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Amanda L. Ohern vs. Safety

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November 18, 2015

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RE: In the Matter of: Amanda L. Ohern (P8465)

Docket No. 19.05-130255J

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:

AMANDA L. OHERN

DOCKET NO. 19.05-130255J

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 **December 3, 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:

**Amanda L. (P8465) Ohern
2001 Nissan Frontier
V.I.N. 1N6DD26S11C336442
Seized from: Amanda L. O'Hern
Seizure date: April 28, 2014
Claimant: Amanda L. O'Hern
Lienholder: N/A**

DOCKET NO: 19.05-130255J

INITIAL ORDER

This matter was heard on January 28, 2015, before Joyce Carter-Ball, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Nina Harris, Staff Attorney for the Department of Safety ("the Department"), represents the State. The Claimant is represented by Attorney D. Marty Lasley.

The subject of this hearing was the proposed forfeiture of the seized property for its alleged use in violation of T.C.A. §55-10-401, 55-10-403 and 40-33-201 et seq. The parties submitted briefs in support of their position on the issue of whether a DUI conviction from another state counts in the State of Tennessee (reciprocity) for forfeiture purposes.

After review of the record and arguments of the parties, it is DETERMINED that the subject vehicle should be **forfeited to the Seizing Agency**.

This conclusion is based on the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Officer Cecil Harvey testified on behalf of the Department.
2. On April 28, 2014, Officer Harvey noticed the subject vehicle stopped on the right shoulder with its emergency flashers activated. Officer Harvey stopped behind the vehicle.
3. While talking to the Claimant about why the vehicle was stopped, Officer Harvey smelled an odor of an intoxicating beverage on Claimant's breath.
4. Claimant stated that she'd had a couple of shots and four (4) beers.
5. When asked to perform a field sobriety test, Claimant exited the vehicle and was very unsteady on her feet. Claimant could not keep her balance during the instructional phase of the walk and turn task.
6. The one leg stand was refused by Claimant and Officer Harvey was concerned that Claimant might fall if the test was conducted. The HGN, walk and turn, finger to nose and field sobriety tests all showed signs that Claimant was impaired.
7. Based on the totality of the circumstances, Officer Harvey arrested the Claimant. This would be Claimant's 2nd DUI within 5 years. **Claimant was convicted on her first DUI in Alabama in October of 2009.**
8. Claimant's vehicle was seized.
9. The Claimant is the **owner** of the subject vehicle.
10. The subject vehicle was seized on April 28, 2014, before the law changed in May 2015. **The Claimant was arrested for DUI 2nd offense.**

CONCLUSIONS OF LAW

1. The State of Tennessee, as the moving party in this case, has the burden to introduce evidence that would, by a preponderance of the evidence, prove the issues should be resolved in its favor. Rule 1360-4-1-.02.
2. **T.C.A. Section 55-10-414:**

(a) The vehicle used in the commission of a person's second or subsequent violation of § 55-10-401, or the second or subsequent violation of any combination of § 55-10-401, and a statute in any other state prohibiting driving under the influence of an intoxicant, is subject to seizure and forfeiture in accordance with the procedure established in title 40, chapter 33, part 2. The department of safety is designated as the applicable agency, as defined by § 40-33-202, for all forfeitures authorized by this section.

(b) In order for subsection (a) to be applicable to a vehicle, the violation making the vehicle subject to seizure and forfeiture must occur in Tennessee and at least one (1) of the previous violations must have occurred within five (5) years of the current violation.

ANALYSIS

Claimant was convicted on her first DUI in Alabama in October of 2009. She was arrested in Tennessee for a 2nd DUI in April of 2014. Claimant's Counsel explained that the DUI 2nd was dropped to DUI 1st. Claimant for the State argues that this decision, made by the Assistant District Attorney, has absolutely no bearing on forfeiture proceedings.

The T.C.A. did not require a conviction, prior to May 2015. It merely required a violation. Claimant was convicted in Alabama for DUI and she was convicted in Tennessee for DUI, both coming within a five (5) year period of each other. Prior to May 2015, there was no requirement that the Claimant be convicted of DUI 2nd offense.

The language used in the statute, §55-10-403(k)(1), is clear: “**violation**”, not “arrest” not “conviction”. The issue to be determined is whether or not the vehicle Claimant was driving can be forfeited for having a 2nd DUI violation within a five (5) year period of time. The second violation triggers the statute and the second violation occurred in Tennessee.

It is **CONCLUDED** that the State of Tennessee **has met** its burden of proof and established by a **preponderance** of the evidence that the subject vehicle was operated in violation of the State of Tennessee statutes.

Based on the foregoing proof, it is **ORDERED** that the subject vehicle be **forfeited to the Seizing Agency**.


IT IS SO ORDERED.

This Initial Order is entered and effective this 18th day of NOVEMBER, 2015.



Joyce Carter-Ball
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 18th day of NOVEMBER 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, 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.