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12-8-2010

Anna M. J6057 Ponder 1999 Isuzu Rodeo V.I.N.
4S2CM58W6X4330708, Seized from: Anna M.
Ponder, Date of Seizure: July 12, 2009, Claimant:
Store 9

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

IN THE MATTER OF:

**Anna M. (J6057) Ponder
1999 Isuzu Rodeo
V.I.N. 4S2CM58W6X4330708
Seized from: Anna M. Ponder
Date of Seizure: July 12, 2009
Claimant: Store 9**

DOCKET NO: 19.01-107099J

INITIAL DEFAULT ORDER

This matter was set to be heard on December 8, 2010, before Joyce Carter-Ball, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Andre Thomas, Staff Attorney for the Department of Safety, represented the Seizing Agency. No one was present on behalf of the Claimant, Store 9.

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 October 26, 2010, 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 December 8, 2010. 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. Rule 4.04 (11) of the *Tennessee Rules of Civil Procedure* addresses service of notice when such notice is mailed by return-receipt mail and is returned "unclaimed".

It states as follows:

When service of a 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. [effective July 1, 2004.]

It is determined that the State made reasonable and proper efforts to serve the notice upon the Claimant.

4. 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."

5. 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 30th day of December, 2010.

Joyce Carter-Ball
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 30th day of December, 2010.



Thomas G. Stovall, Director
Administrative Procedures Division