



3-9-2010

DEPARTMENT OF SAFETY vs. ONE 1986
BUICK REGAL VIN NO:
1G4GM47Y4GP225248, SEIZED FROM: JOSE
M.L. AVILA DATE OF SEIZURE: 9/15/09
CLAIMANT: JOSE M.L. AVILA
LIENHOLDER: N/A

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

IN THE MATTER OF:)
)
DEPARTMENT OF SAFETY)
) **DOCKET NO. 19.05-106821J**
v.) **DOS CASE NO. J7906**
)
ONE: 1986 BUICK REGAL)
VIN NO: 1G4GM47Y4GP225248)
SEIZED FROM: JOSE M.L. AVILA)
DATE OF SEIZURE: 9/15/09)
CLAIMANT: JOSE M.L. AVILA)
LIENHOLDER: N/A)

INITIAL ORDER

This matter was heard on March 9, 2010 in Fall Branch, Tennessee, before Mattielyn B. Williams, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting on behalf of the Tennessee Commissioner of Safety. Attorney Nina Harris represented the State. Claimant Jose M.L. Avila represented himself.

The subject of this matter was the proposed forfeiture of the subject 1986 Buick Regal for its alleged operation by a Driver whose driver's license and driving privilege was revoked for DUI and had not been reinstated, pursuant to Tennessee Code Annotated §55-50-504.

Claimant contended that his driver's license/driving privileges were not truly still revoked, due to a DUI, but rather Claimant had paid all the necessary fines and was eligible for reinstatement, but had not been reinstated due to changes in the law regarding immigration status and eligibility for a driver's license. Claimant indicated that he could prove that the reason his driver's license/driving privileges were non-reinstate-able, if permitted time to file the necessary documents which were stored at his mother's home. The record was left open for additional documents and argument from both parties. The record closed on May 5, 2010.

After consideration of the record, it is **DETERMINED** that the subject vehicle should be **FORFEITED** to the seizing agency for disposition as provided by law.

This decision is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Officer Thomas Garrison, of the Johnson City Police Department, testified that, on September 15, 2009, the subject 1986 Buick Regal was stopped because a passenger in that vehicle was not wearing a seat belt, as required by law. Claimant Jose M.L. Avila was driving the subject vehicle at the time of the stop.

2. Claimant Avila provided Officer Garrison an expired driver's license, when the Officer requested to see a copy of Driver Avila's license. A check of Claimant Avila's driving record, on September 15, 2009, showed that the Claimant's driver's license's was revoked for an earlier DUI conviction. The Claimant was arrested and the subject vehicle was seized.

3. Exhibit 2, a certified copy of Claimant Avila's DUI Record Only Report, processed on March 5, 2010, shows that Claimant engaged in the conduct of DUI on May 13, 2006, was convicted of DUI in Unicoi County, Tennessee on October 26, 2006, and was sent notice that his driver's license had been revoked on January 9, 2007. Exhibit 2 shows that Claimant has an eligibility date of September 17, 2010.

4. Claimant Avila admitted that his cousin was riding in the subject vehicle on September 15, 2009 and that his cousin was not wearing his seat belt. Claimant Avila testified that he (Claimant Avila) was wearing his (Claimant Avila's) seat belt as the driver.

5. Claimant further testified that he served probation and paid fines associated with the October 26, 2006 DUI conviction, received a restricted license, and then moved to California. While in California, Claimant rode the bus and did not consider a driver's license necessary.

6. Claimant continued that he moved back to Tennessee in July 2009. Claimant testified that he applied for a new Tennessee driver's license, once he returned, but that he was denied such based on changes in Tennessee law regarding availability of driver's licenses to immigrants, not based on his 2006 DUI conviction.

7. The record was left open, initially for two (2) weeks, for the Claimant to file a copy of his letter from the Tennessee Department of Safety's Division of Motor Vehicles (DMV), showing that he was denied a driver's license based on immigration status. As of June 8, 2010, nearly three (3) months later, the Claimant has not filed a copy of his Denial Letter from the DMV.

8. Both parties filed late-filed Exhibits. The Claimant filed:

A. Letter from American Consulate General – Visa Section, dated June 17, 1998, regarding “How to Apply for Immigration to the United States.”

B. Letter from Transitional Immigrant Visa Processing Center in Arlington, Virginia, dated August 26, 1992, showing Claimant as “Case Number: CDJ-1992745659,” with “Preference Category: LB”, acknowledging Claimant’s “interest in immigrating to the United States of America,” but also indicating that “Unfortunately, visa numbers are not presently available for your use. ... this delay could be many years. ... ”

9. The State filed:

C. A copy of the Claimant's complete Tennessee Driving Record, noting that the report “shows applications, but no denials.”

D. An April 6, 2010 delineation of what documents the Claimant needs to provide the Department of Safety to show proof of residency, i.e. copies of two (2) utility bills and a copy of his passport with a valid visa.

10. It is **DETERMINED** that the process of immigration is a lengthy one.

11. Claimant's complete Tennessee Driving Record corroborates the Claimant's testimony concerning being issued a Restricted Driver's License. The Claimant began carrying SR22 motor vehicle insurance on October 26, 2006, but permitted that insurance to be cancelled on November 27, 2007. The Claimant re-started SR 22 insurance on January 27, 2008.

12. The Department of Safety's DMV records show "Court Certification that Fines and Costs Paid," as of September 15, 2009, the same date as the seizure in this matter.

13. The State agrees that the Claimant's DMV record "shows applications, but no denials."

14. Although unclear, perhaps the DMV is awaiting a hearing request from Claimant Avila, so that a final determination can be made on those "applications." Once a final determination is made on his application(s), as a result of a hearing, both the action on the application (Denial? Approval?) and the reason (Medical? Immigration Status? Driving while Uninsured?) for such would be keyed into the DMV system.

CONCLUSIONS OF LAW

1. The State was required to carry its burden of proof, by a preponderance of the evidence, that on September 15, 2009, Claimant Avila was driving the subject vehicle at a time when his driver's license was revoked for a DUI offense, thus making the vehicle subject to forfeiture, pursuant to T.C.A. §55-10-403 and §55-50-504(h)2.

2. Claimant does not deny that he was driving the subject vehicle on September 15, 2009, but Claimant disputes that his driver's license was still revoked for DUI, as of that date. Claimant contends that he was eligible for a driver's license and had applied for one prior to September 15, 2009, but was denied one based on his immigration status.

3. Claimant was provided until April 30, 2010 to file a copy of his alleged denial letter from the DMV, showing immigration status, not DUI-related-ineligibility, as the cause for denial of his application for a driver's license. As of June 7, 2010, Claimant has yet to file such a letter.

4. In the absence of such a letter from the DMV, it is **CONCLUDED** that the Claimant has presented no proven factual basis or legal argument that supports the return of the subject vehicle to the Claimant.

5. Based on the foregoing¹, it is hereby **ORDERED** that Claimant's 1986 Buick Regal is **FORFEITED** to the seizing agency, for disposition as provided by law.

This Initial Order entered and effective this 9th day of June, 2010.

Mattielyn B. Williams

Administrative Judge

¹ Had the Claimant supplied the anticipated DMV Letter, the decision in this matter would have been reserved.

Filed in the Administrative Procedures Division, Office of the Secretary of State
this 9th day of June, 2010.

Thomas G. Stovall, Director

Administrative Procedures Division