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August 2015

Alma Sue Gorney vs. Safety

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Administrative Procedures Division
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8th Floor, William R. Snodgrass Tower
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August 21, 2015

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Staff Attorney IV
Tennessee Department of Safety &
Homeland Security
Legal Division
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Memphis, Tennessee 38134-7502

RE: In the Matter of: Department of Safety v. Alma Sue Gorney (Q6917)
Docket No. 19.01-132587J

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

Administrative Procedures Division
Tennessee Department of State

/srp
Enclosure

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

IN THE MATTER OF:

ALMA SUE GORNEY

DOCKET NO.: 19.01-132587J

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 7, 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 AND HOMELAND SECURITY**

IN THE MATTER OF:

DEPARTMENT OF SAFETY

V.

**One 1998 Chevrolet S10
VIN: 1GCCS1941W8164662
Seized from: Jonathon Wayne Hayes
Date of Seizure: 02-26-15
Claimant: Alma Sue Gorney**

**DOCKET NO: 19.01-132587J
D.O.S. # Q6917**

INITIAL ORDER

This matter was set for hearing on August 12, 2015 in Jackson, Tennessee, before Leonard Pogue, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety and Homeland Security. Mr. Joe Bartlett represented the Department. Claimant Sue Gorney was present and waived her right to counsel.

The subject of this hearing was the proposed forfeiture of the above-described seized vehicle for its alleged use in violation of the Tennessee Drug Control Act, T.C.A. §53-11-451 *et seq.* and T.C.A. §40-33-101 *et seq.*

Prior to the hearing, the Department moved to strike Claimant's claim to the seized vehicle for a lack of standing.

FINDINGS OF FACT

1. On February 26, 2015, the subject vehicle was seized from Jonathon Wayne Hayes by the Tennessee Highway Patrol for its alleged use in violation of the Tennessee Drug Control Act, T.C.A. §53-11-45. Hayes' mother, Alma Sue Gorney, claimed an interest in the vehicle.

2. Gorney testified that her son found the vehicle for sale on line. According to Gorney, she was to be the primary driver of the vehicle because her son did not have a license. She and her son purchased the vehicle, several weeks before it was seized, from someone in Jackson, Tennessee whose name she did not know. According to Gorney, she paid \$600.00 and her son paid \$500.00. Gorney did not have a cancelled check, bill of sale or any other documentation of the sale other than the title.¹

3. The vehicle is titled in the name of "Jermaine Pettigrew." The title was issued on October 30, 2014. Gorney does not know Pettigrew and believes the individual from whom she and her son purchased the vehicle purchased the vehicle from Pettigrew. She stated that she did not have the vehicle titled because she and her son planned to do some work on the vehicle after they purchased it. The back of the title shows a date of sale of "11-1-14", the seller as "Jermaine Pettigrew", a sales price of \$550.00", and the buyer as "Randy Powell." Gorney added her name as buyer. She stated she did this at the direction of the county clerk's office, a week before the seizure, when she went to the office to have it titled. However, at that time she did not have it titled because she did not have the money to do so. The vehicle is registered in the name of Jermaine Pettigrew.²

¹ Exhibit 1

² Exhibit 2

CONCLUSIONS OF LAW

1. T.C.A § 53-11-451(a)(6)(A) authorizes the forfeiture of:

“[e]verything 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.”

2. T.C.A. § 53-11-201(f)(1) provides that whenever a claim is filed for any seized property that the claim is not allowed unless and until the claimant proves that the claimant:

A) Has an interest in the property, which the claimant acquired in good faith; and

B) Had at no time any knowledge or reason to believe that it was being used in violation of the laws of the United States or of the state relating to narcotic drugs or marijuana.

3. An individual asserting a claim to seized property has the burden of proving the claimed ownership interest. Department Rule 1340-2-2-.15. In the instant case, Claimant must prove, by a preponderance of the evidence, that she had an interest in the seized property which she acquired in good faith. Urquhart v. Department of Safety, 2008 WL 2019458 (Tenn. Ct. App.).

4. T.C.A. §40-33-204(d) states that, in addition to records of title and registration, “other indicia of ownership” shall include, but is not limited to, the following:


- (1) How the parties involved regarded ownership of the property in question;
- (2) The intentions of the parties relative to ownership of the property;
- (3) Who was responsible for originally purchasing the property;
- (4) Who pays any insurance, license or fees required to possess or operate the property;
- (5) Who maintains and repairs the property;
- (6) Who uses or operates the property;
- (7) Who has access to use of the property; and

(8) Who acts as if they have a proprietary interest in the property.

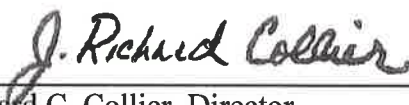
5. Based on the proof presented, it cannot be concluded that Claimant is the owner of the seized vehicle. Claimant failed to establish her legal standing to pursue her claim for the seized vehicle. The Department's motion to dismiss is **GRANTED**. The Claimant's claim to the vehicle is **dismissed**.

It is **ORDERD** that the vehicle is **forfeited** to the seizing agency for disposition as provided by law.

This Initial Order entered this 21st day of August, 2015.


Leonard Pogue
Administrative Judge

Filed in the Administrative Procedures Division, this 21st day of August, 2015.


Richard C. 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, 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.