



7-19-2012

TENNESSEE DEPARTMENT OF SAFETY vs.
One 1999 Harley Davidson, VIN NO.:
1HD1ETL42XY951686, Seized From: Michael R.
Stewart, Date of Seizure: June 18, 2011, Claimant:
Michael R. Stewart, Lien Holder: Y12 FCU

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

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
SAFETY**

v.

**One 1999 Harley Davidson
VIN NO.: 1HD1ETL42XY951686
Seized From: Michael R. Stewart
Date of Seizure: June 18, 2011
Claimant: Michael R. Stewart
Lien Holder: Y12 FCU**

**DOCKET NO: 19.05-117334J
(D.O.S. Case No. L7762)**

INITIAL DEFAULT ORDER

This matter was heard in Knoxville, Tennessee, on July 19, 2012, before Lynn m. England, Administrative Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Robert Ingram, attorney for the Department of Safety, represented the Department. No one was present on behalf of Lienholder, Y12 FCU.

This is a show cause hearing for Lienholder to show why it has failed to take possession of the above referenced vehicle and why its interest in the vehicle should not be forfeited to the seizing agency.

Y12FCU did not appear at the hearing. The Department, therefore, moved for an initial order of **default** and moved that Lienholder's claim be stricken and its interested forfeited. The motion was **granted** based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The vehicle was seized pursuant to law, resulting in the issuance of a Property Forfeiture Warrant. Lienholder filed all necessary documents to assert a claim on this vehicle for its lien.

2. By prior order, the vehicle was forfeited to the seizing agency, subject to the Lienholder's claimed interest. Lienholder was notified of this action, but did not take possession of the vehicle or take other steps to protect its interest. On May 22, 2012, Lienholder was sent notice by the Department advising it that a hearing was scheduled for Lienholder to "show cause" why its interest should not also be forfeited to the seizing agency.

3. A show-cause hearing was scheduled for June 19, 2012. Lienholder was notified of the hearing time and location by certified mail to Lienholder's address of record.

4. Lienholder did not appear at the show-cause hearing, and was not otherwise represented. Based on Lienholder's failure to appear, the Department made an oral motion for an Order of Default and dismissal of Lienholder's claim.

5. The Department had its witnesses available and was ready to go forward to prove its case.

CONCLUSIONS OF LAW

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 Department's motion for default being granted, it is therefore **ordered** that Lienholder'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."

IT IS THEREFORE ORDERED that Lienholder is held in default and its claim is stricken, and further, the above referenced vehicle is forfeited to the seizing agency.

This Initial Order entered and effective this 6 day of July, 2012

Lynn M. England
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 6 day of July, 2012



Thomas G. Stovall, Director
Administrative Procedures