

MOTOR VEHICLE INDUSTRY LICENSING BOARD
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by §92-7(b), Hawaii Revised Statutes (HRS).

Date: Tuesday, September 4, 2012
Time: 9:00 a.m.
Place: King Kalakaua Conference Room
King Kalakaua Building
335 Merchant Street, 1st Floor
Honolulu, Hawaii 96813

Present: Werner Umbhau, Public Member, Chairperson
Stan Masamitsu, Industry Member
Donald Touchi, Public Member
Bill van den Hurk
Christine Rutkowski, Executive Officer
Rodney J. Tam, Deputy Attorney General
Alice Worthy, Secretary

Excused: Russell Y. J. Chung, Public Member
Carl D. Johnsen, Public Member
Dennis Short, Industry Member

Guests: Gary G. Grimmer, Attorney for Honolulu Ford Inc.
and Applicant Mark Benson
Ethel Higa, Treasurer, Honolulu Ford
Mark & Mary Benson, Honolulu Ford
Dave Rolf, HADA
Roger Soderholm, Hawaii Specialty Vehicles

Call to Order: Chairperson Umbhau called the meeting to order at 9:07a.m., at which time quorum was established.

Welcome New Board Member: Chairperson Umbhau welcomed new industry member William van den Hurk. Mr. van den Hurk gave a brief summary of his background. Members and staff introduced themselves and welcomed Mr. van den Hurk.

Election of Officers: Nominations were open for Chairperson and Vice-Chairperson.
Mr. Touchi nominated Mr. Umbhau to continue as Chairperson. It was seconded by Mr. van den Hurk and unanimously carried. Mr. Umbhau accepted the position.

Mr. Umbhau then opened the floor for Vice-Chairperson. Mr. Touchi moved to nominate Mr. Masamitsu as Vice-Chairperson. It was seconded by Mr. van den Hurk and unanimously carried. Mr. Masamitsu accepted the position.

Additions/Revisions
to Agenda:

None.

Approval of Minutes
of Previous Meetings:

It was moved by Mr. Touchi, seconded by Mr. Umbhau, and unanimously carried to approve the meeting minutes of May 22, 2012 and June 26, 2012 as circulated.

Chair's Report:

None.

Executive Officer's
Report:

2013 Board Meeting Schedule

Copies of the 2013 Board meeting schedule were distributed to the members for their information. Members were asked to let the Executive Officer know if they had any conflict with the dates.

Report of June 30, 2012 License Renewals

The Executive Officer reported that the deadline to file for renewal was June 30, 2012. The majority of the renewals were renewed on-line. For those licensees who did not renew by June 30th, they are required to apply as a new applicant.

Chapter 91, HRS
Adjudicatory
Matters:

None.

At 9:19 a.m., it was moved by Mr. Touchi, seconded by Mr. van den Hurk, and unanimously carried to enter into Executive Session to consider and evaluate personal information relating to the individual applying for licensure in accordance with Chapter 92-5(a) (1), and to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities in accordance with Chapter 92-5(a) (4), Hawaii Revised Statutes.

EXECUTIVE SESSION

At 9:54 a.m., it was moved by Mr. van den Hurk, seconded by Mr. Touchi, and unanimously carried to return to the Board's regular order of business.

Licensing: Ratifications

Motor Vehicle Salespersons Transfers
Motor Vehicle Salespersons License
Motor Vehicle Dealers License
Motor Vehicle Manufacturer License
Motor Vehicle Distributor License

Upon a motion by Mr. Touchi, seconded by Mr. Masamitsu, it was unanimously carried to ratify the above lists for the licenses sought (as attached).

Applications

Mark L. Benson – Motor Vehicle Salesperson

Board members reviewed the application and documents submitted by applicant.

After a brief discussion, it was moved by Mr. van den Hurk, seconded by Mr. Touchi, and unanimously carried to approve the license application for a motor vehicle salesperson's license for Mark L. Benson.

Kevin C. Washington – Motor Vehicle Salesperson

Board members reviewed the application and documents submitted by applicant.

It was moved by Mr. van den Hurk, seconded by Mr. Touchi, and unanimously carried to approve the license application for a motor vehicle salesperson's license for Kevin C. Washington.

Conor M. Meagher – Motor Vehicle Salesperson

The Executive Officer stated that applicant called to say that he was withdrawing his application to provide him more time to gather additional information for the Board's review.

Correspondence: June 26, 2012 Email Request from Cara Matesi, Paralegal, Nisen & Elliott LLC, Regarding Licensing Requirement When an Indirect Lessor Who Takes an Assignment of Lease Contract Who Then Sells the Used Vehicle via an Affiliate Company

The Executive Officer reiterated the Board's position that if the vehicle is being leased, no license is required; if there is an option to purchase, then a dealer's license is required.

Deputy Attorney General Tam referred to chap 437-1.1, definition of dealer, regarding a third party buyer. According to chap 437, HRS, unless one of the exemptions under 437-1.1 applies, a license is required.

After a brief discussion, it was moved by Mr. van den Hurk, seconded by Mr. Touchi, and unanimously carried to require a third party buyer to be licensed in order to sell a vehicle, unless one of the exemptions set forth under 437-1.1, definition of “dealer” applies.

Request of Ray Dong, Auto Station LLC dba Jetso Auto Center – Can a MVD Keep a E-10 Two Post Lift in its Showroom?

After a brief discussion, Board members concurred that this is not a licensing issue, and is not within the Board’s jurisdiction. Board members suggest that Mr. Dong check that it complies with any applicable laws, rules, ordinances, etc.

New Business:

In the Matter of SODERHOLM SALES AND LEASING INC., Petitioner vs. COUNTY OF KAUAI, DEPARTMENT OF FINANCE, Respondent; PCY=-2012-017 – Hearings Officer’s Findings of Fact, Conclusions of Law, and Decision

Board members discussed this case, which is a result of a procurement protest and is not under the Board’s jurisdiction. The Hearings Officer’s decision can be found at http://hawaii.gov/dcca/oah/oah_decisions/procurement.

Board members also reviewed the minutes of April 24, 2002 in which the Board issued its non-binding interpretation:

“Board counsel Rod Tam discussed a recent request by the City and County of Honolulu (“City”) on whether they would be in violation of chapter 437, HRS if they purchased buses directly from a manufacturer located outside the State of Hawaii, with the intent that acceptance would be made and the title of ownership would be transferred at the manufacturer’s site.

Tam noted that in general, HRS chapter 437 requires a person or entity that acts, engages in the business of, or advertises as a “dealer” or “salesperson” to be licensed. However, based solely on the information provided by the City, as long as:

1. The manufacturer did not solicit the sale in the State (i.e., the manufacturer is not acting as, engaging in the business of, or advertising as a “dealer” or “salesperson” in the State), and the City approached the manufacturer on its own;

2. There is no "middleman" involved in the sale who can be construed to be acting as a "dealer" or "salesperson";
3. The manufacturer does not have a local representative/office in the State;
4. The sale is consummated outside the State; and
5. The City is solely responsible for transporting the transit buses/other specialized types of motor vehicles to the State,

it appears that the City is not prohibited under HRS chapter 437 from purchasing transit buses or other specialized types of motor vehicles directly from a manufacturer located outside the State."

Board members agreed by consensus that the above remains the Board's position.

Board members also discussed the licensure requirements that dealer applicants must meet, including the premise requirement. It was discussed that the premise requirement is not obtrusive. For example, applicants are not required to purchase real estate or a building or have a showroom. Instead, the Board has allowed applicants to share premises and have a display area where they can display at least three (3) vehicles. In addition, Board members stated that the premise requirement should not be confused with a *residency* requirement.

Further, that an individual or entity that engages in motor vehicle dealer activity in this State regardless of whether the purchaser is a government agency, the individual or entity shall be licensed as a motor vehicle dealer and meet all of the licensure requirements as per ch. 437, HRS.

Roger Soderholm, Hawaii Specialty Vehicles, appeared before the Board regarding the status of Hawaii Specialty Vehicles' application. He was informed by the Executive Officer that there was no issue on the agenda. He thanked the Board and left. Roger Soderholm was not present on behalf of Soderholm Sales and Leasing Inc.

Should Dealer Sales and Service Agreements be Acknowledged/Accepted/Posted to MVD's License Records When the Manufacturer/Distributor is Not Licensed in Hawaii?

The Executive Officer informed the Board that frequently dealers submit copies of their franchise agreements with manufacturers/distributors, but that the manufacturers/distributors are not licensed in Hawaii. If dealers sell these vehicles, the manufacturers/distributors are engaging in unlicensed activity and consumers could get injured. In addition, the dealers could be in violation of State law by aiding and abetting the unlicensed activity of the unlicensed manufacturers/distributors.

After a brief discussion, it was moved by Mr. van den Hurk, seconded by Mr. Touchi, and unanimously carried that the Board will not acknowledge or accept any executed franchise agreement/dealer sales and service agreement unless the manufacturer/distributor has a current Hawaii motor vehicle manufacturer or motor vehicle distributor license.

Unfinished
Business:

2012 Legislative Session

Act 247, SLH 2012/Act 248, SLH 2012

The Executive Officer reported that on July 6, 2012, the Governor signed into law two bills relating to the professional and vocational licenses for nonresident military spouses and military personnel.

Act 247 allows an applicant for licensure by endorsement or reciprocity, who is a nonresident military spouse.

The Board does not allow licensure by endorsement or reciprocity. Applicant must comply with all licensing requirements. Military spouses would have to comply with the licensing requirements, including the education and experience requirements. Depending on the type of license applying for, a temporary license can be issued provided someone agrees to supervise that individual.

Act 248 requires that every licensing authority, upon presentation of satisfactory evidence by an applicant, shall consider relevant education, training, or service completed by an individual as a member of the military when evaluating qualifications for licensure.

With respect to Act 248, the Executive Officer stated that the Licensing Administrator of the professional and vocational licensing division is required to submit a report to the Legislature on how the Board will implement Act 248.

Board members concurred that only one of the areas that would apply would be Consumer Consultant Registration, which requires years of motor vehicle experience.

After discussion, it was moved by Mr. Touchi, seconded by Mr. Masamitsu, and unanimously carried that for consumer consultant applications, the Board will set up a committee to review these applications and hold a special meeting to license each individual on a case-by-case basis.

Open Forum:

None.

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Next Meeting: Tuesday, October 16, 2012
9:00 a.m.
Queen Liliuokalani Conference Room
335 Merchant Street, 1st Floor
Honolulu, HI 96813

Adjournment: There being no further business to discuss, the meeting adjourned at 10:32 a.m.

Taken and recorded by:

/s/ Alice Worthy

Alice Worthy, Secretary

Reviewed and approved by:

/s/ Christine Rutkowski

Christine Rutkowski
Executive Officer

CR:aw
10/4/12

[X] Minutes approved as is.
[] Minutes approved with changes. See Minutes of _____.

APPLICATIONS FOR SALESPERSON'S TRANSFERS						
Tuesday, September 04, 2012						
HONOLULU						
ASAO, DANIEL			HONOLULU FORD INC			
BARRIENTOS, JUAN			STOEBNER HOLDINGS INC			
BISHOP, JOHN			JP AUTOMOBILES INC			
ECCLESINE, CHRISTOPHER			CUTTER CHRYSLER JEEP DODGE INC			
FUKUSHIMA, SCOTTY			HI AUTOMOTIVE RETAILING GROUP INC			
FURUKAWA, MARK			CUTTER CHRYSLER JEEP DODGE INC			
GANTE, MARLON			CUTTER CHRYSLER JEEP DODGE INC			
HANSEN, RONALD			KING WINDWARD NISSAN LLC			
HIRSCH, PETER			CUTTER CHRYSLER JEEP DODGE INC			
JACKSON, GREGORY			TONY HAWAII AUTOMOTIVE GROUP			
KAHAWAI, ROBERT			ALOHA KIA-WAIPAHAU			
KAMAKANA, JOHN			C & C AUTO GROUP INC			
KANESHIRO, RICHARD			CARS TRUCKS & EQUIPMENT INC			
KIM, KEVIN			ALOHA AUTO GROUP LTD			
KINOSHITA, KEVIN			JN GROUP INC			
KINOSHITA, KEVIN			STOEBNER HOLDINGS INC			
LUI-KWAN, JOSEPH			CUTTER CHRYSLER JEEP DODGE INC			
MATSUMOTO, TIFFANY			SERVCO PACIFIC INC			
MILLS III, DALTON			JN GROUP INC			
NAVARRETE, JAVIER			ALOHA AUTO GROUP LTD			
PAYOMO, PHILLIP			GAC AUTO GROUP INC			
PAYSON, DALE			J/R MOTORS 818 KAPIOLANI LLC			
PEDERSEN, KEITH			ALOHA AUTO GROUP LTD			
RAMONES, JEFFREY			JN GROUP INC			
SAGAYSAY, LAWRENCE			CUTTER BUICK GMC INC			
SHERMAN, MARK			CYCLE CITY LTD			
SOSA, ANTHONY			GAC AUTO GROUP INC			
STAGNER, DAVID			HONOLULU FORD INC			
THIESSEN, TY			JACKSON VOLVO			
TRAPP, ARIC			MAKENA HAWAII WINDWARD INC			
YAMADA, GAVIN			CHOICE AUTOMOTIVE LLC			
VILLARREAL III, WILLIAM			JP AUTOMOBILES INC			
HAWAII						
KLINE, GARY			ALOHA AUTO GROUP			
MAUI						
BEESLEY, BROOKS			JIM FALK MOTORS OF MAUI			
JOHNSON, MARK			MAUI AUTOMOTIVE LLC			
NIELSEN, JAVIN			KIHEI AUTO SALES INC			
KAUAI						
BERRY, AARIS			MIDPAC AUTO CENTER			
PERRY JR, DAVID			KUHIO MOTORS INC			

Car Salespersons

REMARK	VAT_02_BPR_LEGAL_NAME_1
CUTTER BUICK GMC INC	OAHU MELANIE C M <AGCANAS<
HI AUTOMOTIVE RTLING GROUP LIC EFF 7/1/12	OAHU FRANCISCO A <ALEJO<
JN GROUP INC	OAHU CHRIS <ALVAREZ<
HAWAII AUTOMOTIVE LLC	OAHU DAVID M <ANDERSON<
JN GROUP INC LIC EFF. 7/1/12	OAHU HAAKON A <ANDOR<
STOEBNER HOLDING INC	OAHU TYSON J <BAISAC<
STOEBNER HOLDINGS	OAHU ROBERT D <BELBAS<
CYCLE CITY LTD	OAHU DAMIEN L <BELL<
WINDWARD AUTO SALES LLC	OAHU DONALD A <BERGERON<
CYCLE CITY LTD LIC EFF 7/1/12	OAHU JOHN R <BIBB<
JN GROUP INC	OAHU JOHN P <CABASAG<
SERVCO PACIFIC INC	OAHU CHARLES T <CAIN<
CUTTER CJD INC	OAHU ANTOINETTE E <CASTRO<
TK AUTO SALES LLC	OAHU BRANDON K V <CHAI<
CYCLE CITY LTD	OAHU SABRINA S <CHRISTIAN<
JIM FALK MOTORS OF MAUI	MAUI CARMENCHITA D <CIOARA<
MAKENA HAWAII	OAHU WENDY M <COWLAND<
CUTTER BUICK GMC	OAHU DON RAYMUNDO E <CRISOSTOMO<
MAKENA HAWAII WINDWARD	OAHU ALBERT J <DAVIS<
HAWAII NISSAN INC	OAHU WILLIAM S <DUNCAN<
SERVCO PACIFIC INC	OAHU ALEJANDRO A <ENDERICA<
JN GROUP INC	OAHU DONALD S <FERN<
JN GROUP INC	OAHU CARLTON A <FINLEY<
BIG ISLAND TOYOTA INC	BIG ISLAND SKYLER J <FISHER<
MAKENA HI	OAHU KAINOA <FRANK<
MCKENNA HAWAII WINDWARD	OAHU KEONI K <FRANK<
BIG ISLAND MOTORS INC	BIG ISLAND GARY G <GOUVEIA< JR
HI AUTOMOTIVE RTLING GROUP	OAHU BRANDON S <GREINER<
J/R KONA ACQUISITION	BIG ISLE STEFANIE L <GUBSER<
CUTTER BUICK GMC	OAHU CRYSTAL <HARDIN<
STOEBNER HOLDINGS INC	OAHU LOUIS T <HECHT<
HONOLULU FORD INC	OAHU DAVID A <HORNA<
JR MOTORS 818	OAHU QUANG N <HUYNH<
MAUI AUTOMOTIVE LLC	MAUI PATRICK N <IBARRA<
SERVCO PACIFIC	OAHU LANCE <ICHIMURA<
JN GROUP INC	OAHU ROBERT W <IMHOFF<
SERVCO SUBARU INC	OAHU ROGERIO <JORDAO<
SERVCO PACIFIC INC	OAHU DANNY I <KIM<
HONOLULU FORD INC LIC EFF. 7/1/12	OAHU RYAN L <KIMBREL<
TONY HAWAII AUTOMOTIVE GROUP	OAHU JOSEPH E <KINSEY<
VALLEY ISLE MOTORS	MAUI JOSHUA T K <KONG<
HONOLULU FORD INC	OAHU RYAN S <LITTLE<
ALOHA AUTO GROUP LTD	OAHU WALLACE Y <MA<
PRE-OWNED MOTOR CARS	BIG ISLAND JEREMY E <MAGAR<
PACIFIC NISSAN	OAHU JARED A <MATSUOKA<
PRE-OWNED MOTOR CARS	BIG ISLAND NORMON E <MATTHEWS<
BMW OF HONOLULU	OAHU DANIEL H <MAU<
JN GROUP INC	OAHU MARTIN L <MCCALL<
JN GROUP INC	OAHU NOBIA F <MCCALL<
4 WHEELS AUTO LLC	OAHU MAJID S <MODARESI<
JIM FALK MOTORS OF MAUI	MAUI DAX A <MOON<
JN GROUP INC	OAHU DEBRA A <MURDOCH<
SERVCO PACIFIC INC	OAHU DERRICK N <NAKASONE<
CURE AUTOPLEX	OAHU NINO T <NICHOLAS<
SOUTH MAUI MOTORS INC	MAUI SHANNAMARIE <NOTEBO-TABURA<
GASPASIN FARMS INC	OAHU ROBERT K <ONUFER ANDREWS<
JIM FALK MOTORS	MAUI RICKY S <PALUDIPAN<

REMARK	VAT_02_BPR_LEGAL_NAME_1
ALOHA AUTO GROUP LTD	OAHU SAE JOON <PARK<
C & C AUTO GROUP LIC EFF 7/1/12	OAHU ANTONIO A <PAULINO<
KUHIO MOTORS INC	KAPAA DAVID W <PERRY< JR
CYCLE CITY LTD	MAUI JOSEPH A <PESTANO< JR
JN GROUP INC	OAHU NGHIA P <PHAM<
JN GROUP INC	OAHU ROBERT L <RAMIREZ<
CUTTER CJD INC	OAHU OMAR O <RHYNES<
TONY HAWAII AUTOMOTIVE GROUP	OAHU BRENDA <SALINAS<
PARADISE AUTOS INC EFF 7/1/12	OAHU MICHAEL D <SARVER<
AUTO CONNECTION LLC	OAHU SAVA <SASIC<
BMW OF HONOLULU	OAHU JUSTIN T <SCROFANI<
CYCLE CITY LTD	OAHU RONALD I <SEPTERS< JR
HAWAII NISSAN	OAHU JOHNNY O <SPARKS<
MISSION MOTORS LLC	OAHU MARIA F <STELLA<
HONOLULU FORD INC	OAHU JASON M <STEWART<
SERVCO PACIFIC INC	OAHU RYAN I <SUGIMURA<
JN GROUP INC	OAHU TY K <THIESSEN<
HAWAII AUTOMOTIVE RTLING GROUP	OAHU SONNIE L C <TORRES<
WINDWARD AUTO SALES INC	OAHU JAI T <TROCHE<
STOEBNER HOLDINGS INC	OAHU JUSTIN D <VENDIOLA<
JR HILO ACQUISITION LLC	BIG ISLAND ALAN A <VENTURA<
HONOLULU FORD INC	OAHU HOWARD <VILLA<
AKAMAI MOTORS LLC	MAUI MARK W <VOELLMY<
HARBOR MOTORS INC	KAUAI BRAD J <WILKS<
A-1 AUTO SALES LLC	OAHU HANNAH B <WRIGHT<

Dealer

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LTYPE	LIC NUM	BUSN		BUSN ZIP	BP NAME PART 1
		ST	ST		
MVD	966	C	HI	96766	HARBOR MOTORS INC

Manufacturer

LTYPE	LIC NUM	BUSN		BUSN ZIP	BP NAME PART 1
		ST	ST		
F	153	C	IN	46540	ARBOC SPECIALTY VEHICLES LLC
F	154	C	SD	57041	ROSENBAUER AMERICA LLC

MVI RELOCATIONS

808 Octopus
91-531 Malakole St
Kapolei HI 96797

MVD-953