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August 2015

## Anthony Turner vs. Safety

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**State of Tennessee**  
**Department of State**  
Administrative Procedures Division  
312 Rosa L. Parks Avenue  
8<sup>th</sup> Floor, William R. Snodgrass Tower  
Nashville, Tennessee 37243-1102  
Phone: (615) 741-7008/Fax: (615) 741-4472

August 27, 2015

Commissioner Bill Gibbons  
Tennessee Department of Safety  
23<sup>rd</sup> Floor, William R. Snodgrass Tower  
312 Rosa L. Parks Avenue  
Nashville, Tennessee 37243-1102

Anthony E. Turner  
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Homeland Security  
Legal Division  
6174 Macon Avenue  
Memphis, TN 38134-7502

RE: In the Matter of: Anthony E. Turner (Q7138)

Docket No. 19.01-132435J

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:**

**ANTHONY E. TURNER**

**DOCKET NO. 19.01-132435J**

**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 **September 11, 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, 8<sup>th</sup> 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 FOR THE  
TENNESSEE DEPARTMENT OF SAFETY**

**IN THE MATTER OF:**

**TENNESSEE DEPARTMENT  
OF SAFETY**

**vs.**

**DOCKET NO: 19.01-132435J  
DOS Case # Q7138**

**One 1992 Chevrolet Silverado  
VIN#: 1GCDC14H7NZ191580  
One Gray Samsung Trac Phone  
Seized From: Anthony Turner  
Seizure Date: 3/11/15  
Claimant: Anthony Turner  
Lien Holder: None Filed**

**INITIAL ORDER GRANTING DEFAULT AGAINST SEIZING AGENCY**

This contested administrative case was heard in Dyersburg, Tennessee on July 28, 2015, before Rob Wilson, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. Mr. Andre Thomas, Staff Attorney for the Department of Safety, was present; however, no witnesses appeared on behalf of the Seizing Agency. The Claimant appeared *pro se*.

The subject of the proceeding was the proposed forfeiture of the subject property, seized for alleged violations of the State's Drug Control Act.

At the outset of the hearing, an oral motion was offered pursuant to TENN. CODE ANN. § 4-5-309, and Rule 1340-2-2-.17 of the Department of Safety [TENN. COMP. R. & REGS], for an order finding the Seizing Agency to be in default for its witnesses' failure to appear and prosecute its Forfeiture Warrant. In support of that motion, documentary evidence was entered proving that notice of this hearing was sent to the Seizing Agency by certified mail, and was duly received. [See Hearing Exhibit #1.] Prior to the

commencement of the hearing, the Seizing Agency did not contact the Department of Safety or the Administrative Judge to seek a continuance of the hearing. On the date of the hearing, the Seizing Agency's witness failed to appear at the hearing.


It was therefore DETERMINED that the Seizing Agency failed to attend the hearing after receiving proper notification of the hearing. The Seizing Agency was found to be in DEFAULT. The State's attorney was unable to prove the Agency's case without the participation of the Seizing Agency, and in the absence of its witness.

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State law provides that, "If a party fails to attend or participate in a . . . hearing or other stage of a contested case, the administrative judge . . . may hold the party in default and either adjourn the proceedings or conduct them without the participation of that party." TENN. CODE ANN. § 4-5-309(a). Without explanation, the Seizing Agency failed to appear at the hearing after being duly notified, and thereby failed to prosecute its Forfeiture Warrant.

**Accordingly, it is ORDERED that the Forfeiture Warrant filed in this matter is hereby DISMISSED, and the subject property shall be returned to the Claimant immediately. The Claimant shall not be assessed any storage fees or other costs associated with this action as long as he claims his property within five (5) working days following receipt of this Order.**

This Initial Order is entered and effective this 27<sup>TH</sup> day of AUGUST, 2015.

  
Rob Wilson  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this 27<sup>th</sup> day of AUGUST 2015.



J. Richard Collier, Director  
Administrative Procedures Division

## **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, 8<sup>th</sup> 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.