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December 2015

Nysheda Marrero vs. Safety

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State of Tennessee
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Administrative Procedures Division
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8th Floor, William R. Snodgrass Tower
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December 1, 2015

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

Nysheda Marrero
2879 Beverly Hills Road, Apt. #7
Memphis, TN 38128

Upgrade Auto Sales
832 Mississippi Boulevard
Memphis, TN 38126-4734

André J. Thomas, Esq.
Staff Attorney III
Tennessee Department of Safety &
Homeland Security
Legal Division
6174 Macon Avenue
Memphis, TN 38134-7502

RE: In the Matter of: Nysheda Marrero (Q8035)

Docket No. 19.01-132985J

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:

NYSHEDA MARRERO

DOCKET NO. 19.01-132985J

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 16, 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:

**TENNESSEE DEPARTMENT OF
SAFETY AND HOMELAND
SECURITY**

**DOCKET NO: 19.01-132985J
D.O.S. Case No. Q8035**

V.

**One 2002 Hyundai Sonata
VIN: KMHWF35H32A555798
Seized from: DeAndre Bonner
Date of Seizure: April 16, 2015
Claimant: Nysheda Marrero
Lienholder:¹ UpGrade Auto Sales,
LLC**

INITIAL ORDER AND NOTICE OF DEFAULT

This matter was heard in Memphis, Tennessee, on September 2, 2015, before Rachel L. Waterhouse, Administrative Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety and Homeland Security. Andre Thomas, Staff Attorney for the Department of Safety and Homeland Security (Department), represented the seizing agency. The Claimant was not present nor was anyone present on the Claimant's behalf.

This is an action to forfeit the subject property for its alleged use in violation of T.C.A. § 53-11-201 *et. seq.* and § 40-33-201 *et. seq.*

¹ The Department's Motion for Default is against Upgrade Auto Sales, as well as Nysheda Marrero. However, the Petition for Hearing filed by Upgrade Auto Sales lists itself as a lienholder and attaches the relevant documentation. Therefore, it appears that Upgrade Auto Sales is a valid lienholder. To the extent that the Department's Motion requests default as to Upgrade Auto Sales, it is denied.

Since neither the Claimant nor counsel appeared for the hearing, the Department moved for an initial order holding the Claimant in **default** and striking the Claimant's claim from the record. The motion was **granted** based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Claimant filed a claim seeking the return of the above-described vehicle and requesting that a hearing be scheduled to consider the claim.
2. The Department sent notice of the hearing time and location by certified mail to the Claimant's address of record on file with the Department.
3. The notice of hearing sent to the Claimant was returned to the Department after two delivery attempts and marked by the U.S. Post Office as Unclaimed.
4. The Department made all reasonable attempts to notify the Claimant of the hearing.
5. The Claimant failed to appear on the day of the hearing. Nor did an attorney appear on his behalf.
6. The Department had its witnesses available and was ready to go forward to prove its case.

CONCLUSIONS OF LAW AND ANALYSIS

1. Department of Safety Rule 1340-2-2-.11, TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*, provides as follows:

(1) At a reasonable time prior to a hearing, a "Notice of Hearing" shall be filed by the Legal Division and served on all parties, per Rule 1340-2-2-.03(4).

(2) In serving a "Notice of Hearing," the Legal Division shall rely upon the addresses of record as given by a claimant or by claimant's counsel. Proof of service per Rule 1340-2-2-.03(4) to the addresses of record shall establish a

rebuttable presumption that claimant or claimant's counsel received notice of the hearing date.

(3) Notice of hearing for a second or subsequent setting of the hearing will be by certified mail, return receipt requested. The return receipt card may be filed with the Legal Division and serve as a record of notification.

(4) All claims filed against a specific seized property shall be consolidated for a single hearing.

2. Department of Safety Rule 1340-2-2-.17(1) , TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*, provides, in relevant part:

(d) No default shall be entered against a claimant for failure to attend except upon proof, that the Legal Division has given notice of hearing per Rule 1340-02-02-.06(2)(e).

(e) Upon default by a party, an administrative judge may enter either an initial default order or an order for an uncontested proceeding.

...

3. Department of Safety Rule 1340-2-2-.17(2) , TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*, states, in relevant part:

Upon a default by a claimant, a claimant's claim shall be stricken by initial default order, or, if the agency requests, the agency may proceed uncontested.

The Department's motion for default being granted, it is therefore **ordered** that the Claimant's **claim be stricken**. The claim being stricken, it is as if no claim had ever been filed, which constructively evokes T.C.A. §40-33-206(c). That section states: "If a claim . . . is not filed with the applicable agency within the time specified . . . the seized property shall be forfeited and disposed of as provided by law."

IT IS THEREFORE ORDERED that the above-described property is forfeited to the seizing agency, subject to the interest of the lienholder.

This Order entered and effective this 1st day of Dec., 2015.

Rachel L. Waterhouse

**RACHEL L. WATERHOUSE
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE**

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the 1st day of Dec. 2015.

J. Richard Collier

**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.