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7-29-2009

DEPARTMENT OF SAFETY vs. \$5,340.00 in U.S.
Currency D.O.S. Case # H6588, Seized From:
Timothy Chatmon, Seizure Date: August 22, 2008,
Claimant: Timothy Chatmon, Seizing Agency:
Hamilton Co Sheriff

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

IN THE MATTER OF:]	
]	
DEPARTMENT OF SAFETY]	
]	
v.]	DOCKET # 19.01-103921J
\$5,340.00 in U.S. Currency]	D.O.S. Case # H6588
Seized From: Timothy Chatmon]	
Seizure Date: August 22, 2008]	
Claimant: Timothy Chatmon]	
Seizing Agency: Hamilton Co Sheriff]	

INITIAL ORDER

This contested administrative case was heard in Chattanooga, Tennessee on July 29, 2009, before J. Randall LaFevor, Administrative Judge assigned by the Secretary of State, Administrative Procedures Division, sitting for the Commissioner of the Tennessee Department of Safety. The Seizing Agency was represented by Ms. Lori Long, Staff Attorney for the Tennessee Department of Safety. The Claimant was represented by his legal counsel, Mr. Michael West.

This hearing was convened to consider the proposed forfeiture of the subject currency based on allegations that its possession and/or receipt was in violation of the Tennessee Drug Control Act. After a Forfeiture Warrant was issued, the Claimant filed a claim for the property, and this hearing was scheduled to consider that claim. As a preliminary matter, the Seizing Agency challenged the Claimant's legal standing to file a claim for the seized currency. Upon full consideration of the pleadings, the evidence submitted and the parties' arguments, it is determined that the Claimant failed to establish that he has legal standing to pursue his claim. This decision is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On August 28, 2008, officers with the Hamilton County Sheriff's Office stopped the Claimant's car for a traffic violation, and smelled marijuana inside. The Claimant

denied having any drugs or cash in the vehicle. A search of the vehicle failed to locate any drugs, but did disclose \$5,340.00 in the Claimant's pockets and the console of the car. The Claimant told the officers that he was not employed, and did not pay taxes, and that the money belonged to someone else, but that he was "responsible" for it. Based on these facts, and the Claimant's "lengthy narcotics history,"¹ the officers seized the money, then sought and obtained a Drug Asset Forfeiture Warrant for the seized currency.

2. The Claimant filed a claim for the seized currency, and this hearing was convened to consider his claim. As a preliminary matter, the State challenged his legal standing to pursue his claim.

3. The Claimant testified that the seized currency did not belong to him, but that he had been selling tickets to a concert, and was on his way to deliver the proceeds from those sales to the concert artist when he was stopped by the police. The Claimant said that he "promotes shows and cuts hair," although he admitted that he had no permit or license to act as a concert promoter. He said that he makes no money from the shows that he promotes, and that the money in his pockets and in the car belonged to the artist. He offered no business records in support of his testimony other than an unexecuted *Performance Agreement* which did not bear the Claimant's name in any capacity, and referred to a concert that was to take place a week later than the one he claimed to have promoted. [See Hearing Exhibit #1] Neither the artist, nor the concert venue owner/manager, nor anyone else associated with the concert that he claimed to have promoted, appeared on the Claimant's behalf.

CONCLUSIONS OF LAW and ANALYSIS

1. The State challenged the Claimant's legal standing to assert a claim for the seized currency. The Department of Safety's *Rules of Procedure for Asset Forfeiture Hearings* provide that, once the issue is raised, the claimant has the burden of proving legal

¹ The seizing officer stated in his Affidavit that the Claimant had a "lengthy narcotics history." Although he obviously considered this knowledge as a factor in his decision to seized the currency, no specific evidence of prior drug trafficking was offered during the hearing.

standing to pursue a claim. Rule 1340-2-2-.15(3), TENN. COMP. R. & REGS.; *see also* TENN. CODE ANN. §53-11-201(f)(A). Also pursuant to Departmental Regulations, once it is properly raised, the issue of legal standing must be determined prior to a ruling on the merits of a contested case. If standing is not proven, the claim may be dismissed, and, where otherwise appropriate, the property may be forfeited to the State. Rule 1340-2-2-.16(1)(g)(3), TENN. COMP. R. & REGS.; *See also, Jones v. Greene*, 946 S.W.2d 817 (Tenn. App. 1996).

2. Even though the money was seized from the Claimant's pockets and from his car, mere physical possession of property is not sufficient, in and of itself, to confer standing to contest a proposed forfeiture. *U.S. v. \$515,060.42 in U.S. Currency*, 152 F.3d at 497; *see also* Am. Jur. 2d *Forfeitures and Penalties*, § 38. To prove legal standing, the Claimant must establish an ownership² interest in the seized property that was acquired in good faith. TENN. CODE ANN. § 53-11-201(f)(1) & *Urquhart v. Department of Safety*, 2008 WL 2019458 (Tenn. Ct. App.)³ Without such an *ownership* interest, a party lacks standing to challenge the forfeiture. *See Jones v. Greene, supra; U.S. v. \$515,060.42 in U.S. Currency*, 152 F.3d 491, 497(6th Circuit 1998).

3. The Claimant told the officers at the time of the seizure, and testified at the hearing, that the seized currency did not belong to him. He testified that the money belonged to the concert artist, and that he was on his way to deliver the cash to him when he was stopped and the money was seized. That being the case, it seems clear that the concert artist is the person who had an *ownership* interest in the currency, but he did not file a claim. Neither did the venue owner/manager, who the Claimant identified as the person who made the initial cash payment to the artist when the concert was originally booked. Not only did these other involved individuals fail to file claims for the seized money, but none of them appeared with the Claimant at the hearing to support his claim.

² Black's Law Dictionary [4th Ed., Rev.] defines "ownership" as "The complete dominion, title or proprietary right in a thing or claim. The entirety of the powers of use and disposal allowed by law."

³ Although TENN. CODE ANN. § 53-11-201(f)(1) merely requires that the Claimant "Has an interest in such property which the claimant acquired in good faith," the Court in *Urquhart* made it clear that the interest referred to is an ownership interest.

4. As indicated above (See paragraph 2), all cited legal authority specifies that, in order to establish standing to pursue his claim, the Claimant must prove an *ownership* interest in the seized property. An ownership interest cannot be established by testimony that the money was actually owned by another person, and that the Claimant was merely in temporary possession of the currency, as the Claimant testified during this hearing. It appears then, that there is no competent evidence in the record establishing the Claimant's ownership interest in the seized currency. It is therefore concluded that the Claimant failed to prove that he has legal standing to pursue his claim.

Accordingly, it is hereby determined that the Claimant failed to prove that he had an ownership interest in the seized currency; he therefore lacks legal standing to file or pursue his claim for the seized currency. The Claimant having failed to prove his legal standing, the merits of the case need not be addressed.

IT IS THEREFORE ORDERED that the Claim filed by Timothy Chatmon is hereby Dismissed.

IT IS FURTHER ORDERED that, there being no other claims filed for the property, the seized currency is hereby forfeited to the Seizing Agency, the Hamilton County Sheriff's Office, for disposition as provided by law.

This Order is entered and effective this 12th day of August, 2009.

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 12th day of August, 2009.



Thomas G. Stovall, Director
Administrative Procedures Division