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Amber M. Vazquez vs. Safety

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Administrative Procedures Division
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April 27, 2016

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RE: In the Matter of: Amber M. Vazquez (P8153 and P8154)
Docket No. 19.05-128535J

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:

AMBER M. VAZQUEZ

DOCKET NO. 19.05-128535J

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 **May 12, 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 2002 Ford Explorer
VIN: 1FMZU73W02**

**Seized From: Amber Vazquez
Date of Seizure: April 6, 2014
Claimant: Amber Vazquez
Seizing Agency: Tennessee Highway
Patrol**

**DOCKET NO: 19.05-128535J
SAFETY NO: P 8153 & P 8154**

INITIAL ORDER

This matter was heard on February 23, 2016, in Chattanooga, Tennessee before Jerome Cochran, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division and designated to sit for the Commissioner of the Tennessee Department of Safety and Homeland Security (Department). Attorney Nina Harris represented the Department, and Claimant was present and represented by her attorney, Doug Aaron.

The issue presented for consideration is the Claimant's Motion to Dismiss and whether the Department can forfeit Claimant's vehicle pursuant to T.C.A. §55-10-403 and §55-50-504. It is **DETERMINED** that the Department has proven, by a preponderance of the evidence that Claimant has violated T.C.A. §55-10-401 on two occasions within a five year period and violated T.C.A. §55-50-504 as Claimant was driving a vehicle during a period of time when the Claimant's license was revoked. Accordingly, the Claimant's Motion to Dismiss is **DENIED** and

it is determined that the subject vehicle should be **FORFEITED** as provided by law. This decision is based on the following Findings of Fact and Conclusions of Law:

SUMMARY OF THE EVIDENCE

Two exhibits were admitted into evidence: EXHIBIT 1, the Claimant's Driving History and EXHIBIT 2, the Technical Record.

FINDINGS OF FACT

1. On April 6, 2014, Trooper Jason Boles, received a call from dispatch that a vehicle was reported to be driving through yards at a trailer park off of Highway 55 and Hopper Smith Road in Coffee County, Tennessee.
2. The Trooper arrived at the scene and saw a Ford Explorer sitting in the grass off of the roadway and a Ford Expedition sitting in the roadway.
3. The driver of the Ford Expedition was told not to leave and identified herself as Crystal Vazquez. The Trooper would later learn this to be an untruth and that in fact the driver was Amber Vazquez, who was at the time claiming to be her twin sister.
4. Ms. Vazquez informed the trooper that she had gotten her vehicle stuck in the grass and had called a friend trying to get the vehicle out.
5. Ms. Vazquez was arrested and taken into custody on a charge of Driving Under the Influence ("DUI").
6. At the jail, the Trooper learned that Ms. Vazquez gave false information regarding her identity and charged her with addition to the DUI, Driving on Revoked, and Criminal Impersonation.

7. The Claimant has a prior DUI conviction and at the time of the seizure had a license that was revoked.
8. The Claimant pled guilty and was convicted of the DUI resulting from her arrest on April 6, 2014.
9. The Department has shown, by a preponderance of the evidence, that when Claimant was stopped by the officer as she was operating her vehicle while impaired by alcohol in violation of T.C.A. §55-10-401(1).
10. The Department has shown, by a preponderance of the evidence, that Claimant violated T.C.A. §55-10-401 on two occasions during a five year period and her vehicle is subject to forfeiture.
11. The Department has shown, by a preponderance of the evidence, that Claimant violated T.C.A. §55-50-504 as she was driving a vehicle during a period of time when her license was revoked for a prior DUI.
12. The Claimant offered no evidence to rebut the testimony of Trooper Bales that the Claimant admitted to him that she had been driving the Ford Explorer and had gotten in stuck in the grass on the day of April 6, 2014.

CONCLUSIONS OF LAW

1. The Department 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. Tennessee Code Annotate §55-10-414 provides as follows:

(a) The vehicle used in the commission of a person's second or subsequent violation of § 55-10-401, or the second or subsequent convictions 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. (emphasis added).

(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.

(c) It is the specific intent that a forfeiture action under this section shall serve a remedial and not a punitive purpose. The purpose of the forfeiture of a vehicle after a person's second or subsequent DUI violation is to prevent unscrupulous or incompetent persons from driving on Tennessee's highways while under the influence of alcohol or drugs. Driving a motor vehicle while under the influence of alcohol or drugs endangers the lives of innocent people who are exercising the same privilege of riding on the state's highways. There is a reasonable connection between the remedial purpose of this section, ensuring safe roads, and the forfeiture of a motor vehicle. While this section may serve as a deterrent to the conduct of driving a motor vehicle while under the influence of alcohol or drugs, it is nonetheless intended as a remedial measure. Moreover, the statute serves to remove a dangerous instrument from the hands of individuals who have demonstrated a pattern of driving a motor vehicle while under the influence of alcohol or drugs.

(d) Only P.O.S.T.-certified or state-commissioned law enforcement officers will be authorized to seize these vehicles under this section.

3. Tennessee Code Annotated §55-10-401 provides:

It is unlawful for any person to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the state, any shopping center, trailer park, apartment house complex or any other location which is generally frequented by the public at large, while:

(1) Under the influence of any intoxicant, marijuana, controlled substance, controlled substance analogue, drug, substance affecting the central nervous system or combination thereof that impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of himself which he would otherwise possess;

(2) The alcohol concentration in the person's blood or breath is eight-hundredths of one percent (0.08%) or more; or

(3) With a blood alcohol concentration of four-hundredths of one percent (0.04%) and the vehicle is a commercial motor vehicle as defined at §55-50-102.

4. Tennessee Code Annotated § 40-33-210 provides as follows:

(a) In order to forfeit any property or any person's interest in the property pursuant to §§ 39-14-307, 47-25-1105, 53-11-451, 55-10-414, 55-50-504(h), 57-3-411, 57-5-409, 57-9-201, 67-4-1020 or 70-6-202, the state shall have the burden to prove by a preponderance of evidence that:

(1) The seized property was of a nature making its possession illegal or was used in a manner making it subject to forfeiture under the sections set out in this subsection (a); and

(2) The owner or co-owner of the property knew that the property was of a nature making its possession illegal or was being used in a manner making it subject to forfeiture, or, in the case of a secured party, that the standards set out in subsection (f) are met.

(b)(1) Failure to carry the burden of proof shall operate as a bar to any forfeiture and the property shall be immediately returned to the claimant.

(2) Notwithstanding that the hearing officer found that the state carried its burden of proof and recommended forfeiture of the property, the administrative head of the applicable agency may, in the interests of justice, order that the seized property be returned to the claimant.

(c)(1) The interest of a co-owner or co-owners who were not in possession of the property at the time it was seized may be forfeited if the co-owners:

(A) Were co-conspirators to the activity making the property subject to forfeiture;

(B) Knew that the property was of a nature making its possession illegal; or

(C) Knew that it was being used in a manner making it subject to forfeiture and consented to the use.

(2) If the state meets its burden of proof as to one (1) co-owner of the seized property but fails to do so as to one (1) or more other co-owners, the property shall be forfeited subject to the interest of the innocent co-owners.

(d) If it is determined that the state has carried the burden of proof with regard to all parties claiming an interest in the property, and the ruling of the administrative head of the applicable agency is adverse to the claimant or claimants, the property shall be sold or disposed of as provided in § 40-33-211.

(e) If the interest of the owner or co-owner of seized property is forfeited pursuant to this section but the interest of the secured party is not, the administrative head of the applicable agency may, at the request of the secured party, return the seized property for disposition in accordance with the security agreement or other contract. If the property is not returned to the secured party, the forfeiture shall be subject to the secured party's interest.

(f) A secured party's interest may be forfeited if, from evidence presented at the hearing, the administrative head of the applicable agency finds that:

(1) The secured party is a co-conspirator to the activity making the property subject to forfeiture;
or

(2) The secured party, at the time the interest attached, had actual knowledge of the intended illegal use of the property. A secured party who acquired an interest in the ordinary course of business shall be presumed to have no actual knowledge of an intended illegal use and shall have no duty to inquire as to the record or reputation of a borrower.

(g) The expenses of storage, transportation and other similar costs shall be adjudged as part of the cost of the proceeding in such manner as the administrative head of the applicable agency shall determine.

The law further provides that it is illegal for a person to operate a motor vehicle at a time when her license to drive has been revoked or suspended. It further provides that, if the revocation or suspension was ordered due to driving a motor vehicle under the influence of an intoxicant, any vehicle driven by the offender during the period of revocation or suspension is subject to seizure and forfeiture. TCA §§ 55-10-401, 55-50-504(a)(1) and (h)(1).

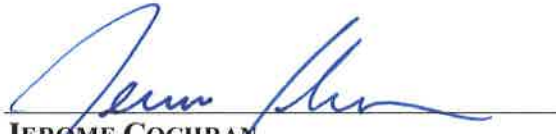
The State's evidence proved that Amber Vazquez was driving in Coffee County, Tennessee on April 6, 2014, on a license that had been revoked due to her prior conviction for Driving Under the Influence of an intoxicant, thus subjecting the Claimant's vehicle to forfeiture under Tenn. Code Ann. § 55-50-504(a)(1) and (h)(1).

It is **CONCLUDED** that the Department has shown, by a preponderance of the evidence, that Claimant has had 2 convictions of DUI within a 5 year period and at the time of the seizure that her license was revoked.

IT IS THEREFORE ORDERED that the Claimant's Motion to Dismiss is **DENIED** and that the above described vehicle is forfeited to the seizing agency.

It is so ORDERED.

Entered and effective this the 27th day of APRIL 2016.



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 27th day of APRIL 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.