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6-27-2007

TENNESSEE DEPARTMENT OF SAFETY vs.  
Kenneth F4095 TynerOne 1983 Ford Pickup VIN  
NO.: 2FTEF14Y0DCA24694, Seized From:  
Kenneth Tyner, Date of Seizure: June 29, 2006,  
Claimant: Kenneth Tyner, Lien Holder:

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

**IN THE MATTER OF:**

**TENNESSEE DEPARTMENT OF  
SAFETY**

**v.**

**Kenneth (F4095) Tyner  
One 1983 Ford Pickup  
VIN NO.: 2FTEF14Y0DCA24694  
Seized From: Kenneth Tyner  
Date of Seizure: June 29, 2006  
Claimant: Kenneth Tyner  
Lien Holder:**

**DOCKET NO: 19.01-096054J  
(D.O.S. Case No. F4095)**

**INITIAL DEFAULT ORDER**

This matter was heard in Union City, Tennessee, on June 27, 2007, before Rob Wilson, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. James Trey Phillips, Staff Attorney for the Department of Safety, represented the State.

The subject of this hearing was to show cause as to why claimant had not taken possession of his vehicle as per the terms of an Order of Compromise and Settlement dated November 27, 2006.

Kenneth Tyner, 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 show-cause hearing by certified mail at his address of record. A copy of the postal green card shows that the notice was unclaimed. No alternate address is available for Mr. Tyner.
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.”

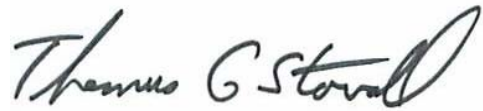
Accordingly, the 1983 Ford Pickup Truck is forfeited to the seizing agency.

This Initial Order entered and effective this 6th day of July, 2007.

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Rob Wilson  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this 6th day of July, 2007.



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Thomas G. Stovall, Director  
Administrative Procedures Division