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January 2016

Amelia Powers vs. Safety

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Administrative Procedures Division
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January 12, 2016

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RE: In the Matter of: Amelia (Q9773) Powers Docket No. 19.05-134942J

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

Administrative Procedures Division
Tennessee Department of State

/ncp
Enclosure

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

IN THE MATTER OF:

AMELIA POWERS

DOCKET NO.: 19.05-134942J

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 **January 27, 2016.**

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,)	
)	
v.)	DOCKET NO: 19.05-134942J
)	Safety Case No. Q 9773
ONE 2008 Chevrolet Cobalt)	
VIN: 1G1AM18B087185909)	
)	
Seized From: Amelia Powers)	
Date of Seizure: 06/08/15)	
Claimant: Amelia Powers)	
Seizing Agency: Selmer Police Department)	
Lienholder: Capital One Auto Finance)	

NOTICE OF DEFAULT AND INITIAL ORDER

This matter was set to be heard on December 9, 2015, before Jerome Cochran, Administrative Judge, assigned by the Secretary of State to sit for the Commissioner of the Tennessee Department of Safety and Homeland Security (the Department) in Jackson, Tennessee. Joe Bartlett, Staff Attorney, represented the Department. The Claimant, Amelia Powers, was not present nor was an attorney present on his behalf.

The subject of this hearing was the proposed forfeiture of the subject vehicle. The matter was heard upon the Department's motion to be granted an Initial Default Order due to the Claimant's failure to appear at the hearing after receiving proper notice thereof. After consideration of the record it is determined that the Department's motion is proper and should be **GRANTED**. It is further **ORDERED** that the subject property should be **FORFEITED** to the

seizing agency, subject to any valid interest of the lienholder, Capital One Auto Finance. This decision is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The subject of this hearing was the seizure of a 2008 Chevrolet Cobalt from Amelia Powers by the Selmer Police Department on June 8, 2015. The Claimant, Amelia Powers, filed a petition for the return of the subject vehicle and requested that a hearing be scheduled to consider that claim.

2. The Claimant was sent notice of the hearing by certified mail to his address of record. Postal records indicate that the notice was delivered and signed for on November 19, 2015.

3. The Claimant did not appear on the day of the hearing, no attorney appeared on his behalf, and no continuance had been requested.

4. The Department had its witnesses available and was ready to proceed with the case.

CONCLUSIONS OF LAW and ANALYSIS

1. TENN. COMP. R. & REG. 1340-2-2-.11(2) (2007),¹ RULES OF PROCEDURE FOR ASSET FORFEITURE HEARINGS, provides:

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.

¹ These RULES were revised on March 10, 2015; however, because these revisions were after the January 5, 2015, filing of the claim in this case, the December 2007 RULES are still applicable to this appeal.

2. TENN. COMP. R. & REG. 1340-2-2-.17(1) provides, in relevant part:

(d) No default shall be entered against a claimant for failure to attend except upon proof, by the filing of the return receipt card, that the Legal Division has given notice of hearing.

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

3. TENN. COMP. R. & REG. 1340-2-2-.17(2)(b) 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.

4. The State's motion for default having been granted, it is therefore **ORDERED** that Claimant's **CLAIM BE STRICKEN**. The claim having been stricken, it is as if no claim had ever been filed, evoking TENN. CODE ANN. § 40-33-206(c), which specifies that "If a claim . . . is not filed with the applicable agency within the time specified by this part, the seized property shall be forfeited and disposed of as provided by law."

5. Based upon the foregoing, it is hereby **ORDERED** that the Claimant's claim be **STRICKEN**, the matter **DISMISSED**, and the Claimant's interest in the subject property **FORFEITED** to the seizing agency, subject to any valid claim by the lienholder, Capital One Auto Finance.

Accordingly, it is ordered that the lienholder, Capital One Auto Finance, shall have 15 days from the entry of this Order to claim the subject vehicle. **No storage fees shall be assessed against the lienholder.**

The policy reasons for this decision are to uphold the laws of the State of Tennessee while providing appropriate protections for the property rights of individuals.

It is so ORDERED.

Entered and effective this the 12th day of January 2015.



JEROME COCHRAN
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 12th day of January 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.