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6-28-2012

TENNESSEE DEPARTMENT OF SAFETY v.
Charles Young, 1989 Mitsubishi Mighty Max,
VIN: JA7FL24D6KP035692, Seized from: Charles
Young, Claimant: Charles Young, Seizure Date:
April 22, 2011, Lienholder: None

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

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
SAFETY**

v.

**Charles Young
1989 Mitsubishi Mighty Max
VIN: JA7FL24D6KP035692
Seized from: Charles Young
Claimant: Charles Young
Seizure Date: April 22, 2011
Lienholder: None**

**DOCKET NO: 19.05-117427J
DOS CASE NO: L5244**

NOTICE OF DEFAULT and INITIAL ORDER

This matter was set to be heard on June 28, 2012, in Memphis, Tennessee, before Kim Summers, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Tennessee Department of Safety. Andre Thomas, attorney for the Department of Safety, represented the State. The Claimant did not appear for the hearing, and no one appeared on his behalf.

This hearing was a “show cause” hearing to determine why the subject vehicle should not be forfeited to the Seizing Agency because the Claimant had failed to abide by the terms of the March 22, 2012 Order of Compromise and Settlement. Because the Claimant did not appear at the show-cause hearing and had not requested a continuance, the Department of Safety made a motion for default.

After consideration of the evidence offered and the entire record in this matter, it is **ORDERED** that the seized vehicle be **FORFEITED** to the seizing agency. This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Claimant's property was seized pursuant to law, resulting in the issuance of a Property Forfeiture Warrant. The Claimant filed a claim seeking the return of the property and requested that a hearing be scheduled to consider that claim.

2. The Claimant subsequently entered into an Order of Compromise and Settlement, effective March 22, 2012; however, the Claimant failed to fulfill the requirements of this agreement, and the case was rescheduled so that the Claimant could show the reasons for his failure to comply.

3. The Order of Compromise and Settlement specified that the property would be forfeited to the Seizing Agency if Claimant failed to comply within thirty days.

4. The record contains no indication that the Claimant has complied with the Order of Compromise and Settlement.

5. The show-cause hearing was scheduled for June 28, 2012, and the Claimant was notified of the hearing time and location by certified mail sent to his address of record. This notice was delivered and signed for by Claimant on May 24, 2012.

6. The Claimant did not appear at the hearing, and no one appeared on his behalf.

CONCLUSIONS OF LAW and ANALYSIS

1. Claimant's failure to comply with the Order of Compromise and Settlement results in forfeiture of the property to the seizing agency in accordance with the terms of the agreement.

2. Department of Safety Rule 1340-2-2-.11(2) provides:

In serving a "Notice of Hearing," the Legal Division shall rely upon the addresses of record as given by a claimant or by claimant's counsel. Proof of service per Rule 1340-2-2-.03(4) to the addresses of record shall establish a rebuttable presumption that claimant or claimant's counsel received notice of the hearing date.

3. 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.

4. Department of Safety Rule 1340-2-2-.17(2)(b) states, in relevant part:

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 Claimant received adequate notice of the hearing but did not appear to show cause why the property should not be forfeited and was, therefore, found to be in **DEFAULT**.

6. It is, therefore, **ORDERED** that the claim be **STRICKEN**, which renders the claim void *ab initio*, as though it had never been filed.¹ Failure to file a claim results in the forfeiture of the property for disposition as provided by law. *See*, Tennessee Code Annotated § 40-33-206(c).

¹ The effect of striking a pleading "is to posture the action as if [that pleading] had never been made." *See*, *INVST Financial Group, Inc. v. Chem-Nuclear Systems, Inc.*, 815 F.2d 391, 404 (6th Cir. 1987).

7. Based upon the foregoing, the matter is **DISMISSED**, and Claimant's interest in the subject property is **FORFEITED** to the seizing agency.

8. Should good cause exist for Claimant's failure to appear / participate in the hearing, Claimant may move to have the default set aside no later than ten (10) days after service of the order.

It is so ordered.

This Initial Order entered and effective this 20 day of July, 2012

JKSummers

KIM SUMMERS
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the _____ day of _____ 2012.



THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE