



2-3-2009

TENNESSEE DEPARTMENT OF SAFETY vs.
one 1994 CADILLAC ELDORADO, VIN #
1G6ET1293RU606562, SEIZED FROM:
ANTHONY McCASTER, SEIZURE DATE:
JUNE 10, 2008, CLAIMANT: ROBBIE
McCASTER, LIENHOLDER: N/A

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

In the matter of:)
)
TENNESSEE DEPARTMENT)
OF SAFETY,) **Docket No. 19.01-101762J**
)
) **Department of Safety**
) **Case No. H3670**
)
v.)
)
one 1994 CADILLAC ELDORADO)
VIN# 1G6ET1293RU606562)
SEIZED FROM: ANTHONY McCASTER)
SEIZURE DATE: JUNE 10, 2008)
CLAIMANT: ROBBIE McCASTER)
LIENHOLDER: N/A)

**INITIAL ORDER GRANTING
STATE'S MOTION FOR DEFAULT
AND
FORFEITURE OF PROPERTY**

NOTICE OF DEFAULT

This matter came on to be heard on February 3, 2009, before Joyce Grimes Safley, Administrative Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety in Chattanooga, Tennessee. Mr. Andre Thomas, attorney for the Department of Safety, represented the Department of Safety or the State. Claimant was not present, nor was anyone present on her behalf.

The subject of this hearing was the proposed forfeiture of the above referenced vehicle seized for its alleged use in violation of the Tennessee Drug Control Act, T.C.A. §39-17-401, *et seq.* and T.C.A. §53-11-451.

FINDINGS OF FACT

1. The State showed that it had attempted to serve notice several times upon the Claimant at the address of record. Despite this, the notice of hearing was returned to the Department of Safety as “unclaimed”. The Department of Safety utilized all reasonable means of serving the notice of the hearing upon the Claimant. The return mail receipt showing that the notice of hearing was mailed to the Claimant was made Exhibit 1 (collective) at the hearing.

2. It is determined that the State complied with applicable laws and regulations regarding notice to claimant.

CONCLUSIONS OF LAW

1. The Administrative Procedures Act, T.C.A. §4-5-309, sets forth the procedure for default hearings:

(a) If a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the administrative judge or hearing officer, hearing the case alone,... may hold the party in default and either adjourn the proceedings or conduct them without the participation of that party, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

2. T.C.A. §4-3-2008 states:

The Commissioner of Safety has the authority to establish and promulgate such rules and regulations governing the administration and operation of the department as may be deemed necessary by the commissioner and which are not inconsistent with the laws of this state.

3. Rule 1340-2-2-.17 of *The Rules of Tennessee Department of Safety* sets forth the Department of Safety's procedure for default and uncontested proceedings as follows:

Default and Uncontested Proceedings.

(1) Default. The motion for default may be in writing or oral.

(a) The failure of a party to attend or to participate in a prehearing conference, ***a party's non-attendance at a second setting of a hearing on the merits in a case or a party's non-attendance at another stage of contested case proceedings after notice thereof are each causes for holding such party in default pursuant to T.C.A. §4-5-309.***

(c) In any situation set out in parts (a) and (b)n of this rule, a motion may be made to hold the absent party in default and to enter an initial default order or to continue on an uncontested basis.

(e) Upon default by a party, an administrative judge may enter either an initial default order or an order for an uncontested proceeding.

4. Rule 1340-2-2-.17(2)(b) of *The Rules of Tennessee Department of Safety*, states: "Upon a default by a claimant, a claimant's claim *shall* be stricken by initial default order or, if the agency requests, the agency may proceed uncontested."

5. The State showed that it attempted several times to obtain service of the notice upon the Claimant. The return mail receipt showing that the notice of hearing was mailed to the Claimant was made Exhibit 1 at the hearing.

6. T.C.A. §53-11-451 states:

Goods subject to forfeiture---Seizure---Disposition.---

(a) The following are subject to forfeiture:

(1) All controlled substances that have been manufactured, distributed, dispensed, or acquired in violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4;

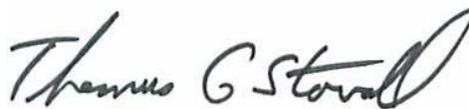
(4) All conveyances, including aircraft, vehicles or vessels that are used, **or are intended for use, to transport, or in any manner to facilitate the transportation, sale or receipt** of property described in subdivision (a)(1) or (2).

7. It is determined that the Claimant failed to participate in the hearing of this matter.

Accordingly, pursuant to the Commissioner's ruling regarding the proper procedure for default proceedings, as set forth in the forfeiture case *In re: Taliaferro*, Docket No. 19.05-049400J (April 12, 2004), the Claimant's claim is **STRICKEN**, the State's motion for **DEFAULT** is **GRANTED**, and the above captioned vehicle is ordered **FORFEITED** to the seizing agency.

It is so ordered.

This Order entered and effective this 18th day of February, 2009.



Thomas G. Stovall, Director
Administrative Procedures Division