MOTOR VEHICLE DEALER BOARD

MINUTES

July 27, 2017

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

BOARD MEMBERS:

Lisa Freimann
Ramona Graves Bode
Michael Jorgensen
Chris Langley
Stan Martin
Steven Perkins
Dominic Scrivner
Jason White

MEMBERS ABSENT:

Lucky Heggs

SENIOR DIRECTOR OF ENFORCEMENT:

Ron Kammerzell

EXECUTIVE SECRETARY:

Bruce Zulauf

LEGAL ASSISTANT:

Leland Bebee

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

Chris Rouze
Chris Hartman
Gloria Breedon
John Opeka
Frank Agos
Cheryl Morrison
Erica Garcia
Eric Teklu
Mark Kelley
Annamarie Steenbock
Arleen Criddell Tapanen

ATTORNEY GENERAL'S OFFICE:

Brad Jones
Skip Spear
Jennifer Gilbert

VISITORS:

Scott Nisbeth, Scott's Cars
Lori Church, John Elway Dealerships
Marie Johnson
Jim Bode, J. Bode Used Cars
William Simon, LAS Public
Cari Tahaki, LAS Public
Y.E. Scott, OAG
Eric Hartsough, Dealer Services
Todd O'Connell, CIADA
Art Erwin, Christopher's Dodge World
Sarah Wynder, J. Bode Used Cars
H. Oliver Vargas, Century Auto, Inc.
Mike Finger, OAG
Allison Robinette, OAG
Scott Boyd, Balboa Autos
Mike McKinnon, Esq.

Vice-president, Stan Martin, opened the meeting of July 27, 2017 at 9:04 a.m. Mr. Martin turned the floor over to Executive Secretary, Bruce Zulauf.

AGENDA REVIEW AND ANNOUNCEMENTS

Mr. Zulauf informed the Board there were no changes to the agenda as posted. Mr. Lucky Heggs will not be in attendance today. Three hearings will be held today and Mr. Skip Spear will preside as Conflicts Counsel and advise the Board. The Division is busy implementing processes and preparing for upcoming staff additions as a result of the last legislative session.

CALENDAR

Upcoming meeting dates for Rulemaking will be held after regularly scheduled Board meetings in August, September and October. In addition, Mr. Zulauf encouraged Board members to keep the following dates open for rulemaking/stakeholder meetings as well:

- Thursday, August 24th
- Thursday, September 28th and
- Thursday, October 26th

Mr. Kammerzell informed the Board that he will be retiring from the Colorado Department of Revenue and the position of Senior Director of Enforcement after 26 years of service at the end of August. Mr. Kammerzell announced he has hired a new Deputy Director of Enforcement, Mr. Cory Amend. Mr. Amend will attend the next Board meeting. Mr. Kammerzell has agreed to come back from October through December to assist with the transition.

Mr. Kammerzell also informed the Board of the Governor's appointment of a new Executive Director of the Colorado Department of Revenue. The new director is Mr. Michael Hartman, who comes to us from Mutual of Omaha Bank. Mr. Hartman begins his new position next week.

Mr. Zulauf read into the record Executive Order A 2017 185, appointing the following to the Motor Vehicle Dealer Board for terms expiring June 30, 2020:

- Richard Jason White of Littleton as a representative of Licensed Motor Vehicle Dealers;
- Ramona Lee Graves Bode of Aurora as a representative of Licensed Used Motor Vehicle Dealers; and
- Lisa Brenner Freimann of Denver as a member of the Public at Large.

Each new Board member took the Oath of Office, Statute C.R.S. 12-6-104(I) and were sworn in by Ms. Rouze.

Mr. Perkins made a motion to elect the following Board officers:

- President – Stan Martin
- 1st Vice president – Chris Langley
- 2nd Vice president – Mike Jorgensen

The motion passed 6-1 (Freimann abstains).

MINUTES

The minutes of the June 20, 2017 meeting were approved 6-0-1 (Freimann abstains).

BACKGROUND INVESTIGATIONS TEAM

Ms. Breeden presented the following to the Board:

Dealer Applications:

- **Jambo Auto Sales, LLP #41376** – Motion to grant the license – approved 6-0-1 (Langley abstains).
- **Lighthouse Auto Sales, LLC #3863** – Motion to grant the license – approved unanimously.

Mr. Zulauf and Mr. Jones suggested the Board discuss context of documentation in generalizations and abstain from disclosing specific dollar amounts.

Salesperson Applications:

- **Brodeur, Christopher Jude #188337** – Motion to deny the license based on unfitness of criminal character, and having been convicted of a misdemeanor under title 18 or any felony – approved 6-1 (Jorgensen opposed).
- **Cereceres Moreno, Jesus Efren #187602** – Motion to deny the license based on unfitness of licensing character, unfitness of criminal character and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.
- **Gallegos, Jacob Paul #600138** – Motion to deny the license based on unfitness of criminal character, and having been convicted of a misdemeanor under title 18 or any felony – approved 6-1 (Freimann opposed).
- **Grimaldo, Gabriel C. #603295** – Motion to grant the license – approved unanimously.
- **Malekzadeh, Houshang #188443** – Motion to deny the license based on unfitness of licensing character – approved 6-0-1 (Freimann abstains).
- **Nickens, Johana Marie #606417** – Application was not presented.
- **Pilcher, Brett L. #600219** – Motion to deny the license based on unfitness of criminal character – approved 5-2 (Jorgensen and Langley opposed).
- **Stratton, Danae Marie #600950** – Tabled until next month – approved 6-1 (Freimann opposed).
- **Than, Quang #603675** – Motion to deny the license based on unfitness of financial character and unfitness of criminal character – approved unanimously.
- **Walkinshaw, William Christopher #600890** – Motion to deny the license based on unfitness of financial character, unfitness of criminal character and having been convicted of a misdemeanor under title 18 or any felony – approved unanimously.

Board took a 10 min. break.

MOTIONS HEARING

Case #BD17-0497 – Century Auto, Inc. – Licensee/Respondent

Hector Oliver Vargas, Pro Se, appearing on behalf of Licensee/Respondent

Y.E. Scott, Esq., Temporary Assistant Attorney General, appearing on behalf of the State

Oral arguments were heard pursuant to the motions process.

A motion was made to enter Executive session for the expressed purpose of seeking legal advice in the matter of Century Auto, Inc. – passed unanimously

The Board entered into Executive session at 10:30 a.m. and resumed Open session at 10:52 a.m.

The Board deliberated in open session. A motion was made to grant the motion for judgment on the pleadings with the exception of charges 3 and 4 – passed unanimously.

A motion was made to revoke the license – passed 6-1 (Langley opposed). Conflicts Counsel, Skip Spear, will prepare the written Order.

INVESTIGATIONS REPORT

Ms. Rouze presented the following to the Board:

Statistical Reporting – Ms. Rouze informed the Board that we started with 289 cases, 176 new cases were opened and 194 cases were closed for the month, giving the Division a balance of 291 open cases. There were 844 background inquiries performed.

Affidavits of Probable Cause:

- **AutoNation Honda 104, DL #7281** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to AutoNation Honda 104, Dealer #7281; 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.
- **AutoNation Hyundai 104, DL #7280** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to AutoNation Hyundai 104, Dealer #7280; 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.
- **AutoNation Alfa Romeo and Fiat North Denver, DL #42879** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to AutoNation Alfa Romeo and Fiat North Denver, Dealer #42879; 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.

- **Community Auto Center, DL #41993** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Community Auto Center, Dealer #41993; and 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.
- **Rimrock Trade Center, DL #36487** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Rimrock Trade Center, Dealer #36487; 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.

Board took a lunch break.

DISCIPLINARY HEARING

Case #DLD17-0537 – Scott’s Cars – Applicant/Appellant

Scott Wayne Nisbeth, Pro Se, appearing on behalf of Applicant/Appellant

Bradford Jones, Esq., Assistant Attorney General, appearing on behalf of the State

Oral arguments were heard pursuant to the disciplinary process.

A motion was made to enter Executive session for the expressed purpose of seeking legal advice in the matter of Scott’s Cars – passed unanimously.

The Board entered into Executive session at 1:42 p.m. and resumed Open session at 1:52 p.m.

The Board deliberated in open session. A motion was made to uphold the decision to deny the license – passed 6-1 (Freimann opposed).

Board took a 10 min. break.

Mr. Martin recused himself and left the room. Mr. Langley took the chair.

ATTORNEY GENERAL’S REPORT

Mr. Jones presented the following to the Board:

- **Proposed Stipulation and Final Agency Order – Balboa Autos, Dealer #42518** – Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously.

Mr. Martin returned to the room.

EXECUTIVE SECRETARY’S REPORT

Mr. Zulauf presented the following to the Board:

- **Proposed Stipulation and Final Agency Order – Antera Auto Sales, Dealer #41699** – Motion to accept the Proposed Stipulation and Final Agency Order – approved 6-1 (Scrivner opposed).

- **Proposed Stipulation and Final Agency Order – Class Cars, LLC, Dealer #39919** – Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously.

Mr. Scrivner recused himself and left the room.

- **Proposed Stipulation and Final Agency Order – Groove Subaru, Dealer #41260** – Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously.

Mr. Scrivner returned to the room.

- **Proposed Stipulation and Final Agency Order – Mountain States Toyota and Scion, Dealer #36975** – Motion to accept the Proposed Stipulation and Final Agency Order – approved 6-1 (Freimann opposed).
- **Proposed Stipulation and Final Agency Order – H M Brown & Associates, Dealer #41489** – Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously.

BOARD DISCUSSION – Regulation 12-6-104(3) (g) #9 and #14

A motion was made to enter Executive session for the expressed purpose of seeking legal advice for a specific legal question regarding Regulation 12-6-104(3) (g) 9 and 12-6-104 (3) (g) 14 – passed unanimously.

The Board entered into Executive session at 3:07 p.m. and resumed Open session at 3:27 p.m.

OPEN DISCUSSION – Upcoming Rulemaking Agenda

Mr. Zulauf informed the Board that the next 3 regularly scheduled board meetings (August, September and October) will be followed by a rulemaking/stakeholder session. In addition, the 4th Thursday of the next three months will also be used to hold rulemaking/stakeholder sessions. The following are the upcoming rules to be reviewed:

- **August – Application Requirements**
- **September – Off Premise Permits**
- **October – Hearing Procedures**

New Business – Mr. Jones introduced Jennifer Gilbert, Assistant Attorney General, who will be working with the Board and the Division in the future.

Public Comment – None

The meeting of the Motor Vehicle Dealer Board was adjourned at 3:42 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