



7-13-2011

DEPARTMENT OF SAFETY vs. Brittany C.
K5839& K5841 Hicks 1997 Pontiac Grand AM
V.I.N: 1G1NE12T2VM524632, Seized from:
Brittany C. Hicks, Date of Seizure: May 20, 2010,
Claimant: Schwartz Motors

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

IN THE MATTER OF:

**Brittany C. (K5839& K5841) Hicks
1997 Pontiac Grand AM
V.I.N: 1G1NE12T2VM524632
Seized from: Brittany C. Hicks
Date of Seizure: May 20, 2010
Claimant: Schwartz Motors**

DOCKET NO: 19.05-113289J

INITIAL DEFAULT ORDER

This matter was set to be heard on July 13, 2011, before Joyce Carter-Ball, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Nina Harris, Staff Attorney for the Department of Safety, represented the Seizing Agency. No one was present on behalf of the Claimant, Schwartz Motors.

This is a show cause hearing for the lien holder to show why it has failed to take possession of the above referenced vehicle.

Claimant (lien holder) did not appear at the hearing. The State therefore moved for an initial **default** and dismissal of lien holder's claim. The motion was **granted** based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The vehicle was seized pursuant to law, resulting in the issuance of a Property Forfeiture Warrant. The lien holder filed a claim to the vehicle.

2. By previous order the vehicle was forfeited to the Seizing Agency subject to the lien holder's interest. Lien holder was notified of this action but did not take possession of the vehicle or take other steps to protect its interest. On May 12, 2011, lien holder was sent notice by the Department advising it that a hearing was scheduled for lien holder to "show cause" why its interest should not also be forfeited to the Seizing Agency.

3. A show-cause hearing was scheduled on July 13, 2011. The lien holder was notified of the hearing time and location by certified mail. A copy of the postal green card shows that it was signed at Claimant's address.

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

5. The State had its witnesses available and was ready to go forward to prove its case.

CONCLUSIONS OF LAW

1. 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.
2. Department of Safety Rule 1340-2-2-.17(2) states, in relevant part:

Upon a default by a claimant, a claimant's claim shall be stricken by initial default order.

3. The State's motion for default being granted, it is therefore **ordered** that lien holder's **claim be stricken**. The claim being stricken, it is as if no claim had ever been filed, which constructively evokes T.C.A. §40-33-206(c). That section states: "If a claim . . . is not filed with the applicable agency within the time specified . . . the seized property shall be forfeited and disposed of as provided by law."

4. Accordingly, it is hereby **ORDERED** that the lien holder's claim be stricken from the record and dismissed. The subject property is **ORDERED** forfeited to the Seizing Agency.

This Initial Order entered and effective this 29th day of July, 2011.

Joyce Carter-Ball
Administrative Judge