

Minutes of August ADALB meeting held in Marlboro, MA

Present: Chairman Gilbert Cox

Members: Bruce King, Donald Spinelli, Stephen Tague and Joe Valarioti,

Attorney for the Board: Richard Cody and Secretary: Yvonne Torres

Approval of Minutes

Motion to accept minutes with the following changes:

2nd. Page - Don Spinelli recused himself from discussion in the Brian Starkweather matter.

2nd. Page - Bruce King did not second -etc...

Report on licenses

5,159 active licenses; 3 temporary licenses; 1,628 pending renewal;

4 on list for the next PART II; 6 retakes for PART I; 208 new applications

Informal Hearings

2005-06 – Colo v. Commerce (Bradford matter)

Recorded by: John Joyce, Commerce Ins. Co. (Audio/Video) AND Thomas Colo (Audio)

Summary: It was alleged by Thomas Colo that Commerce violated the following sections of 212 CMR 2.04 (d), (e) and (h) and after the Board members heard testimony of both sides, Joe V. moved to go to formal hearing; Motion failed. Tague moved that both parties should get together and resolve. Each party must present their resolutions to the Board at the next meeting. Don Spinelli seconded and King modified the motion to read: Each party must provide their resolution in writing to the Board at the next meeting. Motion passes 3-0; Valarioti did not vote. Matter was disposed and decision postponed until next meeting.

2005-09 – Wilson Associates v. Gerald Capazolli, C&J Auto Body

Present: Steve Wilson and Gerald Capazolli. Each party was sworn under oath at the request of Mr. Capazolli.

Summary: Mr. Wilson filed a complaint against Mr. Capazolli for allegedly violating 212 CMR 2.02 8(e) "the refusal by an appraiser who owns or is employed by a repair shop to allow an appraiser assigned by an insurer access to that repair shop for the purpose of making an appraisal, supervisory re-inspection, or intensified appraisal." Mr. Capazolli admitted to the allegation and stated he would rather close his business than to allow Mr. Wilson to come into his shop. Spinelli made motion to go to formal hearing; Joe seconded; Passed 4-0

Old Complaints

2004-08 – Carol Walsh v. Giordano & Demers

Request by Counsel Richard Cody that Board reconsider its decision to go to formal hearing and to dismiss complaint against each appraiser. Spinelli recused himself from voting in this matter. Mr. King agreed with Mr. Cody's conclusion and moved that a formal hearing be reconsidered; Tague seconded; Passed 2-0 vote.

Tague moved to dismiss complaint; King seconded; Passed 2-1

New Complaints

2005-08 – Xinrong Zhuang v. Michael Ferreira and Commerce

Valarioti moved to dismiss; Seconded by Spinelli; Motion passed 4-0

Review of Complaints against Commerce Appraisers

2005-13 – John Stella v. James C. Bates and Commerce

After much debate between both parties on the issue of paint & material and use of the Mitchell guide, the Chairman suggested that Legal Counsel research the following question: Does just merely producing the Mitchell manual or other manual satisfy the burden of proof for either shop or insurer and if so, does that end the negotiating process? Don Spinelli also agreed that the Board should obtain a legal opinion on the regulation and advisory ruling as written. Specifically, what would satisfy the burden of proof? Joe V. moved to informal hearing, King seconded 2-2 Vote; Chairman voted in the negative (No informal). A vote was not taken to dismiss the case. Discussion will continue at September's meeting and counsel will give his legal opinion on what constitutes the proof of burden. Motion made by Spinelli to adjourn. Seconded by King. Passed 3-0. Ms. Torres was instructed to move the remaining items of August's agenda to next month's agenda.

Future Meeting Dates

September 28, 2005

October 19, 2005