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1-16-2008

DEPARTMENT OF SAFETY, Petitioner, vs. 1996  
FORD CONTOUR AUTOMOBILE, VIN:  
1FALP6532TK241703 CASE NO. G5020, Seized  
From: Ernest Hurd, Date of Seizure: 07/18-07,  
Claimant: Ernest Hurd, Lienholder: None

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

**IN THE MATTER OF:**

**DEPARTMENT OF SAFETY,** )  
    **Petitioner** )

v. )

**1996 FORD CONTOUR AUTOMOBILE** )  
**VIN: 1FALP6532TK241703** )  
**Seized From: Ernest Hurd** )  
**Date of Seizure: 07/18-07** )  
**Claimant: Ernest Hurd** )  
**Lienholder: None** )

**DOCKET NO. 19.05-097820J**  
**CASE NO. G5020**

**INITIAL ORDER**

This contested administrative matter was heard on January 16, 2008, before James A. Hornsby, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety in Knoxville, Tennessee. Nina Harris, Staff Attorney for the Department of Safety, was present and represented the State. The Claimant was present without counsel. Shanel Thomas, wife of the titled owner of the subject vehicle, was also present.

**State's Motions Under Advisement**

1. The State's Motion to dismiss the Claimant's Claim in this matter is hereby **DENIED**. The State contends that because the Claimant is not a titled owner of the subject automobile, but had borrowed it from the titled owner, he does not have standing to file a claim. It is DETERMINED that the law requires that the claimant have an interest in seized property, but it does not require an ownership interest. Mr. Hurd borrowed the seized vehicle and is responsible at law to its owner for its care. He therefore has a recognizable legal interest. Rhodes v. Pioneer Parking lot, Inc., 501 S.W.

2<sup>nd</sup> 569, 570 (Tenn. 1973). U.S. v. \$515,060.42 in U.S. Currency, 152 F. 3<sup>rd</sup> 491, 498 (6<sup>th</sup>.Cir.1998). State v. LeMay, et al., Unpublished Opinion entered March 28, 1977 (Tenn., M.D. 1977).

2. The State's motion to deny the owner of the seized vehicle, and the owner's wife, standing to claim the vehicle is hereby **GRANTED**. Tennessee Code Annotated, Section 40-33-206(a) provides that a claimant has 30 days to file a claim after proper notice. The titled owner of the seized vehicle, John Thomas, received notice, and neither he nor his wife filed a claim for the vehicle. Statutory time limitations for filing are mandatory. Johnson v. Roberts (Dept of Safety), Tenn. App., 638 S.W. 2<sup>nd</sup> 401.

### **ORDER**

The subject of this proceeding is the proposed forfeiture of the subject vehicle under Tennessee Code Annotated, Section 55-50-504(h), which provides for the forfeiture of any vehicle driven by a person whose license has been revoked for driving while intoxicated. After consideration of the entire record and the arguments of the parties, it is ORDERED that the subject vehicle be FORFEITED. This determination is based upon the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. The Claimant, Ernest Hurd had his driver's license revoked on September 22, 1986, after he was convicted for driving while intoxicated. He has had five other alcohol-related violations since that time, and five license revocation notices.

2. Mr. Hurd had not had his driver's license reinstated when, while driving the subject vehicle on July 18, 2007, he was stopped by an officer of the Anderson

County Sheriff's Department for a traffic violation. The Claimant admitted to the officer that he did not have a license because it had been revoked for DUI.

3. The Claimant was charged with driving on a revoked license, and the subject vehicle was seized.

### **CONCLUSIONS OF LAW**

1. Tennessee Code Annotated, Section 55-50-504 concerns driving on a canceled, suspended, or revoked license. Subsection (h) provides, in pertinent part, that:

The vehicle used in the commission of a person's violation of section 55-50-504, when the original suspension or revocation was made for a violation of section 55-10-401 (driving under the influence of an intoxicant), is subject to seizure and forfeiture.

2. It is DETERMINED that the State has carried its burden of proving by a preponderance of the evidence that the Claimant was driving the subject 1996 Ford Contour automobile on July 18, 2007, with a license revoked on September 22, 1986, for driving under the influence of an intoxicant, and that the vehicle is subject to forfeiture under the provisions of T.C.A. §55-50-504(h).

3. Therefore, it is ORDERED that the subject 1996 Ford Contour automobile be, and is hereby, FORFEITED to the seizing agency.

This Initial Order entered and effective this 12th day of February, 2008.

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James A. Hornsby  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this 12th day of February, 2008.

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Thomas G. Stovall, Director  
Administrative Procedures Division