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Alicia Heady vs. Safety

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

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
SAFETY**

v.

**One 1996 Chevrolet 1500
VIN: 1GCEC14W0TZ102044
Seized From: A1 Auto Parts, Inc.
Date of Seizure: August 2, 2013
Claimant: Alicia Heady and Deana
Shores**

**DOCKET NO: 19.01-124560J
(D.O.S. Case No: PO522)**

INITIAL DEFAULT ORDER

This matter was heard on January 30, 2014, before Ann M. Johnson, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Tennessee Department of Safety. Karen Litwin, attorney with the Department of Safety, represented the State. The record contains no indication that the Claimants were represented by legal counsel. Neither the Claimants nor a representative on their behalf appeared for the hearing.

The subject of this case was the proposed forfeiture of the subject vehicle based upon alleged violations regarding alterations of vehicle identification numbers.

When the Claimants failed to appear for the hearing, the attorney for the State made an oral motion pursuant to Tennessee Code Annotated § 4-5-309 and Rule 1340-2-2-.17, TENN. COMP. R. & REGS., Rules of Procedure for Asset Forfeiture Hearings, requesting that the

Claimants be held in default. Based upon the record and the evidence presented, the State's motion was granted, as supported by the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

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

2. This claim was scheduled for hearing on January 30, 2014, and the Claimants were notified of the hearing time and location by certified mail delivered on December 28, 2013, to the address of record. EXHIBIT 1.

3. Before the hearing, one Claimant telephoned the attorney for the Department of Safety, stating that she had received the Notice of Hearing and requesting information about procedure. Ms. Litwin explained the hearing procedure to her.

4. Neither the Claimants nor an attorney on their behalf appeared at the hearing, the second or subsequent setting of the case. Based upon the Claimants' failure to appear, the State made an oral motion for the entry of an Order of Default. The State did not wish to proceed with an uncontested hearing.

CONCLUSIONS OF LAW and ANALYSIS

1. Tennessee Code Annotated § 4-5-309(a) provides that "if a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the administrative judge . . . may hold the party in default" An order holding an absent party in default at the second or subsequent setting of a forfeiture hearing is also authorized by Rule 1340-2-2-.17(1)(a), TENN. COMP. R. & REGS., Rules of Procedure for Asset Forfeiture Hearings.

2. Rule 1340-2-2-.17(1) contains the following relevant provisions:
 - (d) No default shall be entered against a claimant for failure to attend [the hearing] except upon proof by the filing of the return receipt card, that the legal division has given notice of the hearing per Rule 1340-2-2-.11(3).
 - (e) Upon default by a party, an administrative judge may enter either an initial default order or an order for an uncontested proceeding . . .
3. Rule 1340-2-2-.17(2)(b) specifies possible results when a claimant is held

in default:

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.

(Emphasis added.)

4. The legal impact of striking a claim is to render 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).

5. In accordance with the law, as set forth above, it is determined that the State's motion is well taken. The State notified the Claimants according to the rules cited above, as shown by the certified return receipt and the Claimant's admission to the Department's attorney that she received the Notice of Hearing. The Claimants failed to appear at the hearing to proceed with the claim. Pursuant to the cited authority, the Claimants are hereby found to be in default.

Accordingly, it is hereby **ordered** that the Claimants' claim is stricken from the record, and dismissed. The Claimants' interest in the subject property is forfeited to the seizing agency for disposition as specified by law.

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).

This Initial Order entered and effective this _____ day of _____ 2014.

Ann M. Johnson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this
_____ day of _____ 2014.



J. Richard Collier, Director
Administrative Procedures Division