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9-23-2009

Christopher D. J2978 Malone, \$407.00 Four hundred seven in U.S. Currency, 1997 Chevy Tahoe, VIN: 1GNEK13RXVJ406795, Seized From: Christopher D. Malone, Date of Seizure: March 26, 2009, Claimant: Christopher D. Malone, Seizing Agency: Bradley Co. Sheriff's Dept.

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

IN THE MATTER OF:

**Christopher D. (J2978) Malone
\$407.00 (Four hundred seven) in U.S.
Currency
1997 Chevy Tahoe
VIN: 1GNEK13RXVJ406795
Seized From: Christopher D. Malone
Date of Seizure: March 26, 2009
Claimant: Christopher D. Malone
Seizing Agency: Bradley Co. Sheriff's
Dept.**

DOCKET NO: 19.01-104659J

INITIAL DEFAULT ORDER

This matter was heard in Chattanooga, Tennessee, on September 23, 2009, before Joyce Carter-Ball, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Ms. Lori Long, Staff Attorney for the Department of Safety, represented the Seizing Agency.

This hearing was convened to consider the proposed forfeiture of the subject property pursuant to T.C.A. §53-11-201 *et seq* and §40-33-201, *et seq*.

The Claimant did not appear at the hearing, either in person or through legal counsel. 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. The Claimant was sent notice of the hearing by certified mail at his address of record.

2. The Claimant failed to appear on the day of the hearing, nor did an attorney appear on the Claimant's behalf.
3. The State's witnesses were available and 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 the Claimant's **claim is stricken from the record**. 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, IT IS HEREBY ORDERED that the seized property is forfeited to the Seizing Agency, the Bradley Co. Sheriff's Dept.

This Initial Order entered and effective this 6th day of October, 2009.

Joyce Carter-Ball
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 6th day of October, 2009.



Thomas G. Stovall, Director
Administrative Procedures Division