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July 2015

Henry Holmes vs. Safety

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State of Tennessee
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Administrative Procedures Division
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8th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243-1102
Phone: (615) 741-7008/Fax: (615) 741-4472

July 6, 2015

Commissioner Bill Gibbons
Tennessee Department of Safety
23rd Floor, William R. Snodgrass Tower
312 Rosa L. Parks Avenue
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Tennessee Department of Safety &
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Legal Division
6174 Macon Avenue
Memphis, TN 38134-7502

RE: In the Matter of: Henry J. Holmes (Q6017)

Docket No. 19.01-131928J

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:

HENRY J. HOLMES

DOCKET NO. 19.01-131928J

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 **July 21, 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:

**TENNESSEE DEPARTMENT
OF SAFETY**

vs.

**DOCKET # 19.01-131928J
DOS # Q6017**

**\$314.00 in U.S. Currency, and
One 2009 Toyota Camry
VIN: 4T1BE46KX9U363644
Seized From: H. J. Holmes
Date of Seizure: 2/6/15
Claimant: Henry Holmes
Seizing Agency: Memphis P.D.
Lienholder: None Filed**

INITIAL DEFAULT ORDER

This matter was heard in Memphis, Tennessee, on June 30, 2015, before J. Randall LaFevor, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Mr. Joe Bartlett, Staff Attorney for the Department of Safety, represented the State on behalf of the Seizing Agency.

This hearing was convened to consider the proposed forfeiture of the seized property pursuant to T.C.A. §53-11-201, §55-10-401, §55-50-504 and/or §40-33-201, et seq.

The Claimant did not appear at the hearing, either in person or through legal counsel. The State therefore moved for a Default Order and dismissal of the case. The motion was granted based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Notice of the hearing was sent to the Claimant's address of record. [See Hearing Exhibit #1, establishing completed notification or reasonable efforts.]
2. The Claimant failed to appear on the day of the hearing, and no attorney appeared on the Claimant's behalf.
3. The State's witnesses were available and ready to proceed when the case was called.

CONCLUSIONS OF LAW AND ANALYSIS

1. Department of Safety Rule 1340-02-02-.11, TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*, provides as follows:

(1) At a reasonable time prior to a hearing, a “Notice of Hearing” shall be filed by the Legal Division and served on all parties, per Rule 1340-2-2-.03(4).

(2) In serving a “Notice of Hearing,” the Legal Division shall rely upon the addresses of record as given by a claimant or by claimant’s counsel. Proof of service per Rule 1340-02-02-.03(4) to the addresses of record shall establish a rebuttable presumption that claimant or claimant’s counsel received notice of the hearing date.

(3) Notice of hearing for a second or subsequent setting of the hearing will be by certified mail, return receipt requested. Such notice may be proven as set forth in Rule 1340-02-02-.06(2).

2. Tennessee Code Annotated § 4-5-309(a) provides: “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 at the second setting of a forfeiture hearing is authorized by Rule 1340-02-02-.17(1)(a), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*.

Rule 1340-02-02-.17(1), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*, provides, in relevant part:

(d) No default shall be entered against a claimant for failure to attend [the hearing] except upon proof that the legal division has given notice of the hearing per Rule 1340-2-2-.06(2)(e).

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

3. Rule 1340-02-02-.17(2), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings* states, in relevant part:

(b) Upon a default by a claimant, a claimant’s claim shall be stricken by initial default order ... [Underline added.]

4. In accordance with the law, as set forth above, it is determined that the State's motion is well-taken. The Claimant was notified of the hearing, as shown by Hearing Exhibit #1, and failed to appear at the hearing. Pursuant to the cited authority, the Claimant is hereby found to be in default for failing to appear at the hearing scheduled to consider the pending claim.

Accordingly, it is hereby ORDERED that the Claimant's claim is dismissed. The subject property is Ordered forfeited to the Seizing Agency, the Memphis Police Department, for disposition as provided by law.

Entered and effective this 6TH day of JULY, 2015.



J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 6TH day of JULY 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.