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February 2016

Latosha Sparkman vs. Safety

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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

February 23, 2016

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

Advance Financial
ATTN: Legal Advisor
1901 Church Street
Nashville, TN 37203

Latosha Sparkman
655 Cherokee Place
Franklin, TN 37064

Karen Litwin, Esq.
Staff Attorney III
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: Latosha Sparkman (Q3499)

Docket No. 19.01-135069J

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:

LATOSHA SPARKMAN

DOCKET NO. 19.01-135069J

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 **March 9, 2016.**

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.

**1998 Dodge Durango
VIN: 1B4HS28YXWF184997
Seized from: Antonio Starnes
Claimant: Latosha Sparkman
Seizure Date: October 27, 2014
Lienholder: Advance Financial**

**DOCKET NO: 19.01-135069J
DOS CASE NO: Q3499**

NOTICE OF DEFAULT and INITIAL ORDER

This matter was set to be heard on December 16, 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. The Claimant did not appear for the hearing, nor did anyone appear on the Claimant's behalf.

This hearing was a "show cause" hearing to determine why the subject vehicle should not be forfeited to the State because the Claimant had failed to abide by the terms of the July 8, 2015 Order of Compromise and Settlement. Since the Claimant did not appear at the show-cause hearing, 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 Claimant's property was seized pursuant to law, resulting in the issuance of a Property Forfeiture Warrant. The Claimant filed a claim seeking the return of the property and requesting that a hearing be scheduled to consider that claim.

2. The Claimant subsequently entered into an Order of Compromise and Settlement, effective July 8, 2015; however, the Claimant failed to fulfill the requirements of this agreement, and the case was rescheduled so that the Claimant could show the reasons for her failure to comply.

3. The Order of Compromise and Settlement specified that the property would be forfeited to the Seizing Agency if Claimant failed to comply within thirty days.

4. The record contains no indication that the Claimant has complied with the Order of Compromise and Settlement.

5. The show-cause hearing was scheduled for December 16, 2015, and the Claimant was notified of the hearing time and location by certified mail sent to the address of record. This notice was unclaimed as of the date of the hearing.

6. The Claimant did not appear at the hearing.

CONCLUSIONS OF LAW and ANALYSIS

1. Claimant's failure to comply with the Order of Compromise and Settlement results in forfeiture of the property to the seizing agency in accordance with the terms of the agreement.

2. 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.

3. Pursuant to RULE 4.04(11) of the TENNESSEE RULES OF CIVIL PROCEDURE, the return of the notice as “Unclaimed - Refused” is deemed to be actual service:

When service of summons, process, or notice is provided for or permitted by registered or certified mail under the laws of Tennessee and the addressee or the addressee’s agent refuses to accept delivery and it is so stated in the return receipt of the United States Postal Service, the written return receipt if returned and filed in the action shall be deemed an actual and valid service of the summons, process, or notice. Service by mail is complete upon mailing. For purposes of this paragraph, the United States Postal Service notation that a properly addressed registered or certified letter is “unclaimed,” or other similar notation, is sufficient evidence of the defendant’s refusal to accept delivery.

4. 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.

5. 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.

6. The State made reasonable attempts at service of the notice upon the Claimant, which are deemed, under the law, to be actual service.

7. Because the Claimant was absent from the hearing, she could not show cause why the vehicle should not be forfeited and was found to be in **DEFAULT**.

8. It is, therefore, **ORDERED** that the claim be **STRICKEN**, the legal impact of which is to render the claim void *ab initio*, as though it had never been filed.¹

¹ 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).

9. 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).

10. Based upon the foregoing, the matter is **DISMISSED**, and Claimant's interest in the subject property is **FORFEITED** to the seizing agency, subject to any valid lienholder's claim.

11. Should good cause exist for Claimant's failure to appear / participate in the hearing, Petitioner 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 23rd day of FEB 2016.



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 23rd day of FEBRUARY 2016.



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.