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9-2-2010

TENNESSEE DEPARTMENT OF SAFETY vs.
\$2,258.00 in U.S. Currency, Seized From: Rita
Wilbourn, Date of Seizure: 4/16/09, Claimant:
Rita Wilbourn Seizing Agency: Marion Co. S.D.

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

IN THE MATTER OF:

**TENNESSEE DEPARTMENT
OF SAFETY**

vs.

\$2,258.00 in U.S. Currency

Seized From: Rita Wilbourn

Date of Seizure: 4/16/09

Claimant: Rita Wilbourn

Seizing Agency: Marion Co. S.D.

DOCKET # 19.05-107977J

DOS # J3664

INITIAL DEFAULT ORDER

This matter was heard in Chattanooga, Tennessee, on September 2, 2010, before J. Randall LaFevor, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Ms. Nina Harris, Staff Attorney for the Department of Safety, represented the State on behalf of the Seizing Agency.

This hearing was convened to consider the proposed forfeiture of the seized property pursuant to T.C.A. §53-11-201, §55-10-401, §55-50-504 and/or §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 a Default Order and dismissal of the case. The motion was granted based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Notice of the hearing was sent to the Claimant's address of record. [See Hearing Exhibit #1, establishing completed notification or reasonable efforts.]
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 proceed when the case was called.

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. Having granted the State’s motion for default, Rule 1340-2-2-.17(2) requires that the Claimant’s claim be stricken from the record. Once a claim is 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 Claimant is found to be in default, the claim is stricken from the record, and the Claimant’s interest in the subject property is forfeited to the Seizing Agency, the Marion County Sheriff’s Department.

This Initial Order entered and effective this 7th day of September, 2010.

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 7th day of September, 2010.



Thomas G. Stovall, Director
Administrative Procedures Division