



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

Tennessee Department of State, Opinions from the
Administrative Procedures Division

Law

November 2015

Dana Millinder vs. Safety

Follow this and additional works at: 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



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

November 12, 2015

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

Jack S. Hinson
Attorney at Law
P.O. Box 88
Lexington, TN 38351

Joe R. Bartlett, Esq.
Staff Attorney IV
Tennessee Department of Safety &
Homeland Security
Legal Division
6174 Macon Avenue
Memphis, TN 38134-7502

RE: In the Matter of: Dana M. Millinder (Q6759)

Docket No. 19.05-133913J

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:

DANA M. MILLINDER

DOCKET NO. 19.05-133913J

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 30, 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,**

)
)
) **Docket No. 19.05-133913J**
)
)
)

**Department of Safety
Case No. Q6759**

v.

**One 2001 DODGE DURANGO
VIN #1B4HR28N61F615099
SEIZED FROM: DANA MILLINDER
SEIZURE DATE: FEBRUARY 20, 2015
CLAIMANT: DANA MILLINDER
LIENHOLDER: N/A
SEIZING AGENCY: LEXINGTON POLICE
DEPARTMENT**

**INITIAL ORDER GRANTING
STATE'S MOTION FOR DEFAULT**

NOTICE OF DEFAULT

This matter came on to be heard on October 13, 2015, before Joyce Grimes Safley, Administrative Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety in Jackson, Tennessee. Mr. Joe Bartlett, attorney for the Department of Safety, represented the Department of Safety or the State. Claimant was not present, nor was anyone present on her behalf.

The subject of this hearing was the proposed forfeiture of the above styled vehicle seized for its alleged use in violation of Tennessee's DUI statutes, T.C.A §55-50-504 (driving a vehicle without a valid driver's license—revoked license due to DUI).

FINDINGS OF FACT

1. The State showed that it had served notice of the hearing upon the Claimant's attorney. The signed return mail receipt noted reflected that delivery of the Notice of Hearing was signed and received on September 4, 2015. The receipt was made Exhibit 1 at the hearing.
2. It is determined that the State complied with applicable laws and regulations regarding notice to claimant.

CONCLUSIONS OF LAW

1. The ADMINISTRATIVE PROCEDURES ACT, T.C.A. §4-5-309, sets forth the procedure for default hearings:

(a) If a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the administrative judge or hearing officer, hearing the case alone,... may hold the party in default and either adjourn the proceedings or conduct them without the participation of that party, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

2. T.C.A. §4-3-2008 states:

The Commissioner of Safety has the authority to establish and promulgate such rules and regulations governing the administration and operation of the department as may be deemed necessary by the commissioner and which are not inconsistent with the laws of this state.

3. Rule 1340-2-2-.17 of *THE RULES OF TENNESSEE DEPARTMENT OF SAFETY* (REVISED March, 2015) sets forth the Department of Safety's procedure for default and uncontested proceedings as follows:

Default and Uncontested Proceedings.

- (1) Default. The motion for default may be in writing or oral.

(a) The failure of a party to attend or to participate in a prehearing conference, ***a party's non-attendance at a second setting of a hearing on the merits in a case or a party's non-attendance at another stage of contested case proceedings after notice thereof are each causes for holding such party in default pursuant to T.C.A. §4-5-309.***

(c) In any situation set out in parts (a) and (b) of this rule, a motion may be made to hold the absent party in default and to enter an initial default order or to continue on an uncontested basis.

(d) No default shall be entered against a claimant for failure to attend except upon proof, that the Legal Division has given notice of the hearing per Rule 1340-02-.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.

(f) The defaulting party, no later than ten (10) days after service of the order may file a motion for reconsideration under T.C.A. §4-5-317, requesting that the default be set aside for good cause shown, and stating the grounds relied upon. The administrative judge may enter an order pursuant to T.C.A. §4-5-317. These orders by an administrative judge are reviewable by the commissioner.

4. Rule 1340-2-2-.17(2)(b) of *THE RULES OF TENNESSEE DEPARTMENT OF SAFETY*, (Revised, March 2015) states: “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.”

5. The State showed that it had effected service of the notice of the hearing upon the Claimant’s attorney at the address of record. The return mail receipt with signature was made Exhibit 1 at the hearing.

6. It is determined that the State made reasonable and proper efforts to serve the notice upon the Petitioner.

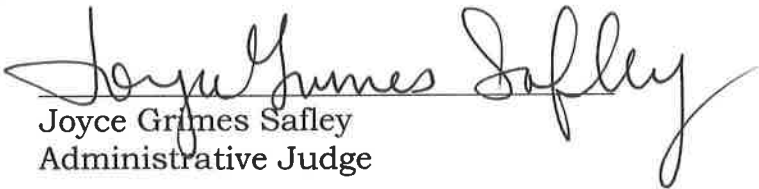
7. T.C.A. §40-33-201 provides that property, including conveyances or vehicles, shall be subject to forfeiture under the provisions of T.C.A. §55-10-403(k) and T.C.A. §55-50-504(h).

8. It is determined that the Claimant failed to participate in the hearing of this matter.

Accordingly, pursuant to the Commissioner's ruling regarding the proper procedure for default proceedings, as set forth in the forfeiture case *In re: Taliaferro*, Docket No. 19.05-049400J (April 12, 2004), the Claimant's claim is **STRICKEN**, the State's motion for **DEFAULT** is **GRANTED**, and the above captioned vehicle is ordered **FORFEITED** to the seizing agency.

It is so ordered.

This Order entered and effective this 12TH day of November, 2015.


Joyce Grimes Safley
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this
12~~th~~ day of Nov., 2015.

J. Richard Collier

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.