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March 2016

## Crystal Fernandez 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

March 29, 2016

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

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

Crystal Fernandez  
233 Lane Avenue  
Algood, TN 38506

RE: In the Matter of: Crystal N. Fernandez (Q8427)

Docket No. 19.05-135368J

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:**

**CRYSTAL N. FERNANDEZ**

**DOCKET NO. 19.05-135368J**

**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 **April 13, 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, 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.**

**1997 Toyota Corolla  
VIN: 2T1BA02EXVC197125  
Seized from: Crystal Fernandez  
Claimant: Crystal Fernandez  
Seizure Date: May 7, 2015  
Lienholder: N/A**

**DOCKET NO: 19.05-135368J**

**DOS CASE NO: Q8427**

**NOTICE OF DEFAULT and INITIAL ORDER**

This matter was set to be heard on January 5, 2016, before Kim Summers, Administrative Judge, assigned by the Secretary of State to sit for the Commissioner of the Tennessee Department of Safety. The State of Tennessee was represented by Robert Broome, attorney for the Department of Safety.

The subject of this hearing was the proposed forfeiture of the subject property for its alleged use in violation of T.C.A. § 55-50-504 and §§ 40-33-201, *et seq.*

The Claimant did not appear at the hearing. The State has, therefore, moved for an initial **default** and dismissal of the case and elected to have the Claimant's claim stricken without proceeding with an uncontested hearing.

The motion for default is hereby **GRANTED** based upon the following findings of fact and conclusions of law.

**FINDINGS OF FACT**

1. The property at issue 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 requested that a hearing be scheduled to consider that claim.

2. Claimant was sent notice of the hearing by certified mail to the address of record. Postal records indicate that the notice was unclaimed as of the date of the hearing.

3. Claimant did not appear on the day of the hearing, and no attorney appeared on the Claimant's behalf.

4. The State had its witnesses available and was ready to proceed with the case.

### **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. 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.

3. 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.

4. 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.

5. Even in the absence of actual service of the Notice of Hearing, the Department's attempt at service on the Claimant is deemed to be actual and valid service in light of the Department's reasonable efforts and the Claimants refusal to accept service.

6. The State's motion for default having been granted, it is therefore **ORDERED** that Claimant's **CLAIM BE STRICKEN**. The claim having been stricken, it is as if no claim had ever been filed, evoking T.C.A. § 40-33-206(c), which specifies that "If a claim . . . is not filed with the applicable agency within the time specified by this part, the seized property shall be forfeited and disposed of as provided by law."

7. Based upon the foregoing, it is hereby **ORDERED** that the matter be **DISMISSED**, and the Claimant's interest in the subject property be **FORFEITED** to the seizing agency.

8. For good cause, the Claimant may move to have the default set aside no later than ten (10) days after service of the order.

The policy reasons for this decision are to uphold the laws of the State of Tennessee while providing appropriate protections for the property rights of individuals.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the 29<sup>TH</sup> day of MARCH 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 29<sup>TH</sup> day of MARCH 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, 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.