



9-27-2007

DEPARTMENT OF SAFETY FORFEITURE
PROCEEDING vs. One 1997 Honda Accord
VIN: 1HGCD5654VA255609, Seized From:
Dianna Smith 6, Seizure Date: February 15, 2007,
Claimant: Dianna Smith, Lienholder: World
Finance Corp

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

IN THE MATTER OF:]	
DEPARTMENT OF SAFETY]	FORFEITURE PROCEEDING
]	
v.]	
]	
One 1997 Honda Accord]	
VIN: 1HGCD5654VA255609]	DOCKET # 19.05-096878J
Seized From: Dianna Smith]	(D.O.S. # G-0476)
Seizure Date: February 15, 2007]	
Claimant: Dianna Smith]	
Lienholder: World Finance Corp]]	

INITIAL ORDER

This contested administrative case was heard in Chattanooga, Tennessee, on September 27, 2007, before J. Randall LaFevor, Administrative Judge, assigned by the Secretary of State and sitting for the Commissioner of the Tennessee Department of Safety. Ms. Lori Long, Staff Attorney for the Tennessee Department of Safety, represented the State. The Claimant was absent from the hearing, but was represented by her legal counsel, Mr. Johnny D. Houston, Jr.

The subject of the hearing was the proposed forfeiture of the described vehicle for its alleged operation by an individual whose driving privileges had been revoked or suspended for driving a motor vehicle while under the influence of an intoxicant (“DUI”). Upon full consideration of the entire record in this matter, it is determined that the forfeiture proceeding should be dismissed, and that the subject vehicle should be returned to the Claimant. This decision is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. From documents in the record, it appears that the subject vehicle was seized by an officer of the Chattanooga Police Department on February 15, 2007, based on his allegation that the Claimant was operating it while her Tennessee driver’s license was suspended or revoked due to a prior DUI offense.

2. The Claimant, the registered owner of the vehicle, filed a claim for its return, resulting in the scheduling of the instant contested administrative case hearing.
3. Upon scheduling the case for hearing, the Department of Safety notified the Seizing Agency and the Claimant that the case would be heard on the 10:00 a.m. docket on September 27, 2007.
4. At the scheduled time, the Claimant's attorney appeared at the hearing room with the State's counsel, and the case was announced ready for hearing. However, the State's attorney then announced that she had no witnesses available, and intended to rely on the Claimant's testimony to prove her case. The Claimant's attorney then announced that his client was not at the hearing location, and was therefore not available to testify as a witness. The Claimant had not been subpoenaed to the hearing by the State.
5. Since the State was unable to offer any proof in support of the proposed forfeiture, the Claimant's attorney moved for a dismissal of the proceedings. The State did not object.

CONCLUSIONS OF LAW & ANALYSIS

1. The law provides that it is illegal for a person to operate a motor vehicle at a time when his license to drive has been revoked. It further provides that, if the revocation was ordered due to a DUI conviction, any vehicle driven by the offender during the period of revocation is subject to seizure and forfeiture. TCA § 55-50-504(a)(1) and (h)(1).
2. The state has the burden of proving, by a preponderance of the evidence, that the seized property fits within the statute defining its illegal use, thereby rendering it subject to forfeiture. Rule 1340-2-2-.15(4), TENN. COMP. R. & REGS., *Rules of the Tennessee Department of Safety*. Failure to carry the burden of proof operates as a bar to the proposed forfeiture. TENN. CODE ANN. § 53-11-201(d)(2); Rule 1340-2-2-.15, TENN. COMP. R. & REGS., *Rules of the Tennessee Department of Safety*.

3. The State failed to meet its burden of proof. The State's case was seriously impeded by the absence of the seizing officer, and the Claimant's decision not to attend the hearing. In their absence, the State was unable to prove that the Claimant was driving the vehicle on the date of the vehicle seizure. Without such proof, the State was unable to establish a necessary element of its case. As indicated above, failure to carry the burden of proof operates as a bar to a proposed forfeiture.

4. In light of the State's inability to prove the elements of its alleged basis for the seizure and proposed forfeiture, the Claimant's motion to dismiss the forfeiture proceedings must be granted.

Accordingly, IT IS HEREBY ORDERED that the proposed forfeiture of the Claimant's vehicle is Dismissed, and the seized vehicle, one 1997 Honda Accord, shall be RETURNED to the Claimant, Dianna Smith.

Entered and effective this 10th day of October, 2007.

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 10th day of October, 2007.



Thomas G. Stovall, Director
Administrative Procedures Division