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Charles B. Huber vs. Safety

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Administrative Procedures Division
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June 22, 2015

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Charles B. Huber
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Raleigh, NC 27613

RE: In the Matter of: Charles B. Huber (Q4992)

Docket No. 19.05-131527J

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:

CHARLES B. HUBER

DOCKET NO. 19.05-131527J

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 7, 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 AND HOMELAND SECURITY**

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
SAFETY,**

v.

**ONE 2005 DODGE RAM
VIN: 1D7HA16D25J517646
Seized From: Charles B. Huber
Date of Seizure: 12/3/14
Claimant: Charles B. Huber
Seizing Agency: Pigeon Forge Police
Department
Leinholder: None Filed.**

**DOCKET NO: 19.05-131527J
(DOS Case No. Q4992)**

INITIAL ORDER

This contested case was heard in Knoxville, Tennessee, on June 3, 2015, before Elizabeth D. Cambron, Administrative Judge, assigned by the Secretary of State and sitting for the Commissioner of the Tennessee Department of Safety. Ms. Nina Harris, Staff Attorney for the Tennessee Department of Safety, represented the State. The Claimant represented himself.

The hearing was convened to consider the proposed forfeiture of the described vehicle for its alleged operation by an individual whose driving privileges had been revoked or suspended for driving a motor vehicle while under the influence of an intoxicant (“DUI”). TENN. CODE ANN. §§ 55-50-504 & 40-33-201, *et seq.* Upon full consideration of the entire record in this matter, it is determined that the subject vehicle should be **FORFEITED** as provided by law. This decision is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. In the early afternoon of December 3, 2014, the Claimant, Mr. Charles B. Huber, was involved in a traffic accident in Pigeon Forge, Tennessee. Mr. Huber was not at fault for the accident.
2. At the time of the accident, Mr. Huber was taking his wife to the doctor's office because she was very sick.
3. Officer Scott Bull, an accident reconstructionist with the Pigeon Forge Police Department, responded to the call for an officer to report to the scene and investigate.
4. Upon investigation, Officer Bull learned that Mr. Huber's driver's license was revoked due to a conviction for DUI. *See*, Exhibit 1.
5. Because Mr. Huber was driving on a revoked license, he was arrested and his car was seized. Mr. Huber does not contest the fact that he was driving on a revoked license.

CONCLUSIONS OF LAW and ANALYSIS

1. The law provides that it is illegal for a person to operate a motor vehicle at a time when his or her license to drive has been revoked. It further provides that, if the revocation resulted from a DUI conviction, any vehicle driven by the offender during the period of revocation is subject to seizure and forfeiture. TENN. CODE ANN. § 55-50-504(h) (emphasis added.)
2. The state has the burden of proving, by a preponderance of the evidence that the seized property fits within the statute defining its illegal use, thereby rendering it subject to forfeiture. TENN. COMP. R. & REGS. 1340-2-2-.15(4) (2007).¹

¹ These RULES were revised in March 2015; however, because these revisions were after the February 5, 2015, filing of the claim in this case, the December 2007 RULES are still applicable to this appeal.

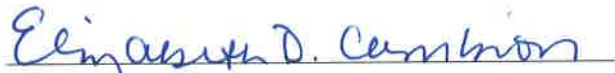
3. In order to prevail in this case, the State must prove: (1) that the Claimant was driving the subject vehicle; and (2) that he was doing so while his license to drive was revoked for a DUI conviction.

4. The State's evidence proved that the Claimant's license was revoked from April 8, 2014, to April 16, 2015, due to his conviction for driving under the influence of an intoxicant. See, Exhibit 1. While his license was still revoked, he was found to be operating the subject vehicle when it was involved in an accident on December 3, 2014. Under these circumstances, the law provides that the vehicle is subject to forfeiture. The State has successfully met its burden of proof.

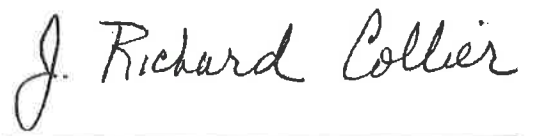
Accordingly, it is hereby **ORDERED** that the subject 2005 Dodge Ram is **FORFEITED** to the Seizing Agency, the Pigeon Forge Police Department, for disposition as provided by law.

It is so ORDERED.

Entered and effective this the 22ND day of JUNE 2015.


ELIZABETH D. CAMBRON
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the 22ND day of JUNE 2015.


J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

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.