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1-3-2014

Ally Bank vs. safety

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

**IN THE MATTER OF:**

**TENNESSEE DEPARTMENT OF SAFETY**

**V.**

**2007 Mazda MA6  
VIN: 1YVHP80C475M40902  
Seized from: Jonathon Hutsell  
Claimant: Ally Bank  
Seizure Date: January 4, 2013  
Lienholder: Ally Bank**

**DOCKET NO: 19.05-123548J**

**DOS CASE NO: N4599**

**NOTICE OF DEFAULT and INITIAL ORDER**

This matter was set to be heard on November 6, 2013, in Knoxville, 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. Nina Harris, attorney for the Department of Safety, represented the State. No one appeared at the hearing on the Lienholder's behalf.

This hearing was a "show cause" hearing to determine why the subject vehicle should not be forfeited to the seizing agency because the Lienholder had failed to abide by the terms of the May 1, 2013 Order of Delegation and Forfeiture Subject to Lien. Because the Lienholder 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 vehicle was seized pursuant to law, resulting in the issuance of a Property Forfeiture Warrant.
2. The Lienholder was given the opportunity to take possession of the vehicle pursuant to the May 1, 2013 Order of Delegation and Forfeiture Subject to Lien.
3. The Order specified that the property would be forfeited to the seizing agency if the Lienholder failed to comply within thirty days.
4. The record contains no indication that the Lienholder has complied with the Order.
5. The show-cause hearing was scheduled for November 6, 2013, and the Lienholder was notified of the hearing time and location by certified mail sent to the address of record. This notice was received and signed for on October 18, 2013.
6. The Lienholder did not appear at the hearing and did not request a continuance.

## **CONCLUSIONS OF LAW and ANALYSIS**

1. 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.
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.
  - (e) Upon default by a party, an administrative judge may enter either an initial default order or an order for an uncontested proceeding.

3. Because the Lienholder received adequate notice of the hearing and did not appear to show cause why the property should not be forfeited, the State's motion for default is appropriately granted.

4. Based upon the foregoing, it is hereby **ORDERED** that the Lienholder's interest in the subject property be **FORFEITED** to the seizing agency, pursuant to the terms of the Order of Delegation and Forfeiture Subject to Lien.

5. Should good cause exist for the Lienholder's failure to appear / participate in the hearing, the Lienholder 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 the \_\_\_\_\_ day of \_\_\_\_\_ 2014.

*DK Summers*

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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 \_\_\_\_\_ 2014.

*J. Richard Collier*

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J. RICHARD COLLIER, DIRECTOR  
ADMINISTRATIVE PROCEDURES DIVISION  
OFFICE OF THE SECRETARY OF STATE