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5-31-2007

DEPARTMENT OF SAFETY, Petitioner, D.O.S.
Case No. G0835 vs. One 2005 Toyota Tundra
VIN: 5TBDT48125S489575, Seized from: Mack
Cooke, Jr., Date of Seizure: February 28, 2007,
Claimant: Mack Cooke, Jr., Lienholder: Toyota
Financial Services

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

IN THE MATTER OF:)	
)	
DEPARTMENT OF SAFETY,)	DOCKET NO. 19.05-095749J
Petitioner)	(D.O.S. Case No. G0835)
)	
v.)	
)	
One 2005 Toyota Tundra)	
VIN: 5TBDT48125S489575)	
Seized from: Mack Cooke, Jr.)	
Date of Seizure: February 28, 2007)	
Claimant: Mack Cooke, Jr.)	
Lienholder: Toyota Financial Services)	

INITIAL ORDER

The contested hearing of this matter was held on May 31, 2007, in Knoxville, Tennessee, before Robert Fellman, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. Lori Long, staff attorney for the Department of Safety, represented the Department of Safety. Mack Cooke, Jr., Claimant, represented himself.

The issue was whether Claimant's vehicle should be forfeited for his DUI violation.

After consideration of the record in this matter, it is determined that the subject **vehicle** should be **forfeited** to the seizing agency, subject to the lien of Toyota Financial Services. This determination is based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On February 28, 2007, Claimant was pulled over by the Johnson City Police Department after the vehicle he was driving, a 2005 Toyota Tundra, was observed driving in the wrong lane. His speech was slurred and he failed three sobriety tests. He had an opened can of beer in the vehicle.

2. Claimant has previous convictions for D.U.I. on September 9, 1998, August 31, 2002 and December 30, 2005.

3. At the May 31, 2005 hearing, Claimant did not dispute the above facts. He did, however, suggest that it would save everybody time if the vehicle was returned to him right away as he was going to get it back anyway from the lien holder.

CONCLUSIONS OF LAW AND ANALYSIS

1. T.C.A §55-10-403(k) states:

(1) The vehicle used in the commission of a person's second or subsequent violation of §55-10-401 [driving under the influence of an intoxicant], or the second or subsequent violation 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 subsection.

(2) In order for the provisions of subdivision (k)(1) 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 occur on or after January 1, 1997, and the second offense after January 1, 1997, occurs within five (5) years of the first offense occurring after January 1, 1997.

2. The State carried its burden of proving the seized vehicle was used in violation of T.C.A §55-10-403(k)(1) and (2).

3. Therefore, it is **ordered** that the subject vehicle be **forfeited** to the seizing agency, subject to the lien of Toyota Financial Services.

4. At the hearing, it was clear that Claimant had no compunction about driving while drunk and he appeared to consider the hearing as a joke. Based on his attitude, it seems likely he will be driving drunk again in the near future. Although Toyota Financial Services is an innocent lien holder here, by this order they are put on notice that the next time Claimant is caught driving DUI, it is possible that the Department of Safety may not automatically consider Toyota Financial as an innocent lien holder and so may seek to have Toyota Financial's security interest forfeited.

This Initial Order entered and effective this 29th day of June, 2007.

Robert Fellman
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 29th day of June, 2007.

Charles C. Sullivan II, Director
Administrative Procedures Division