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Andrew Bryant vs. Safety

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State of Tennessee
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Administrative Procedures Division
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July 20, 2015

Commissioner Bill Gibbons
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Andrew Bryant
2228 Highway #75
Blountville, TN 37617

RE: In the Matter of: Andrew Bryant (Q1973)

Docket No. 19.05-131212J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

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

IN THE MATTER OF:

ANDREW BRYANT

DOCKET NO. 19.05-131212J

NOTICE

ATTACHED IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **August 4, 2015**.

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
WILLIAM R. SNODGRASS TOWER
312 ROSA PARKS AVENUE, 8th FLOOR
NASHVILLE, TENNESSEE 37243-1102

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, **615/741-7008 OR 741-5042, FAX 615/741-4472**. PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

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

**IN THE MATTER OF:
DEPARTMENT OF SAFETY**

FORFEITURE PROCEEDING

v.

**One 2000 Chevrolet Pickup
VIN: 1GCEC14T8YZ184893
Seized From: Andrew Bryant
Seizure Date: 9/2/14
Claimant: Andrew Bryant
Lienholder: Eastman Credit Union**

**DOCKET # 19.05-131212J
(D.O.S. # Q1973)**

INITIAL ORDER

This contested administrative case was heard in Fall Branch, Tennessee, on May 5, 2015 before Rob Wilson, Administrative Judge, assigned by the Secretary of State and sitting for the Commissioner of the Tennessee Department of Safety. Nina Harris, Staff Attorney for the Tennessee Department of Safety, represented the State. The Claimant appeared *pro se*.

The hearing was convened to consider the proposed forfeiture of the described vehicle for its alleged operation by an individual whose driving privileges had been revoked or suspended for driving a motor vehicle while under the influence of an intoxicant ("DUI"). TENN. CODE ANN. §§ 55-50-504 & 40-33-201, *et seq.* Upon full consideration of the entire record in this matter, it is determined that the subject vehicle should be FORFEITED as provided by law. This decision is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On September 2, 2014, an officer with the Tennessee highway Patrol stopped the subject vehicle for speeding and aggressive driving. When the officer approached the vehicle, the driver, Andrew Bryant ("Claimant") stated that he had a Restricted Tennessee Driver's License, but was unable to produce a document verifying his court-ordered restrictions, or any documentation pertaining to an interlock device.

2. Following a records check, the officer determined that the Claimant had no valid driver's license because it was revoked for a prior DUI conviction in March of 2014, and because he did not have a valid Restricted License in his possession (with a copy of the Restriction Order). Based on those facts, the Claimant was cited for Driving on a Revoked License.

3. Based on information obtained during and after the stop, the officers seized the Claimant's vehicle, and later sought and obtained a Vehicle Forfeiture Warrant. The Claimant filed a claim for its return, resulting in the scheduling of the instant contested administrative case hearing.

4. The testimony of the witnesses and records from the Tennessee Department of Safety¹ established that the Claimant was previously convicted of DUI in March of 2014, resulting in the revocation of his Tennessee motor vehicle operator's license. He stated that he was issued an Order granting him a Restricted License. However, pursuant to the terms of that Order, his Restricted License was only valid when accompanied by a copy of the Order. [The Order² contains the following language: **FOR YOUR RESTRICTED LICENSE TO BE VALID FOR DRIVING, THIS ORDER MUST BE KEPT WITH YOUR LICENSE AT ALL TIMES.** [(All emphasis in original.)] The Claimant did not have a copy of the Order in his possession at the time of his traffic stop on September 2, 2014. Although Claimant stated that he had been granted a restricted driver's license in 2014, he did not produce any proof or documentation of a restricted driver's license at this hearing.

CONCLUSIONS OF LAW & ANALYSIS

1. The law provides that it is illegal for a person to operate a motor vehicle at a time when his/her license to drive has been revoked. It further provides that, if the revocation was ordered due to a DUI conviction, any vehicle driven by the offender during the period of revocation is subject to seizure and forfeiture. TCA § 55-50-504(a)(1) and (h)(1). [Emphasis added.]

¹ Hearing Exhibit #1, Official Driver Record.

² See Hearing Exhibit #2, Blank Form Order for Restricted Driver License

2. The state has the burden of proving, by a preponderance of the evidence, that the seized property fits within the statute defining its illegal use, thereby rendering it subject to forfeiture. Rule 1340-2-2-.15(4), TENN. COMP. R. & REGS., *Rules of the Tennessee Department of Safety*.

3. In order to prevail in this case, the State must prove (1) that the Claimant was driving the subject vehicle; and (2) that he was doing so at a time when his license to drive had been revoked for a DUI conviction.

4. The State's evidence proved that the Claimant's license was revoked due to a 2014 conviction for driving under the influence of an intoxicant. While his license was still revoked, he was found to be operating the subject vehicle when it was stopped on September 2, 2014. The Claimant's Restricted License was not valid when he was stopped, because (1) he did not have a copy of the Order for Restricted Driver License in his possession, as required by the terms of that Order.

Accordingly, it is hereby ORDERED that the subject 2000 Chevrolet Truck is FORFEITED to the Seizing Agency subject to the lien of Eastman Credit Union.

Entered and effective this 20TH day of JULY, 2015.



Rob Wilson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the

20TH day of JULY 2015.



**J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE**

APPENDIX A TO INITIAL ORDER
NOTICE OF APPEAL PROCEDURES

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, Nashville, Tennessee, 37243. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.