



University of Tennessee, Knoxville
**Trace: Tennessee Research and Creative
Exchange**

Tennessee Department of State, Opinions from the
Administrative Procedures Division

Law

3-7-2007

TENNESSEE DEPARTMENT OF SAFETY vs.
One 1985 Cadillac Fleetwood VIN No.:
1G6DW6985F9755079, Seized From: Aaron
Willis, Date of Seizure: July 11, 2006, Claimant: C.
Denise Atkins

Follow this and additional works at: http://trace.tennessee.edu/utk_lawopinions



Part of the [Administrative Law Commons](#)

This Initial Order by the Administrative Judges of the Administrative Procedures Division, Tennessee Department of State, is a public document made available by the College of Law Library, and the Tennessee Department of State, Administrative Procedures Division. For more information about this public document, please contact administrative.procedures@tn.gov

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

IN THE MATTER OF:

TENNESSEE DEPARTMENT OF SAFETY

**DOCKET NO: 19.01-094957J
(D.O.S. Case No. F4290)**

v.

**One 1985 Cadillac Fleetwood
VIN No.: 1G6DW6985F9755079
Seized From: Aaron Willis
Date of Seizure: July 11, 2006
Claimant: C. Denise Atkins**

INITIAL DEFAULT ORDER

This matter was set for a March 7, 2007 hearing in Knoxville, Tennessee, before Robert Fellman, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. The subject of the hearing was the proposed forfeiture of the above-listed seized vehicle for Claimant's failure to abide by a settlement agreement and take custody of the vehicle.

Lori Long, staff attorney for the Department of Safety, represented the State. Neither Claimant, nor a legal representative, appeared 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. After the vehicle at issue was seized, Claimant filed a claim for the vehicle.
2. Subsequently, on December 6, 2006, an Order of Compromise and Settlement was entered by the Department of Safety, and sent to Claimant, which stated, in relevant part:

This cause came to be heard before the Appeals Division, Tennessee Department of Safety, pursuant to the Commissioner's delegation order of October 22, 2003, and Rule 1340-2-2-.21(4), regarding settlement orders. Based upon the agreement between the **SEIZING AGENCY** and **CLAIMANT**, Carolyn Atkins, and by representation of counsel for the Legal Division, it is hereby **ORDERED** that the **CAPTIONED PROPERTY** that was confiscated pursuant to T.C.A. §53-11-201, et seq., and §40-33-201, et seq., be restored to the **CLAIMANT**, Carolyn Atkins, upon payment of \$1750.00 to the **Knox County Sherriff's Department/Narcotic Division Drug Fund**, pursuant to this Civil Settlement. It is further **ORDERED** that, if the **Petitioner** fails to comply with the terms of this settlement within **thirty (30) days** from the date of this **ORDER**, the **CAPTIONED PROPERTY** will be forfeited to the Seizing Agency.

3. Claimant failed to comply with this order. Thereafter, on February 7, 2007, the Department of Safety sent Claimant a certified letter that stated, in relevant part:

The above-mentioned property was awarded to you pursuant to an Order of Compromise and Settlement dated December 6, 2006. As of the date of this letter, you have failed to take custody of the above-mentioned property or make other arrangements for its disposal. Accordingly, a show cause hearing had been set to determine the disposition of this property. The hearing will be held at **Tennessee Dept. of Safety/Knoxville** on the following date:

March 7, 2007 – 10:00 a.m.

If you do not appear at the hearing, the State will enter a motion requesting that your interest in the subject vehicle be forfeited to the seizing agency.

4. Two days before, on February 5, 2007, the Department of Safety had also sent Claimant its standard notice of the March 7, 2007 hearing date. On February 17, 2007, Claimant personally signed for that notice.

5. When Claimant did not appear for the March 7, 2007 hearing to show cause why her interest in the vehicle should not be forfeited, the State moved for an initial default judgment against her. The motion was granted.

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) provides, in relevant part:
 - (b) Upon a default by a claimant, a claimant's claim shall be stricken by initial default order.

3. Based on Claimant's failure to appear for the hearing after receiving proper notice, the State's motion for default was 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 specified time . . . the seized property shall be forfeited and disposed of as provided by law."

This Initial Default Order entered and effective this 28th day of March, 2007.

Robert Fellman
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this
28th day of March, 2007.

Charles C. Sullivan II, Director
Administrative Procedures Division