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April 2015

Marcus D. Rivers vs. Safety

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Administrative Procedures Division
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April 27, 2015

Commissioner Bill Gibbons
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Jims Used Cars
Attn United Acceptance Corp. -J Afanador
2400 Lake Park Dr., Suite 100
Smyrna, Georgia

RE: In the Matter of: Marcus D. (M7105) Rivers Docket No. 19.01-118915J

Enclosed is an *Initial Order of Forfeiture Following Show-Cause Hearing* rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/llp
Enclosure

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

IN THE MATTER OF:

MARCUS D. RIVERS

DOCKET NO.: 19.01-118915J

NOTICE

ATTACHED IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **May 12, 2015**.

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
WILLIAM R. SNODGRASS TOWER
312 ROSA PARKS AVENUE, 8th FLOOR
NASHVILLE, TENNESSEE 37243-1102

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, **615/741-7008 OR 741-5042, FAX 615/741-4472**. PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

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

IN THE MATTER OF:]	
]	
DEPARTMENT OF SAFETY]	
]	
v.]	DOCKET # 19.01-118915J
]	D.O.S. Case # M7105
One 1997 Mercury Grand Marquis]	
VIN: 2MELM75W0VX648291]	
Seized From: Marcus D. Rivers]	
Seizure Date: 5/17/12]	
Claimant(s): Marcus D. Rivers]	
Lienholder: Jims Used Cars]	

INITIAL ORDER OF FORFEITURE FOLLOWING SHOW-CAUSE HEARING

This matter was heard in Memphis Tennessee on November 6, 2014, before Michael Begley, Administrative Judge assigned by the Secretary of State, Administrative Procedures Division, sitting for the Commissioner of the Tennessee Department of Safety. Mr. Joe Bartlett, Staff Attorney for the Tennessee Department of Safety, represented the State. The Lienholder, Jim's Used Cars/United Acceptance Inc., was not present, either in person or through legal counsel.

This Show-Cause hearing was convened to consider the proposed forfeiture of the subject due to the Lienholder's failure to comply with the provisions of a previous Order. Upon the Lienholder's failure to appear at the hearing, counsel for the State made an oral motion for an order finding the Lienholder to be in default, pursuant to TCA § 4-5-309. Upon full consideration of the evidence received at the hearing and the entire record in this case, the State's motion was granted. The Lienholder was found to be in default, as supported by the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The vehicle was seized pursuant to law, resulting in the issuance of a Property Forfeiture Warrant. On September 24, 2014, the Department of Safety issued a notice

notifying the Lienholder of the forfeiture and outlining the process by which it could recover the property. The Lienholder failed to perform according to the terms of that Order.

2. In the event of such a failure, the Order provides for a Show-Cause hearing to be held to allow the Lienholder to show why its interest should not be forfeited to the Seizing Agency. A Show-Cause hearing was scheduled, and the State sent notice of the hearing time and location to the Lienholder by certified mail.

3. The Lienholder did not appear at the Show-Cause hearing, and was not otherwise represented. Based on the Lienholder's failure to appear, the State made an oral motion for the entry of an Order of Default.

CONCLUSIONS OF LAW and ANALYSIS

1. Tennessee Code Annotated § 4-5-309(a) provides that "if a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the administrative judge . . . may hold the party in default . . ." An order holding an absent party in default is authorized by Rule 1340-2-2-.17(1)(a), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*.

2. Department of Safety Regulations governing asset forfeiture hearings also provide:

(e) Upon default by a party, an administrative judge may enter either an initial default order or an order for an uncontested proceeding . . .

Rule 1340-2-2-.17(1), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*.

And, that

Upon a default by a claimant, a **claimant's claim shall be stricken by initial default order**, or, if the agency requests, the agency may proceed uncontested.

See, Rule 1340-2-2-.17(2)(b), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*. (Bold emphasis added.)

3. In accordance with the law, as set forth above, it is determined that the State's motion is well-taken. The State properly notified the Lienholder of the Show-Cause hearing, as shown by the Postal Service notation, and the Lienholder failed to appear at the hearing. Pursuant to the cited authority, the Lienholder is hereby found to be in default for failing to appear at the Show-Cause hearing.


Accordingly, it is hereby ORDERED that Claimant's interest in the seized property is forfeited to the Seizing Agency.

Entered and effective this 27th day of April, 2015.



Michael Begley, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 27th day of April 2015.



J. Richard Collier, Director
Administrative Procedures Division

APPENDIX A TO INITIAL ORDER
NOTICE OF APPEAL PROCEDURES

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, Nashville, Tennessee, 37243. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.