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1-11-2007

TENNESSEE DEPARTMENT OF SAFETY vs.
One 2000 Mastercraft 205 Boat VIN No.:
MBCA2JTdB000, Seized From: Michael Pulley,
Date of Seizure: May 2, 2006, Claimants: Michael
Pulley, Bobby Pulley, Walter Smith

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

IN THE MATTER OF:

TENNESSEE DEPARTMENT OF SAFETY

v.

One 2000 Mastercraft 205 Boat

VIN No.: MBCA2JTdB000

Seized From: Michael Pulley

Date of Seizure: May 2, 2006

**Claimants: Michael Pulley, Bobby Pulley, Walter
Smith**

**DOCKET NO: 19.03-094391J
(D.O.S. Case No. F2023)**

INITIAL DEFAULT ORDER

This contested case was set for a January 11, 2007 hearing in Nashville, Tennessee, before Robert Fellman, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Orvil Orr, Staff Attorney for the Department of Safety, represented the State. Bobby Pulley, one of the three claimants, appeared and represented himself.

The subject of this hearing was the proposed forfeiture of the seized property for its alleged use in violation of T.C.A. §55-5-108 *et. seq.*

Claimants Michael Pulley and Walter Smith failed to appear for the hearing. Subsequently, the State moved for an initial **default** and dismissal of the case against these claimants. The motion was **granted** based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Notices of the hearing were sent by certified mail to Claimants Michael Pulley and Walter Smith. Copies of the postal “green cards” show that Claimant Walter Smith signed for his notice on December 19, 2006. Claimant Michael Pulley’s notice was sent to his address of record and signed for on December 9, 2006.

2. Neither Claimants Michael Pulley or Walter Smith appeared on the day of the hearing.

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) states, 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 the claims of Michael Pulley and Walter Smith be stricken.**

4. At the January 11, 2007 hearing, the State agreed to release the boat at issue to Bobby Pulley and it is so **ordered.**

This Initial Order entered and effective this 25th day of January, 2007.

Robert Fellman
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 25th day of January, 2007.


Charles C. Sullivan II, Director
Administrative Procedures Division