



University of Tennessee, Knoxville  
**Trace: Tennessee Research and Creative  
Exchange**

---

Tennessee Department of State, Opinions from the  
Administrative Procedures Division

Law

---

November 2015

## Britanee Good vs. Safety

Follow this and additional works at: [http://trace.tennessee.edu/utk\\_lawopinions](http://trace.tennessee.edu/utk_lawopinions)

---

This Initial Order by the Administrative Judges of the Administrative Procedures Division, Tennessee Department of State, is a public document made available by the College of Law Library, and the Tennessee Department of State, Administrative Procedures Division. For more information about this public document, please contact [administrative.procedures@tn.gov](mailto:administrative.procedures@tn.gov)



**State of Tennessee**  
**Department of State**  
Administrative Procedures Division  
312 Rosa L. Parks Avenue  
8<sup>th</sup> Floor, William R. Snodgrass Tower  
Nashville, Tennessee 37243-1102  
Phone: (615) 741-7008/Fax: (615) 741-4472

November 6, 2015

Commissioner Bill Gibbons  
Tennessee Department of Safety  
23<sup>rd</sup> Floor, William R. Snodgrass Tower  
312 Rosa L. Parks Avenue  
Nashville, Tennessee 37243-1102

Patrick L. Rice, Esq.  
Staff Attorney  
Tennessee Department of Safety &  
Homeland Security  
7175 Strawberry Plains Pike, Suite #102  
Knoxville, TN 37914-7002

K & J Auto, Inc., Lot #2  
1315 South Cumberland Street  
Morristown, TN 37813

Britanee Good  
1130 Little Mountain Road  
Russellville, TN 37860

RE: In the Matter of: Britanee Good (Q7361)

Docket No. 19.05-133109J

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:**

**BRITANEE GOOD**

**DOCKET NO. 19.05-133109J**

**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 **November 23, 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, 8<sup>th</sup> 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:**

**Dept. of Safety and Homeland Security,**

**v.**

**One 1993 Ford F250 Truck  
VIN: 1FTHX26H1PKA61699  
Seized From: Kendall D. Stokes  
Date of Seizure: March 23, 2015  
Claimant: Britanee Good  
Lien Holder: J & K Auto, Inc.**

**DOCKET NO: 19.05-133109J  
D.O.S. Case No. Q7361**

**INITIAL ORDER AND NOTICE OF DEFAULT**

This matter came for hearing in Fall Branch, Tennessee on September 9, 2015, before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Attorney Patrick Rice represented the Department of Safety. No one appeared on Claimant's behalf.

This is an action to forfeit the subject property for its alleged use in violation of Tennessee law. Since neither Claimant nor counsel appeared for the hearing, the Department moved for an initial order holding Claimant in **default** and striking Claimant's claim from the record. The motion was **granted** based upon the following findings of fact and conclusions of law.

**FINDINGS OF FACT**

1. Claimant was sent notice of the hearing by certified mail to Claimant's address of record. The notice of hearing was delivered to Claimant's address of record.
2. Claimant, having received adequate notice, failed to appear on the day of the hearing. Nor did an attorney appear on Claimant's behalf.

3. The Department had its witnesses available and was ready to go forward to prove its case.

### CONCLUSIONS OF LAW AND ANALYSIS

1. Department of Safety Rule 1340-2-2-.11 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 1340-2-2-.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. The return receipt card may be filed with the Legal Division and serve as a record of notification.

- (4) All claims filed against a specific seized property shall be consolidated for a single hearing.

2. 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.

3. 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.

The Department's motion for default being granted, it is therefore **ordered** that Claimant'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."

**IT IS THEREFORE ORDERED** that the above described vehicle is forfeited to the seizing agency subject to the lien of J & K Auto, Inc.

This Initial Order entered and effective this 6<sup>th</sup> day of NOV. 2015.



Steve R. Darnell  
Administrative Law Judge

6<sup>th</sup> Filed in the Administrative Procedures Division, Office of the Secretary of State, this day of NOVEMBER 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, 8<sup>th</sup> 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.