



2-18-2009

DEPARTMENT OF SAFETY, WESTERN
DIVISION vs. One 2007 Dodge Charger, VIN #
2B3KA43R97H758255, Seized From: Michael L.
Taylor, Date of Seizure: 04 June 2008, Claimant:
Vivian Patterson, Agency: Shelby County Sheriffs
Office, Lien Holder: Wells Fargo

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

IN THE MATTER OF:

**DEPARTMENT OF SAFETY,
WESTERN DIVISION,**

v.

**One: 2007 Dodge Charger
2B3KA43R97H758255**

**Seized From: Michael L. Taylor
Date of Seizure: 04 June 2008
Claimant: Vivian Patterson
Agency: Shelby County Sheriffs Office
Lien Holder: Wells Fargo**

**DOCKET NO: 19.01-101967J
D.O. S. CASE NO. H4308**

INITIAL DEFAULT ORDER

This Matter was heard in Memphis, Tennessee on February 18, 2009, before William J. Reynolds, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Andre Thomas represented the Department. The claimant, Vivian Patterson, Failed To Appear.

The Subject of this hearing was the proposed forfeiture of the subject property for its alleged use in violation of *Tennessee Code Annotated §53-11-201 et seq.* and *§40-33-201 et seq.*

Vivian Patterson, Claimant, did not appear at the hearing. Therefore, the Department moved for an initial default and dismissal of the case. The motion was granted, and the Department permitted to proceed *ex parte*, 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 address of record. A copy of the postal green card shows Vivian Patterson signed for the notice on January 16, 2009.

2. The claimant did not appear on the day of the hearing, nor did an attorney appear on Claimant's behalf.

3. It appears Claimant chose not to pursue her claim by Failing To Appear or otherwise prosecute her claim. Her conduct indicates she voluntarily gave up her sole remedy and opportunity to be heard.

4. *The Rules of Procedure For Asset Forfeiture Hearings, Rule 1340-2-2-.17 (g)*, provides that "No party shall be required by the administrative judge to call or inquire as to the whereabouts of a missing party."

5. The Department was ready to go forward to prove its case.

6. The subject property secures an indebtedness to Wells Fargo, Attn: Frederick L. Null, Jr., 5201 Seaport Drive, Suite BH300, Chester, PA 19013-1510. The Lien Holder , Wells Fargo Corporation's, interest has priority and primes the interest of Vivian Patterson.

CONCLUSIONS OF LAW AND ANALYSIS

1. *Department of Safety Rule 1340-2-2-.17(1) (d) (e)* 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.

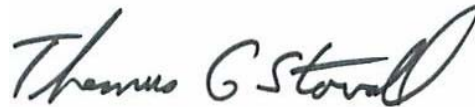
3. The Department's motion for default being granted, it is therefore ordered that Claimant's claim be stricken. The claim being stricken, it is as if no claim had ever been filed, which constructively evokes *Tennessee Code Annotated, §40-33-206(c)*. That section states: "If a claim . . . is not filed with the applicable agency within the time specified . . . the seized property shall be forfeited and disposed of as provided by law."

It is therefore **ORDERED** the subject property is forfeited to the seizing agency EXCEPT, and subject to, to the secured interest of the Lien Holder.

ORDERED AND ENTERED this 25th day of February, 2009.

WILLIAM J. REYNOLDS
ADMINISTRATIVE JUDGE

FILED in the Administrative Procedures Division, Office of the Secretary of State, this 25th day of February, 2009.



THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION