

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, December 15, 2020

Time: 9:00 a.m.

Place: Virtual via Zoom

Present: Wayne De Luz, Industry Member, Chairperson
Steven J. T. Chow, Esq., Public Member, Vice-Chairperson
Byron Hansen, Public Member
John Uekawa, Industry Member
Russell Wong, Industry Member
Kedin C. Kleinhans, Executive Officer (“EO”)
Christopher J. I. Leong, Deputy Attorney General (“DAG”)
LaJoy Lindsey, Secretary
Jenny Yam, Secretary
Terry Akasaka-Toyama, Deputy Director’s Secretary
Micah Cadalzo, Secretary

Guests: Dave Rolf, Hawaii Automobile Dealers Association
Erik Soderholm, Soderholm Sales and Leasing Inc.
Jeffrey Miller, Attorney for Soderholm Sales and Leasing Inc.

Call to Order: Chairperson DeLuz called the meeting to order at 9:08 a.m. Roll call was taken and Messrs. DeLuz, Chow, Hansen, Uekawa and Wong were all present.

Approval of Minutes of October 27, 2020 Minutes It was moved by Mr. Wong, and seconded by Vice-Chairperson Chow to approve the minutes of the October 27, 2020 meeting.
A roll call vote was taken and Messrs. Chow, DeLuz, Hansen, Uekawa and Wong voted unanimously to approve the minutes.

Chapter 91, HRS, Adjudicatory Matters: In the Matter of the Motor Salesperson’s License of Terry A. Martinez; In the Matter of the Motor Vehicle Salesperson’s License of Johnny H. Martinez; and In the Matter of the Motor Vehicle Dealer’s License of South Maui Motors, Inc. MVI-2017-57-L; MVI-2018-26-L [Consolidated]

RECESS:

IN: 9:13 a.m. OUT: 9:30 a.m.

It was moved by Mr. Wong and seconded by Mr. Uekawa to accept the Hearings Officer’s Findings of Fact, Conclusions of Law and Recommended Order, and issue the Board’s Final Order. A roll call was

taken and Messrs. DeLuz, Chow, Hansen, Uekawa and Wong unanimously voted to accept the Hearings Officer's Findings of Fact, Conclusions of Law and Recommended Order, and issue the Board's Final Order.

Upon return to Open Session, a roll call was taken and Messrs. Chow, DeLuz, Hansen, Uekawa and Wong were all present

Licensing:

a. Ratifications

EO Kleinhans indicated the Ratification List will be provided at next scheduled meeting.

b. Applications

(1) D.K. LLC – Motor Vehicle Dealer

At 9:52 a.m. it was moved by Vice-Chairperson Chow and seconded by Mr. Uekawa to move into Executive Session to consider and evaluate personal information relating to individuals applying for licensure in accordance with Hawaii Revised Statutes ("HRS") 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 HRS chapter 92-5(a)(4). A roll call was taken and Messrs. Chow, DeLuz, Hansen, Uekawa and Wong unanimously voted to enter into Executive Session.

EXEC SESSION IN: 9:52 a.m.

EXEC SESSION OUT: 9:55 a.m.

At 9:55 a.m. it was moved by Mr. Wong, seconded by Vice-Chairperson Chow to exit Executive Session. A roll call was taken and Messrs. DeLuz, Chow, Hansen, Uekawa and Wong voted unanimously to exit Executive Session.

Upon return to Open Session a roll call was taken and Messrs. Chow, DeLuz, Hansen, Uekawa and Wong were all present.

It was moved by Vice-Chairperson Chow and seconded by Mr. Uekawa to approve D.K. LLC's application. A roll call vote was taken. Messrs. Chow and Uekawa voted yes, while Messrs. DeLuz, Hansen and Wong voted no. The motion did not pass. EO Kleinhans suggested the Board further discuss the application in Executive Session.

At 9:58 a.m. it was moved by Vice-Chairperson Chow and seconded by Mr. Wong seconded to move into Executive Session to consider and evaluate personal information relating to

individuals applying for licensure in accordance with HRS 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 HRS chapter 92-5(a)(4). A roll call vote was taken. Messrs. DeLuz, Chow, Hansen, Uekawa and Wong voted unanimously to enter Executive Session.

EXEC SESSION IN: 9:58 a.m.
EXEC SESSION OUT: 10:16 a.m.

At 10:16 a.m. it was moved by Mr. Wong and seconded by Vice-Chairperson Chow to exit Executive Session. A roll call vote was taken and Messrs. Chow, DeLuz, Hansen, Uekawa and Wong unanimously voted to exit Executive Session.

Upon return to Open Session a roll call was taken and Messrs. Chow, DeLuz, Hansen, Uekawa and Wong were all present.

It was moved by Mr. Wong and seconded by Mr. Uekawa to deny D.K. LLC's application for Motor Vehicle Dealer basing its decision on the following grounds of the HRS, which find factual support in the records and files of the application:

HRS §437-28 provides that:

(a) In addition to any other actions authorized by law, the board, after notice and hearing as provided in chapter 91, and subject to appeal to the circuit court of the circuit in which the board has jurisdiction under the procedure and rules prescribed by the laws of the State or the applicable rules of the courts pertaining to appeals to circuit courts, may suspend, revoke, fine, or deny the renewal of any license, or prior to notice and hearing deny the issuance of any license for any cause authorized by law, including but not limited to circumstances where the board finds that the applicant or holder, or any officer, director, general manager, trustee, partner, or stockholder owning more than ten per cent interest of the applicant or holder:

* * *

- (1) Has intentionally made a false statement of a material fact in the application for a license or in any other statement required by this chapter or has obtained or attempted to obtain a license by fraud or misrepresentation;
- (5) Has failed to comply with, observe, or adhere to any law in any other respect so that the board deems the applicant or holder to be an unfit or improper person to hold a license;

- (6) Has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license;

HRS §436B-19 provides that:

In addition to any other acts or conditions provided by law, the licensing authority may refuse to renew, reinstate or restore, or may deny, revoke, suspend, or condition in any manner, any license for any one or more of the following acts or conditions on the part of the licensee or the applicant thereof:

- (1) Failure to meet or maintain the conditions and requirements necessary to qualify for the granting of a license;
- (5) Procuring a license through fraud, misrepresentation, or deceit;
- (12) Failure to comply, observe, or adhere to any law in a manner such that the licensing authority deems the applicant or holder to be an unfit or improper person to hold a license;

The California Vehicle Code (“CVC”) provides that:

Dealer Defined

“Dealer” is a person not otherwise expressly excluded by CVC Section 286 who:

- (a) For commission, money, or other thing of value, sells, exchanges, buys, or offers for sale or exchange of an interest in a vehicle subject to registration or a motorcycle subject to identification under this code, or induces or attempts to induce any person to buy or exchange an interest in a vehicle and, who receives or expects to receive a commission, money, brokerage fees, profit, or any other thing of value, from either the seller or purchaser of said vehicle; or
- (b) Is engaged wholly or in part in the business of selling vehicles or buying or taking in trade, vehicles for the purpose of resale, selling, or offering for sale, or consigned to be sold.

Vehicle Salesperson

- (a) “Vehicle Salesperson” is a person not otherwise expressly excluded by this section, who does one or a combination of the following:

* * *

- (1) Is employed as a salesperson by a dealer, as defined in CVC Section 285, or who, under any form of contract, agreement or arrangement with a dealer for commission, money, profit, or other thing of value, sells, exchanges, buys or offers for sale, negotiates, or attempts to negotiate, a sale, or exchange of an interest in a vehicle required to be registered under this code.
- (2) Induces or attempts to induce any person to buy or exchange an interest in a vehicle required to be registered, and who receives or expects to receive a commission, money, brokerage fees, profit, or any other thing of value, from either the seller or purchaser of the vehicle.

Dealers, Laws Affecting

Before a dealer can make a retail or wholesale of a vehicle, a dealer's license must first be obtained
CVC Sections 11700, 11726.

Salespersons, Laws Affecting

Before a person can act as a vehicle salesperson, a salesperson's license must first be obtained
CVC Sections 11800, 11824.

Mr. Wong stated that contrary to Mr. Hudman's indication that his work is exempt from California licensure, certification, or registration, the information contained in the California "Guide for Licensed Vehicle Dealers and Lessor-Retailers" provided by Mr. Hudman indicate otherwise.

A roll call vote was taken and Messrs. Chow, DeLuz, Hansen, Uekawa and voted to deny D.K. LLC's application for Motor Vehicle Dealer.

(2) Antonio C. Alcantara Jr. – Motor Vehicle Salesperson

It was moved by Mr. Hansen and seconded by Vice-Chairperson Chow to approve Antonio C. Alcantara Jr.'s application for Motor Vehicle Salesperson. A roll call vote was taken and Messrs. Chow, DeLuz, Hansen, Uekawa and Wong unanimously voted to approve Antonio C. Alcantara Jr.'s application for Motor Vehicle Salesperson.

Old Business:

- a. Request for Informal Interpretation from Erik Soderholm

Does the manufacturer of a licensed Motor Vehicle Distributor, where the Distributor possesses a franchise agreement with a licensed Motor Vehicle Dealer, need a Motor Vehicle Manufacturer license?

EO Kleinhans provided background information and a timeline when Motor Vehicle Manufacturers and Distributors were required licensure in 2004. The first Distributors licensed were Nissan Motor Corporation in Hawaii Ltd, BMW of North America, LLC, and Hyundai Motor America. The manufacturers of the aforementioned entities located outside of the United States did not obtain a Manufacturer license.

Chairperson DeLuz stated that past practice has been to recognize the Distributors as representatives of the Manufacturers, and the current regulatory structure works effectively.

Mr. Hansen commented that the Distributors of Volkswagen and BMW are subsidiaries of the Manufacturer.

Mr. Soderholm reiterated from the previous meeting that the HRS 437 plainly states that if you are doing business in the State of Hawaii, you need a Manufacturer license.

Mr. Wong stated that if a Manufacturer wants to engage in business here as the Manufacturer, then the Manufacturer has to be licensed; however, if their Distributor is engaging in business here, then the Distributor has to be licensed.

Mr. Miller referenced the definition section of the act HRS 437-1.1, it defines the manufacturer as "any person, resident or non-resident who is engaged in the business of manufacturing or assembling new motor vehicles." He stated that the statute is not limiting it to whether the entity is a foreign corporation or domestic corporation - if the entity is manufacturing vehicles, then the entity is required to be licensed.

EO Kleinhans stated that the primary purpose of the Board is consumer protection, and changing precedence may pass costs down to the consumer.

Mr. Wong commented that an interpretation in that manner would impact commerce substantially, and many franchised Dealers would have to shut down until Manufacturers located outside the United States obtained the Manufacturer license.

Mr. Rolf shared that when the franchise laws were brought back around 2003-2004 HRS section 437-7(g)(4) states: "In the case of an application for a dealer's license, if the applicant proposes to engage in the business of selling new motor vehicles, a copy of the dealer sales and service

agreement from the applicable manufacturer or distributor.”” He added that the statute gives the Dealer the option to submit a franchise agreement between the Manufacturer or Distributor.

After considerable discussion, it was moved by Chairperson DeLuz and seconded by Vice-Chairperson Chow to issue the following informal, non-binding interpretation that past practice and current regulatory structure properly protects consumers. A roll call vote was taken and Messrs. Wong, Chow, Hansen, Uekawa and DeLuz unanimously voted to approve the motion.

Hawaii Administrative
Rules - Amendments to
Chapter 86

EO Kleinhans reported new amendments regarding the format of records. Motor vehicle dealers shall keep records in compliance with Chapter 437 HRS for at least 7 years from date of occurrence. Records may be maintained in an electronic format. He noted some proposed rule language was removed to remain consistent with statutory language.

At 10:55 a.m., Chairperson DeLuz requested a 5-minute break. The board returned to business at 11:00 a.m.

Chairperson DeLuz took a roll call and Messrs. Chow, DeLuz, Hansen, Uekawa and Wong were all present.

New Business:

Legislative Delegation. The board skipped ahead to agenda item 7 in order to discuss this matter due to time constraints. EO Kleinhans stated that he may require assistance to provide testimony at the Legislature should bills be scheduled for hearing prior to our next meeting. . Wong volunteered to assist as necessary.

Discussion on Possible Amendments Regarding Finance and Cash Value of Motor Vehicles:

Chairperson DeLuz reported that a Dealer has 24 hours to provide financing with some restrictions for trade value. A value may be put on the vehicle, but it may not be the actual value, e.g. a trade-in is \$2,000.00, but the vehicle value is \$500.00. He noted that the Board will need to explore this matter further as it relates to “yo-yo” financing.

Public Comment:

Mr. Rolf shared that Senator Shimabukuro’s bill from last session requires the return of vehicle if financing is not obtained. Chairperson DeLuz commented that the Dealer should not sell the trade-in vehicle until the deal is completely approved.

This discussion will be tabled for the time being.

6c. Subchapters for New Discussion (Subchapter 3)

Mr. Rolf noted that the language “within the purview of this chapter” seem to limit the rules only to those entities which are licensed in Hawaii.

He preferred the existing language which has worked and continues to work today, EO Kleinhans responded that he will tighten up the language prior to the next meeting.

Next Meeting: Tuesday, February 2, 2021
9:00 a.m.
Virtual Videoconference Meeting
Zoom Webinar

Adjournment: There being no further business to discuss, the meeting was adjourned at 11:29 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

1/15/21

[] Minutes approved as is.

[] Minutes approved with changes. See Minutes of _____.