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Tennessee Department of State, Opinions from the  
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Law

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3-21-2007

DEPARTMENT OF SAFETY vs. \$4,185.00 in U.S.  
Currency, and One 2001 Dodge Intrepid VIN:  
2B3HD56J51H614173, Seized From: Paul  
Douglas, Date of Seizure: May 23, 2006, Claimant:  
Paul Douglas

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

<b>IN THE MATTER OF:</b>	]	
	]	
<b>DEPARTMENT OF SAFETY</b>	]	
	]	
<b>v.</b>	]	<b>DOCKET # 19.01-094575J</b>
	]	<b>D.O.S. Case # F-2988</b>
<b>\$4,185.00 in U.S. Currency, and</b>	]	
<b>One 2001 Dodge Intrepid</b>	]	
<b>VIN: 2B3HD56J51H614173</b>	]	
<b>Seized From: Paul Douglas</b>	]	
<b>Date of Seizure: May 23, 2006</b>	]	
<b>Claimant: Paul Douglas</b>	]	

**INITIAL ORDER**

This matter was heard in Knoxville, Tennessee on March 21, 2007, before J. Randall LaFevor, Administrative Judge assigned by the Secretary of State, Administrative Procedures Division, sitting for the Commissioner of the Tennessee Department of Safety. The Seizing Agency was represented by Ms. Lori Long, Staff Attorney for the Department of Safety. The Claimant was represented by his legal counsel, Mr. A. Thomas Monceret.

This hearing was convened to consider the proposed forfeiture of the subject property based on allegations that its possession and/or receipt by the Claimant was in violation of the Tennessee Drug Control Act.

As a preliminary matter, the Claimant's attorney requested a hearing on his Motion to Suppress Evidence. The State's counsel opposed that request, citing the fact that the Motion had been received in her office less than the (10) days before the hearing, in violation of Department of Safety Regulation 1340-2-2-.10(3)(b). Additionally, a search of the Administrative Procedures Division's file disclosed that the Motion had not been filed with that office at all, as required by Department of Safety Regulation 1340-2-2-.10(1)(a). For failure to comply with Departmental procedural rules, the Claimant's request for a hearing on his motion was denied.

The Claimant's attorney next requested that the hearing be continued, due to the absence of his client. That motion was denied, because the case had been continued twice previously at the Claimant's request. The last *Order of Continuance* stated that, "No further continuances shall be granted in this matter except for extreme circumstances." No such extreme circumstances were offered in support of the motion.

Upon the Claimant's failure to appear at the hearing, counsel for the State made an oral motion for an order finding the Claimant to be in default, pursuant to TCA § 4-5-309. Upon full consideration of the entire record in this case, the State's motion was granted. The Claimant was found to be in default, and the claim filed in this matter was stricken, as supported by 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. A hearing on the claim was scheduled for hearing on March 21, 2007, and the State sent the Claimant's attorney notification of the hearing time and location by certified mail.<sup>1</sup>
3. The State's Notice was duly delivered to the Claimant's attorney, who appeared at the scheduled time, but without his client.
4. Based on the Claimant's failure to appear, the State made an oral motion for the entry of an Order of Default.

### **CONCLUSIONS OF LAW and ANALYSIS**

1. Tennessee Code Annotated § 4-5-309(a) provides that "if a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the

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<sup>1</sup> In this case, there was actual notice to the Claimant's attorney, who appeared for the hearing.

administrative judge . . . may hold the party in default . . . ” An order holding an absent party in default at the *second* setting of a forfeiture hearing is authorized by Rule 1340-2-2-.17(1)(a), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*.

2. Department of Safety Regulations governing asset forfeiture hearings also provide:

Upon default by a party, an administrative judge may enter either an initial default order or an order for an uncontested proceeding . . .

Rule 1340-2-2-.17(1)(e), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*.

And, that

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.

See, Rule 1340-2-2-.17(2)(b), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*. (Bold emphasis added.)

3. The legal impact of striking a claim is to render the claim void *ab initio*, as though it had never been filed.<sup>2</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).

4. In accordance with the law, as set forth above, it is determined that the State’s motion is well-taken. The Claimant was notified of the hearing, as shown by the certified return receipt, and failed to appear at the hearing to pursue his claim. Pursuant to the cited authority, the Claimant is hereby found to be in default for failing to appear at the hearing scheduled to consider his claim.

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Accordingly, it is hereby ORDERED that the Claimant’s claim is stricken from the record, and dismissed. The Claimant’s interest in the subject vehicle and U.S.

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<sup>2</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).

currency is Ordered forfeited to the Seizing Agency, the Knox County Sheriff's Office, for disposition as provided by law.

For the benefit of the Claimant in this case, it is noted that his attorney was present at the scheduled hearing, and prepared to present his case. However, he was unable to proceed without his client, whose absence was unexplained.

Entered and effective this 4th day of April, 2007.

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J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 4th day of April, 2007.



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Charles C. Sullivan, II, Director  
Administrative Procedures Division