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November 2015

## Car Corner vs. Safety

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**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 4, 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

Car Corner  
ATTN: Legal Advisor  
1803 Bartlett Road  
Memphis, TN 38134

Karen Litwin, Esq.  
Staff Attorney  
Tennessee Department of Safety  
and Homeland Security  
Division of Legal Services  
1150 Foster Avenue  
McCord Building, Room #107  
Nashville, TN 37249-1000

RE: In the Matter of: Car Corner (Q3165) Docket No. 19.01-132727J

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:**

**CAR CORNER**

**DOCKET NO. 19.01-132727J**

**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 19, 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:**

**TENNESSEE DEPARTMENT OF SAFETY**

**v.**

**2001 Honda UEX  
VIN: 1HGCG56651A057714  
Seized from: Jared Sims  
Claimant: Car Corner  
Seizure Date: March 28, 2014  
Lienholder: Car Corner**

**DOCKET NO: 19.01-132727J  
DOS CASE NO: Q3165**

**NOTICE OF DEFAULT and INITIAL ORDER**

This matter was set to be heard on August 19, 2015, in Nashville, Tennessee, before Kim Summers, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Tennessee Department of Safety. Karen Litwin, attorney for the Department of Safety, represented the State. No one appeared at the hearing on behalf of the Claimant.

This hearing was a “show cause” hearing to determine why the subject vehicle should not be forfeited to the Seizing Agency because the Claimant failed to take possession of the vehicle pursuant to the January 2, 2014 Order of Compromise and Settlement. Because the Claimant did not appear at the show-cause hearing and had not requested a continuance, the Department of Safety made a motion for default.

After consideration of the evidence offered and the entire record in this matter, it is **ORDERED** that the seized vehicle be **FORFEITED** to the seizing agency. This decision is based upon the following Findings of Fact and Conclusions of Law.

## FINDINGS OF FACT

1. The property was seized pursuant to law, resulting in the issuance of a Property Forfeiture Warrant. The registered owner filed a claim seeking the return of the property.
2. The vehicle was awarded to the Claimant pursuant to an Order of Compromise and Settlement dated January 2, 2014. The Claimant failed to fulfill the requirements of this Order, and the case was rescheduled so that the Claimant could show the reasons for the failure to comply.
3. The show-cause hearing was scheduled for August 19, 2015, and the Claimant was notified of the hearing time and location by certified mail sent to the address of record. This notice was delivered and signed for on behalf of Claimant on July 22, 2015.
4. No one appeared at the hearing on behalf of the Claimant.

## CONCLUSIONS OF LAW and ANALYSIS

1. Department of Safety Rule 1340-2-2-.11(2) provides:  
  
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.
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)(b) states, in relevant part:  
  
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.
4. The Claimant received adequate notice of the hearing but did not appear to show cause why the property should not be forfeited and was, therefore, found to be in **DEFAULT**.


5. It is, therefore, **ORDERED** that the claim be **STRICKEN**, which renders the claim void *ab initio*, as though it had never been filed.<sup>1</sup> Failure to file a claim results in the forfeiture of the property for disposition as provided by law. *See*, Tennessee Code Annotated § 40-33-206(c).

6. Based upon the foregoing, the matter is **DISMISSED**, and Claimant's interest in the subject property is **FORFEITED** to the seizing agency.


7. Should good cause exist for Claimant's failure to appear / participate in the hearing, Claimant may move to have the default set aside no later than ten (10) days after service of the order.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the 4<sup>TH</sup> day of NOV. 2015.

  
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KIM SUMMERS  
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 4<sup>TH</sup> day of NOVEMBER 2015.

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

<sup>1</sup> The effect of striking a pleading "is to posture the action as if [that pleading] had never been made." *See, INVST Financial Group, Inc. v. Chem-Nuclear Systems, Inc.*, 815 F.2d 391, 404 (6th Cir. 1987).

**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.