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January 2016

Advance America 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
Nashville, Tennessee 37243-1102
Phone: (615) 741-7008/Fax: (615) 741-4472

January 08, 2016

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

Patrick Rice, Esq.
Tennessee Department of Safety
7175 Strawberry Plains Pike
Suite 102
Knoxville, TN 37914-9637

Advance America
2708 N. Roan St.
Jonesborough, TN 37659

RE: In the Matter of: Advance America Docket No. 19.05-135035J

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:

ADVANCE AMERICA CASH

DOCKET NO.: 19.05-135035J

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 25, 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.

**One 2003 Ford Ranger
VIN: 1FTYR44UO3PB65748
Seized from: Joshua Fox
Claimant: Advance America Cash
Seizure Date: 12/28/14
Lienholder: Advance America Cash**

**DOCKET NO: 19.05-135035J
DOS CASE NO: Q6430,Q6429**

NOTICE OF DEFAULT and INITIAL ORDER

This matter was heard on December 9, 2015, in Fall Branch, Tennessee, before Rob Wilson, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Tennessee Department of Safety. Patrick Rice, attorney for the Department of Safety, represented the State. No one appeared at the hearing on behalf of the Lienholder.

This hearing was a hearing to determine why the subject vehicle should not be forfeited to the State because the Lienholder had failed to claim the vehicle.

After consideration of the evidence offered and the entire record in this matter, it is **ORDERED** that the seized vehicle be **FORFEITED** to the seizing agency. This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The vehicle was seized pursuant to law, resulting in the issuance of a Property Forfeiture Warrant.
2. The Lienholder was given the opportunity to take possession of the vehicle pursuant to a forfeiture Order entered on June 26, 2015.
3. The case was set on the docket and the lienholder was notified of the hearing scheduled for December 9, 2015.
4. Lienholder was notified of the hearing time and location by certified mail sent to the address of record. This notice was received and signed for.
5. The Lienholder did not appear at the hearing and did not request a continuance.

CONCLUSIONS OF LAW and ANALYSIS

1. Department of Safety Rule 1340-2-2-.11(2) 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.
2. Department of Safety Rule 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. Because the Lienholder received adequate notice of the hearing and did not appear at the hearing, the State's motion for default is appropriately granted.

4. Based upon the foregoing, it is hereby **ORDERED** that the Lienholder's interest in the subject property be **FORFEITED** to the seizing agency.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the 8th day of January 2016.



ROB WILSON
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 8th day of January 2016.



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.