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11-10-2010

TENNESSEE DEPARTMENT OF SAFETY vs.
One 2003 Chevrolet Suburban VIN NO.:
3GNFK16ZX3G251356, Seized From: Pamela
Thornburg, Date of Seizure: October 12, 2009,
Claimant: Pamela Thornburg, 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 2003 Chevrolet Suburban
VIN NO.: 3GNFK16ZX3G251356
Seized From: Pamela Thornburg
Date of Seizure: October 12, 2009
Claimant: Pamela Thornburg
Lien Holder: N/A**

**DOCKET NO: 19.01-110301J
(D.O.S. Case No. J8630)**

INITIAL DEFAULT ORDER

This matter was set to be heard in Memphis, Tennessee, on November 10, 2010, as a show cause hearing before Margaret R. Robertson, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Andre Thomas, 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. §53-11-201 et seq. and §40-33-201 et seq. Claimant Pamela Thornburg entered into an Order of Compromise and Settlement effective June 3, 2009 but failed to comply with the requirements of the Order, prompting the show cause hearing.

Pamela Thornburg, 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 her attorney's address of record. A copy of the postal green card shows Sam Vincent signed for the notice at the offices of attorney Gray W. Bartlett, Esq. on September 24, 2010.
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." Therefore, the 2003 Chevrolet Suburban shall be forfeited to the seizing agency for disposal as provided by law.

This Initial Order entered and effective this 29th day of November, 2010.

Margaret R. Robertson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 29th day of November, 2010.



Thomas G. Stovall, Director
Administrative Procedures Division