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12-6-2007

TENNESSEE DEPARTMENT OF SAFETY vs.
One 1997 Mitsubishi VIN NO.:
6MMAF57P9VT001126, Seized From: Gemuel
Ibarra, Date of Seizure: 6/16/07, Claimant:
American Financial, Lien Holder: N/A

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

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
SAFETY**

v.

**One 1997 Mitsubishi
VIN NO.: 6MMAP57P9VT001126
Seized From: Gemuel Ibarra
Date of Seizure: 6/16/07
Claimant: American Financial
Lien Holder: N/A**

**DOCKET NO: 19.01-097514J
(D.O.S. Case No. G4357)**

INITIAL DEFAULT ORDER

This matter was heard in Memphis, Tennessee, on December 6, 2007, before Margaret R. Robertson, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Trey Phillips, Staff Attorney for the Department of Safety, represented the State.

The subject of this hearing was the proposed forfeiture of the subject property for its alleged use in violation of T.C.A. §55-10-401 et seq., §55-50-504 and §40-33-201 et seq.

American Finance, Claimant, did not appear at the hearing. The State therefore moved for an initial **default** and dismissal of the case. The motion was **granted** based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Claimant was sent notice of the hearing by certified mail at his address of record. A copy of the postal green card shows Shannelle Buford signed for the notice on October 31, 2007.
2. Claimant failed to appear on the day of the hearing. Nor did an attorney appear on Claimant's behalf.
3. The State had its witnesses available and was ready to go forward to prove its case.

CONCLUSIONS OF LAW AND ANALYSIS

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 Claimant'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.”

This Initial Order entered and effective this 17th day of December, 2007.

Margaret R. Robertson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 17th day of December, 2007.



Thomas G. Stovall, Director
Administrative Procedures Division