



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

Tennessee Department of State, Opinions from the
Administrative Procedures Division

Law

October 2015

Check Into Cash 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

October 7, 2015

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

Andre Thomas, Esq.
TN Dept of Safety
6174 Macon Road
Memphis, Tennessee 38134-7502

Check Into Cash
Attention Legal Advisor
1213 Getwell
Memphis, TN 38111

RE: In the Matter of: Check Into Cash (Q7280) Docket No. 19.05-133326J

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

Administrative Procedures Division
Tennessee Department of State

/srp
Enclosure

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

IN THE MATTER OF:

Check Into Cash

DOCKET NO.: 19.05-133326J

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 **October 22, 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:

One 2004 Ford Taurus

V.I.N.: 1FAFP55S64A162458

Seized from: Cornell Sykes

Seizure date: 3/19/15

Lienholder/

Claimant: Check Into Cash

Seizing Agency: Memphis P.D.

DOCKET # 19.05-133326J

DOS # Q7280

INITIAL ORDER OF DEFAULT & DISMISSAL

This matter was heard in Memphis, Tennessee on September 24, 2015, before J. Randall LaFevor, Administrative Judge assigned by the Secretary of State, Administrative Procedures Division, sitting for the Commissioner of the Tennessee Department of Safety. Mr. Andre Thomas, Staff Attorney for the Tennessee Department of Safety, represented the State. No one representing the Lienholder was present.

This matter was scheduled as a Show-Cause Hearing, to permit the Lienholder to demonstrate why its interest should not be forfeited for failure to comply with a previous Order. Upon the Lienholder's failure to appear at the Show-Cause Hearing, counsel for the State made an oral motion for an Order finding the Lienholder to be in default, pursuant to TCA § 4-5-309. Upon full consideration of the evidence received at the hearing and the entire record in this case, the State's motion was granted. The Lienholder was found to be in default, and its claim to the subject property was dismissed, as supported by the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Claimant's vehicle was seized pursuant to law, resulting in the issuance of a Property Forfeiture Warrant. The Lienholder filed a notice of its interest, and sought possession of the vehicle to secure that interest.
2. On May 26, 2015, an Order was entered, awarding the seized property to the seizing agency, subject to the Lienholder's interest. The Lienholder failed to take

possession of the vehicle pursuant to the terms of that Order. In such event, the law provides for forfeiture of the Lienholder's interest to the Seizing Agency.

3. A Show-Cause Hearing was scheduled on September 24, 2015, for the Lienholder to demonstrate why its interest in the vehicle should not be forfeited, as provided in the Order. The Lienholder was notified of the hearing time and location by certified mail. See Hearing Exhibit #1.

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

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. Upon filing a claim for property, a Lienholder is treated as a Claimant for the purpose of applying the laws related to property forfeiture. The Lienholder was notified of the show-cause hearing, as shown by Hearing Exhibit #1, and failed to appear at the hearing. Pursuant to the cited authority, the Lienholder is hereby found to be in default for failing to appear at the show-cause hearing scheduled to consider its claim.

Accordingly, it is hereby ORDERED that the Lienholder'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 7th day of October, 2015.



J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 7th day of October 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.