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TENNESSEE DEPARTMENT OF SAFETY vs.
One 2004 Toyota Tundra, Seized From: Mark
Hammock, Date of Seizure: October 28, 2004,
Claimant: Mark Hammock, Lienholder: Toyota
Motor Credit Corporation

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**BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF SAFETY**

IN THE MATTER OF:

TENNESSEE DEPARTMENT OF SAFETY,

v.

One 2004 Toyota Tundra

Seized From: Mark Hammock

Date of Seizure: October 28, 2004

Claimant: Mark Hammock

Lienholder: Toyota Motor Credit Corporation

**DOCKET NO: 19.01-094184J
(D.O.S. CASE NO. D6409N)**

INITIAL ORDER

This case was heard on December 12, 2006, in Nashville, Tennessee, before Robert Fellman, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Orvil Orr, Staff Attorney for the Department of Safety, represented the State. The lienholder, Toyota Motor Credit Corporation (hereinafter, Toyota), was represented by Randall Spivey of the Nashville bar.

The subject of this hearing was the proposed forfeiture of the seized vehicle for the failure of the lienholder to take custody of the vehicle under the terms of an order by the Department of Safety.

After consideration of the record, it is determined that the seized **vehicle** should be **returned to the lienholder**. This determination is based on the following findings.

Findings

1. On August 28, 2006, the Tennessee Department of Safety issued an Order of Delegation and Forfeiture Subject to Lien (although nothing in the Order indicated what or who is being delegated). This Order states, in relevant part:

ORDERED that the **CAPTIONED VEHICLE** that was confiscated pursuant to T.C.A. §53-11-201, et seq., and §40.33-201, et seq., be forfeited to the **SEIZING AGENCY** subject to the lien interest of **Toyota Financial Svcs and Randall J. Spivey Attorney of Record**, it having complied with the T.C.A. §40-33-201 et seq. It is further **ORDERED** that, if **LIENHOLDER** fails to take custody of the **CAPTIONED VEHICLE** on or before thirty (30) days from the date of this **ORDER**, all interest in the **CAPTIONED VEHICLE** will be forfeited to the Seizing Agency.
PETITIONER WILL PAY ANY AND ALL TOWING AND STORAGE COSTS. No storage to be charged until five (5) days after date of order.

2. Toyota failed to take custody of the vehicle within 30 days from the August 28, 2006 Order.

3. The record is unclear but Toyota evidently attempted to retrieve the vehicle either about 10 or 21 days after the 30 days allowed under the August 28, 2006 order.

4. The Department of Safety refused to release the vehicle. Toyota requested a contested hearing on the matter, thus resulting in the December 12, 2006 administrative hearing.

5. At the December 12 hearing, Toyota introduced into evidence the affidavit of Toyota's Operations Administrator which gave the following as its reason for Toyota's failure to pick up the vehicle within 30 days:

Due to the length of time that elapsed between the initial seizure and the Order of Forfeiture [from October 28, 2004 to August 28, 2006], Toyota was unable to process and finalize the recovery of the Vehicle within thirty (30) days.

Analysis and Legal Conclusions

1. Toyota really has no justifiable reason for its neglect in retrieving its vehicle. No matter how long the time period was from seizure of the vehicle to the Order of Forfeiture, this does not explain why, once Toyota was notified to pick up the vehicle by September 27, 2006, it failed to do so. Toyota does not allege it failed to timely receive a copy of the order after it was mailed on August 28, 2006.

2. On the other hand, Toyota is an innocent secured party which under the law need not even “file a claim to preserve any right such party may have to such property.” It need only submit proof of its security interest. T.C.A. §40-33-205.

3. The intent of Tennessee’s forfeiture statute is to take vehicles from drug dealers, not innocent lienholders.

4. The State’s position is that the lienholder here failed to abide by its order and therefore Toyota should forfeit its interest in the vehicle.

5. Forfeitures are not favored in law. *See Wells v. McCanless*, 184 Tenn. 293, 198 S.W.2d 641, 643 (1947).

6. The State did not argue any law or rule which requires a lienholder to retrieve its vehicle within 30 days from when the vehicle is forfeited to the Department of Safety.

7. Even if there were a statute or rule specifying that a lienholder must claim its vehicle within 30 days from the Order of Forfeiture, “the general rule in this State is that statutory provisions relating to the time of doing an act to which the statute applies are directory rather than mandatory.” *Garrett v. State, Dept. of Safety*, 717 S.W.2d 290, 291 (Tenn. 1986). The court added, “This is especially true absent some showing of prejudice.” *Id.* Regarding the

particular time limit at issue in Garrett, the court noted that the time limit “provision in the forfeiture statute has no effect on the merits of the case.” Id.

8. Garrett is on point here because Toyota’s failure to abide by the 30 day time period at issue in no way affected the merits of the case; the merits had already been determined and, as a result, Toyota was ordered to retrieve its vehicle. Nor was there any prejudice to the State by Toyota’s not picking up the vehicle within the thirty day time period because the August 28, 2006 order made Toyota responsible for paying storage costs.

9. In Garrett, the court found “no reason to rigidly construe the ninety day rule. Instead, we rely on the harmless error provision set forth in §4-5-322(i). Id. at 292. The same reasoning applies here.

10. For these reasons, it is **ordered** that **Toyota** be allowed to **take custody** of the 2004 **Toyota** Tundra.

This Order entered and effective this 23rd day of February, 2007.

Robert Fellman
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 23rd day of February, 2007.


Charles C. Sullivan II, Director
Administrative Procedures Division

