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April 2015

Car Mart of Tullahoma vs. Safety

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Administrative Procedures Division
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8th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243-1102
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April 13, 2015

Commissioner Bill Gibbons
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Car Mart of Tullahoma
2116 North Jackson Street
Tullahoma, TN 37388

RE: In the Matter of: Car Mart of Tullahoma (Q1563) Docket No. 19.05-130650J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

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

IN THE MATTER OF:

CAR MART OF TULLAHOMA

DOCKET NO. 19.05-130650J

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 **April 28, 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 TE

IN THE MATTER OF:

**Car Mart of Tullahoma (Q1563)
2000 Ford Expedition
V.I.N. 1FMRU15L8YLA71862
Seized from: Patricia A. Beavers
Date of Seizure: August 25, 2014
Claimant: Car Mart of Tullahoma**

DOCKET NO: 19.05-130650J

INITIAL DEFAULT ORDER

This matter was set to be heard on March 26, 2015, before Joyce Carter-Ball, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Nina Harris, Staff Attorney for the Department of Safety (“the Department”), represented the State. No one was present on behalf of the Claimant, Car Mart of Tullahoma.

This is a show cause hearing for the lien holder to show why it has failed to take possession of the above referenced vehicle.

Claimant (lien holder) did not appear at the hearing. The State therefore moved for an initial **default** and **dismissal** of lien holder’s claim. The motion was **granted** based upon 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. The lien holder filed a claim to the vehicle.

2. By previous order, the vehicle was forfeited to the Seizing Agency, subject to the lien holder's interest. Lien holder was notified of this action, but did not take possession of the vehicle or take other steps to protect its interest. On January 17, 2015, lien holder was sent notice by the Department advising it that a hearing was scheduled for lien holder to "show cause" why its interest should not also be forfeited to the Seizing Agency.

3. A show-cause hearing was scheduled on March 26, 2015. The lien holder was notified of the hearing time and location by certified mail. A copy of the postal green card shows that it was signed at Claimant's address.

4. The lien holder did not appear at the show-cause hearing, and was not otherwise represented. Based on the lien holder's failure to appear, the State made an oral motion for the entry of an Order of Default and Dismissal of lien holder's claim.

5. The State had its witnesses available and was ready to go forward to prove its case.

CONCLUSIONS OF LAW

1. Department of Safety Rule 1340-2-2-.17(1) provides, in relevant part:

(d) No default shall be entered against a claimant for failure to attend except upon proof, by the filing of the return receipt card, that the Legal Division has given notice of hearing.

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

2. Department of Safety Rule 1340-2-2-.17(2) states, in relevant part:

Upon a default by a claimant, a claimant's claim shall be stricken by initial default order.


3. Department of Safety Rule 1340-2-2-.11(2) provides, in relevant part:

The Department of Safety is entitled to rely upon the address of record in providing notice to a claimant.

4. The State's motion for default being granted, it is therefore **ordered** that the lien holder's **claim be stricken**. The claim being stricken, it is as if no claim had ever been filed, which constructively evokes T.C.A. §40-33-206(c). That section states: "If a claim . . . is not filed with the applicable agency within the time specified . . . the seized property shall be forfeited and disposed of as provided by law."


5. Accordingly, it is hereby **ORDERED** that the lien holder's claim be stricken from the record and dismissed. The subject property is **ORDERED forfeited to the Seizing Agency**.

This Initial Order entered and effective this 13TH day of APRIL 2015.



Joyce Carter-Ball
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 13TH 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.