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\$731 U.S. Currency, Seized From: Brian F. Samuel,
Date of Seizure: December 18, 2008, Claimant:
Brian F. Samuel, 309 29th Avenue North, Nashville,
Tennessee 37203

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

IN THE MATTER OF:

\$731 U.S. Currency
Seized From: Brian F. Samuel
Date of Seizure: December 18, 2008
Claimant: Brian F. Samuel
309 29th Avenue North
Nashville, Tennessee 37203

DOCKET NO: 19.01-103021J
DOS No. H9551N

INITIAL ORDER

This contested administrative case was heard in Nashville, Tennessee on May 21, 2009, before Lynn M. England, Administrative Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Mr. Orvil Orr, Staff Attorney for the Tennessee Department of Safety and Mr. Cynthia Gross, Attorney with for Metropolitan Nashville Davidson County represented the State. The Claimant appeared *pro se*.

The subject of this hearing was the seizure and proposed forfeiture of \$731.00¹ in U.S. Currency, based on allegations that the Claimant received or possessed it in violation of the Tennessee Drug Control Act. Upon full consideration of the entire record in this case, it is determined that the proposed forfeiture is supported by the evidence, and that the seized currency should therefore be forfeited to the Seizing Agency. This decision is based on the following Findings of Fact and Conclusions of Law:

¹ \$21 of the currency was removed as evidence. The currency is located in the police department's property room.

FINDINGS OF FACT

1. On December 12, 2008, a confidential informant, while under surveillance², purchased approximately 3.7 grams of cocaine from the Claimant. The confidential informant purchased the cocaine with previously marked “buy money”.
2. On December 17, 2008, the same confidential informant purchased 3.1 grams of cocaine from the Claimant using previously marked “buy money”. Again, the confidential informant was under surveillance³.
3. Both purchases were monitored by Joshua Black, with the Metropolitan Police department’s Crime Suppression Unit.
4. On December 18, 2008 a search warrant was executed on 309 29th Avenue North, Nashville, Tennessee, the residence of the Claimant.
5. During the search of the residence, Officer Black recovered approximately 90 grams of marijuana and 10 grams of white powder, as a result of a field test, believed to be cocaine. Also recovered from the Claimant’s bedroom were scales, baggies and \$710 in cash. \$661 was found in one area of the bedroom while the other \$50 was found in another location in the bedroom.
6. Of the \$710 seized, \$200 matched the serial numbers of the “buy money” by the confidential informant to purchase cocaine.
7. The money was seized and a Drug Asset Forfeiture Warrant was later obtained. The Claimant filed a claim seeking the return of the currency.
8. During the hearing, the Claimant offered some evidence of legitimate gainful employment. However, the evidence was not sufficient to overcome the fact that “buy money” was commingled with the money seized.

² The confidential informant was searched, monitored, wired and provided with documented “buy money” while being kept under constant surveillance.

³ The confidential informant was searched, monitored, wired and provided with documented “buy money” while being kept under constant surveillance.

CONCLUSIONS OF LAW and ANALYSIS

1. “Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of the Tennessee Drug Control Act of 1989, . . . all proceeds traceable to such an exchange, and all moneys . . . used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act . . . ” are subject to forfeiture under the law. TENN. CODE ANN. 53-11-451(a)(6)(A).

2. The Tennessee Department of Safety bears the burden of proof in forfeiture proceedings, and must therefore prove, by a preponderance of the evidence, that the seized property is subject to forfeiture, pursuant to law. Failure to carry the burden of proof operates as a bar to the proposed forfeiture. TENN. CODE ANN. §§ 53-11-201(d)(2) and 40-33-210(a) and (b)(1); *Rule 1340-2-2-.15*, TENN. COMP. R. & REGS., *Rules of the Tennessee Department of Safety*. Specifically, in this case, the State must prove that the money found in the Claimant’s residence was derived from the illegal sale of drugs.

3. The State met its burden of proof. Taken as a whole, the evidence adequately proved that the Claimant was a drug dealer. The drugs in his home, the scales and packaging material found in his home, the “buy money” used during his sales of drugs to the confidential informant on two prior occasions all lead to the conclusion that the money confiscated was more likely than not proceeds of the illegal sale of drugs. The Claimant failed to prove that the money found in his residence was obtained through other lawful means. In the absence of a reasonable, plausible explanation, it is reasonable to conclude from all the facts of this case, that the money found in the Claimant’s residence was proceeds from his illegal drug transactions.

Accordingly, it is hereby concluded that the seized currency was “proceeds traceable to” illegal drug transactions in violation of the Tennessee Drug Control Act, and is therefore subject to forfeiture under the law. TENN. CODE ANN. 53-11-451(a)(6)(A).

It is therefore ORDERED that the seized currency, in the amount of \$710, shall be forfeited to the Seizing Agency, the Metropolitan Nashville Police Department, for disposition as provided by law.

Entered and effective this 25th day of June, 2009.

Lynn M. England
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 25th day of June, 2009.



Thomas G. Stovall, Director
Administrative Procedures Division