

NEW HAMPSHIRE MOTOR VEHICLE INDUSTRY BOARD

OFFICIAL MINUTES

Minutes of Board Meeting - December 12, 2008

Approved and adopted by the Board by unanimous vote on May 14, 2009

ATTENDANCE:

Mr. Archie Burnett, II
Mr. Lloyd Freese
Mr. William Fenollosa
Mr. Robert Copeland
Mr. Christopher Casco, Esq., Chair
Ms. Patricia Smith, Clerk

EXCUSED:

Mr. Walter McCarthy

OTHERS:

Mr. Gregory Holmes, Esq., counsel for Stratham
Ms. Beth Leonard, Esq., law firm of Wiggin & Nourie
Mr. Justin O'Sullivan, Esq., counsel for Nissan
Mr. Roger Giroux, owner of Stratham
Mr. Curtis Duclos

Chair Mr. Casco declared the meeting open with a quorum of Board members present.

NEW BUSINESS:

1. Hearing on The Matter of Seacoast Imported Auto, Inc., d/b/a Nissan of Stratham, Docket No. 06-04. The Board held a hearing on Nissan's Motion to Strike all References to Settlement Communications Contained in the July 15, 2008 Protest and Stratham's objection to such motion. After deliberation, the board voted to deny the motion pursuant to Mvi 208.06 which states that the Rules of Evidence do not apply to proceedings before the Board. Moreover, any relevant evidence shall be admissible before the board. This is an issue involving the weight to be given the evidence at the hearing, and not one of admissibility. There is no other legal authority upon which to grant Nissan's motion. The Board will issue an order to that effect and issue a notice for a full hearing to be held in mid May, 2009 which is the next available time when all members are available to be present. The Board shall also issue a prehearing discovery

order to the parties that shall be complied with requiring that they engage in meaningful discovery. In addition, the board will require the parties to submit witness lists with summaries of the proposed testimony, outline of the factual and legal issues to be determined, and any other information deemed necessary to have a fair and meaningful hearing.

2. The Board voted to approve the draft minutes for the meeting held on June 26, 2008. Mr. Burnett moved to accept the minutes and Mr. Copeland **SECONDED** the motion. Vote was **UNANIMOUS**.
3. The Board discussed the amended MVI administrative rules. No further action is needed as the new rules have already been previously adopted.
4. The Board acknowledged the filing of a new case by McDevitt Trucks, Inc. which alleges violations of RSA 357-C:3, I, RSA 357-C:3, III-c, and RSA 357-C:7. The Board members were given their copies of the filing. The Board accepted the petition and it will be assigned a docket number. In addition, pursuant to Mvi 206.01, a prehearing conference shall be scheduled within 90 days of the filing, to be held with the Chair. The protest was filed on November 25, 2008. However, under RSA 357-C:12, the prehearing conference is to be held no later than 45 days after the protest is filed. Therefore, the prehearing conference will be scheduled no later than January 9, 2009.

OTHER BUSINESS:

1. Mr. Copeland's reappointment to the Board has been done. That it is the Board's understanding that terms of service to the Board are now indefinite. No further action is required.
2. The Board discussed hearing procedures and the ruling on evidentiary objections. Previously, the Board members have sat side by side and conducted side bar conferences in reference to evidentiary objections, and thereafter, the chair has announced the ruling. That practice has worked well and will be continued at future hearings.
3. The Board recommended that the subscription to Lexis/Nexis be continued. The issue of whether a computer should be purchased with Board funds was considered. The Board is amenable to reviewing a request to purchase a computer if one is necessary to use Lexis/Nexis. If such recommendation is made, it should be done so with specific monetary costs. However, a new computer may not be necessary because this service is on the internet and any computer can be used.

ADJOURNMENT:

Mr. Burnett moved to adjourn. Mr. Fenollosa **SECONDED**. Vote was **UNANIMOUS**. The Chair declared the meeting **ADJOURNED** at 12:00 p.m.