

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, October 16, 2018

Time: 9:00 a.m.

Place: Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, 1st Floor
Honolulu, Hawaii 96813

Present: Wayne De Luz, Industry Member, Chairperson
Byron Hansen, Public Member
Larry Ignas, Public Member
Carl D. Johnsen, Public Member
John Uekawa, Industry Member
Russell Wong, Industry Member
Kedin Kleinhans, Executive Officer (“EO”)
Mana Moriarty, Deputy Attorney General (“DAG”)
LaJoy Lindsey, Secretary

Excused: Steven J. T. Chow, Esq., Public Member, Vice-Chairperson

Guests: Daniel Moss, Third-Party for Kark Inc.
Dave Rolf, Hawaii Automobile Dealers Association (“HADA”)

Call to Order: Chairperson De Luz called the meeting to order at 9:12 a.m. at which time quorum was established.

Approval of Minutes of the August 21, 2018 Meeting: It was moved by Mr. Wong, seconded by Mr. Hansen, and unanimously carried to approve the minutes of the August 21, 2018 Board meeting as circulated.

Executive Officer’s Report:

- a. Introduction of New Board Member – John Uekawa (Industry)
Mr. Uekawa briefly introduced himself. He has been in the industry since 1995 and is currently the Dealer Principal for New City Nissan. He shared that he is honored to be serving and hopes to be of help to the Board. Chair De Luz commented that there is now a full Board.

Chair De Luz announced the Board will recess its meeting to review adjudicatory matters. The meeting was recessed at 9:17 a.m.

Chapter 91, HRS. Adjudicatory Matters:

- a. In the Matter of the Motor Vehicle Dealer's License of Platinum Automotive Center LLC; MVI 2014-5-L

SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER
After discussion, it was moved by Mr. Hansen, seconded by Mr. Johnsen, and unanimously carried to approve the Settlement Agreement for the Motor Vehicle Dealer's License of Platinum Automotive Center LLC; MVI 2014-5-L.

The Board reconvened its meeting at 9:19 a.m., and immediately entered into Executive Session.

At 9:20 a.m., it was moved by Mr. Wong, seconded by Mr. Johnsen, and unanimously carried to enter into Executive Session to consider and evaluate personal information relating to the individual applying for licensure in accordance with HRS section 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 HRS section 92-5(a)(4).

EXECUTIVE SESSION

At 9:50 a.m., it was moved by Mr. Wong, seconded by Mr. Hansen, and unanimously carried to return to the Board's regular order of business.

Licensing:

- a. Ratifications

Motor Vehicle Car Salesperson Transfers
Motor Vehicle Dealer Licenses
Motor Vehicle Manufacturer License

Chair De Luz noted that under Car Salesperson Transfers, First National Auto Group, Inc. and Windward Ford of Hawaii should be listed under the City and County of Honolulu not County of Hawaii.

Mr. Wong questioned if it should be Rainbow Chevrolet or Cutter Chevrolet. Some of the salesperson's licenses show Rainbow Chevrolet and others Cutter Chevrolet. EO Kleinhans noted that the legal name is Rainbow Chevrolet Inc. dba Cutter Chevrolet. He thinks perhaps the licensing software had a glitch and did not post correctly.

DAG Moriarty explained to Mr. Uekawa that the Licensing Branch initially reviews the applications and if there are no flaws, applicants receive temporary approval subject to Board ratification.

It was moved by Mr. Hansen, seconded by Mr. Wong, and unanimously carried to ratify the above lists for the licenses sought (as attached) with corrections to indicate First National Auto Group, Inc. and Windward Ford of Hawaii to be listed under the City and County of Honolulu and not County of Hawaii.

b. Applications

(i) Kark Inc.
Motor Vehicle Dealer

Discussion ensued as to whether one tandem stall and a separate stall one building over satisfies the requirement for three display stalls pursuant to HRS 437-11(a)(1)(B).

It was moved by Mr. Wong, seconded by Mr. Hansen, and unanimously carried to defer the above applicant for Motor Vehicle Dealer licensure, unless the applicant obtains the required minimum three display stalls. If the applicant satisfies the display stall requirement, the EO may approve the application.

(ii) Jordan Fryar
Motor Vehicle Salesperson

It was moved by Mr. Hansen, seconded by Mr. Wong, and unanimously carried to issue the applicant a conditional license, subject to the Board's receipt of a criminal history record check. Provided the criminal history record check does not indicate undisclosed criminal convictions, the conditional license shall be issued under the following terms:

1. Licensee must comply with the Terms and Conditions of Probation.
2. If licensee fails to comply with any term or condition of probation, the license shall be automatically revoked upon receipt of a letter from the licensee's probation officer that licensee violated the Terms and Conditions of Probation.
3. Licensee is required to notify every Motor Vehicle Dealer that employs licensee of criminal history.
4. Every Dealer that employs licensee shall submit a letter signed by the Dealer

Principal acknowledging the criminal history of the licensee and why the Dealer seeks to employ licensee.

New Business:

- a. HADA – Requests for Off-Premise Display at Military Bases for the Purpose of Raising Awareness for a Cause

EO Kleinhans explained that he was informed by Dave Rolf of HADA that Motor Vehicle Dealers may soon be requesting to display vehicles off-premise at military bases. He noted that participating Dealers would be displaying these vehicles for charities or to raise awareness for a cause. EO Kleinhans noted that a request has not been received yet.

DAG Moriarty explained that as the Licensing Authority, the Board has jurisdiction over Hawaii Dealer activity, regardless of where a Dealer is situated.

Mr. Hansen commented that he would think there would need to be a timeframe of not more than three to five days for an event. Mr. Wong had earlier mentioned that he is okay with it as long as it's for a specific period of time.

It was moved by Mr. Wong, seconded by Mr. Hansen, and unanimously carried to require Dealer participating in the off-premise display of motor vehicles at military bases for the purpose of raising awareness for a cause to submit an off-premise display request form.

DAG Moriarty shared that in relation to the military base display, there was an incident within the past year, where the consumer financial protection bureau entered into a settlement agreement with dealers who operated near military bases and were allegedly entering into lease agreements with servicemen that did not comply with the federal lending law, which resulted in a significant fine.

Correspondence:

- a. Does the "door-to-door sale" clause (Chapter 437-28(a)(17)(f), Hawaii Revised Statutes) need to be on the Sales or Lease Agreement or is it allowed to be disclosed on a separate form other than the Sales or Lease Agreement?

EO Kleinhans explained that the door-to-door sales clause, which is based on the Federal Trade Commission's cooling off rule, gives a buyer the right to cancel on a door-to-door sale. Each state differs on how to implement the rule. He further stated that a Board determination would have a huge impact as there is a Regulated Industries Complaint Office

(RICO) investigation involved, and thus a formal interpretation would be appropriate.

Mr. Wong asked if the question related to being able to use a separate document? EO Kleinhans confirmed.

Chair De Luz noted the statute requires the door-to-door sales clause be on the contract for sales or lease. He suggested the Board defer their decision until there is clearer interpretation. DAG Moriarty advised that Board go into Executive Session.

At 10:20 a.m., it was moved by Mr. Wong, seconded by Mr. Hansen, and unanimously carried to enter into Executive Session 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 HRS section 92-5(a)(4).

Mr. Ignas left the meeting at 10:20 a.m.

EXECUTIVE SESSION

At 10:28 a.m. it was moved by Mr. Wong, seconded by Mr. Hansen and unanimously carried to return to the Board's regular order of business.

It was moved by Mr. Hansen, seconded by Mr. Wong, and unanimously carried to instruct EO Kleinhans to advise the requestor to go through the regulatory hearings process for declaratory relief.

- b. Regarding Motor Vehicle Dealer licensure: Can the required minimum three display stalls be located outside the boundaries of the proposed premise, provided that a written agreement is obtained to rent those stalls.

Mr. Wong mentioned that the law clearly states that there must be three stalls on site.

It was moved by Mr. Wong, seconded by Mr. Johnsen, and unanimously carried that based on the information provided, the minimum required three display stalls must be on site, pursuant to HRS 437-11(a)(1)(B).

In accordance with HAR section 16-201-90, the above interpretation is for informational and explanatory purposes only and based solely on the information provided. It is not an official opinion or decision and therefore not binding on the Board.

Board Member
Disaster/
Emergency
Preparedness The Board viewed the Avoid/Deny/Defend training video developed by Advance Law Enforcement Rapid Response Training (ALERRT): A three-step plan for survival in the event of an active shooter event or other public acts of violence.

Next Meeting: Tuesday, December 18, 2018
9:00 a.m.
King Kalakaua Building
Queen Liliuokalani Conference Room
335 Merchant Street, 1st Floor
Honolulu, HI 96813

Adjournment: There being no further business to discuss, the meeting adjourned at 10:46 a.m.

Taken and recorded by:

/s/ LaJoy Lindsey

LaJoy Lindsey, Secretary

Reviewed and approved by:

/s/ Kedin C. Kleinhans

Kedin C. Kleinhans
Executive Officer

11/19/18

[] Minutes approved as is.

[x] Minutes approved with changes. See Minutes of December 18, 2018.