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Diana Anez vs. Department of Safety

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**BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT
OF SAFETY AND HOMELAND SECURITY**

IN THE MATTER OF:

DEPARTMENT OF SAFETY

v.

**\$5,167.00 in U.S. currency
Seized From: Diana Anez
Date of Seizure: September 25, 2012
Claimant: Diana Anez
Lien Holder: None**

**DOCKET NO: 19.01-121450J
D.O.S. Case No. N1522**

INITIAL ORDER AND NOTICE OF DEFAULT

This matter came for hearing in Chattanooga, Tennessee on May 30, 2013, before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Attorney Joe Bartlett represented the Department of Safety. Attorney Mary S. Moore represents the Claimant in this case.

This is an action to forfeit the subject property for its alleged use in violation of T.C.A. §55-50-504 *et seq.* and §40-33-201 *et seq.*

Since neither Claimant nor her counsel appeared for the hearing, the Department moved for an initial order holding Claimant in **default** and striking Claimant's claim from the record.

The motion was **granted** 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 to her address of record. The notice of hearing was signed for and accepted by K. Roberts on May 3, 2013.¹ The Department is entitled to a rebuttable presumption that Claimant received notice of the hearing under its rule set forth below.
2. Claimant failed to appear on the day of the hearing. Nor did his attorney appear on Claimant's behalf.
3. The Department had its witnesses available and was ready to go forward to prove its case.

CONCLUSIONS OF LAW AND ANALYSIS

1. Department of Safety Rule 1340-2-2-.11 provides as follows:
 - (1) At a reasonable time prior to a hearing, a "Notice of Hearing" shall be filed by the Legal Division and served on all parties, per Rule 1340-2-2-.03(4).
 - (2) **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.** (emphasis added).
 - (3) Notice of hearing for a second or subsequent setting of the hearing will be by certified mail, return receipt requested. The return receipt card may be filed with the Legal Division and serve as a record of notification.
 - (4) All claims filed against a specific seized property shall be consolidated for a single hearing.
2. 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.

¹ The recipient's address is illegible, with the exception of the zip code which appears to be 37406. This is also the zip code noted in the U.S.P.S. delivery receipt. The Department's records indicate Ms. Moore address is in the 37405 zip code. The Department's records indicate the mail was sent to Ms. Moore's address of record.

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

3. 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.

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 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 the \$5,167.00 in U.S. currency is forfeited to the seizing agency.

This Initial Order entered and effective this _____ day of _____ 2013.

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this _____ day of _____ 2013.

J. Richard Collier

J. Richard Collier, Director
Administrative Procedures Division