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5-30-2014

## Michael W. Wright vs. Safety

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

**In the matter of:**

**TENNESSEE DEPARTMENT  
OF SAFETY,**

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)  
) **Docket No. 19.01-126055J**  
)  
) **Department of Safety**  
) **Case No. P4546**  
)

**v.**

**1997 CHEVROLET TAHOE  
VIN # 1GNEC13ROVJ369589  
SEIZED FROM: MICHAEL WRIGHT  
SEIZURE DATE: DECEMBER 12, 2013  
CLAIMANT: MICHAEL WRIGHT  
LIENHOLDER: N/A**

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**INITIAL ORDER GRANTING  
STATE'S MOTION FOR DEFAULT  
AND  
FORFEITURE OF VEHICLE**

**NOTICE OF DEFAULT**

This matter came on to be heard on May 20, 2014 before Joyce Grimes Safley, Administrative Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety in Lawrenceburg, Tennessee. Ms. Karen Litwin, attorney for the Department of Safety, represented the Department of Safety or the State. Claimant was not present at the hearing, nor did anyone appear on his behalf.

The subject of this hearing was the proposed forfeiture of the above referenced vehicle seized for its alleged use in violation of the Tennessee Drug Control Act, T.C.A. §39-17-401, *et seq.* and T.C.A. §53-11-451.

### **FINDINGS OF FACT**

1. The State showed that it had served notice of the hearing upon the Claimant via Certified Mail (return receipt requested).

2. The State provided a signed return receipt of the notice being accepted and signed for by an adult at the Claimant's address of record. The signed return receipt was entered into evidence as Exhibit 1.

3. Claimant received proper notice of the hearing.

4. Claimant did not appear at the hearing, nor did anyone appear on his behalf.

### **CONCLUSIONS OF LAW**

1. The Administrative Procedures Act, T.C.A. §4-5-309, sets forth the procedure for default hearings:

(a) If a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the administrative judge or hearing officer, hearing the case alone,... may hold the party in default and either adjourn the proceedings or conduct them without the participation of that party, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

2. T.C.A. §4-3-2008 states:

The Commissioner of Safety has the authority to establish and promulgate such rules and regulations governing the administration and operation of the department as may be deemed necessary by the commissioner and which are not inconsistent with the laws of this state.

3. TENN. COMP. R. & REGS. 1340-2-2-.17 (*The Rules of Tennessee Department of Safety*) sets forth the Department of Safety's procedure for default and uncontested proceedings as follows:

**Default and Uncontested Proceedings.**

(1) Default. The motion for default may be in writing or oral.

(a) The failure of a party to attend or to participate in a prehearing conference, ***a party's non-attendance at a second setting of a hearing on the merits in a case or a party's non-attendance at another stage of contested case proceedings after notice thereof are each causes for holding such party in default pursuant to T.C.A. §4-5-309.***

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(c) In any situation set out in parts (a) and (b)n of this rule, a motion may be made to hold the absent party in default and to enter an initial default order or to continue on an uncontested basis.

\*\*\*

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

4. Rule 1340-2-2-.17(2)(b) of *The Rules of Tennessee Department of Safety*, states: "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 State showed that it had served notice of the hearing upon the Claimant. The return mail receipt showing that the notice of hearing was mailed to the Claimant was made Exhibit 1 at the hearing.

6. T.C.A. §53-11-451(a)(6)(A) authorizes the forfeiture of "everything of value furnished, or intended to be furnished in exchange for controlled substance, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act."

7. It is determined that the Claimant failed to participate in the hearing of this matter.

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Accordingly, pursuant to the Commissioner's ruling regarding the proper procedure for default proceedings, as set forth in the forfeiture case *In re: Taliaferro*, Docket No. 19.05-049400J (April 12, 2004), the Claimant's claim is **STRICKEN**, the State's motion for **DEFAULT** is **GRANTED**, and the above captioned vehicle and currency is ordered **FORFEITED** to the seizing agency. The vehicle is forfeited to the seizing agency (17th Judicial District Task Force).

It is so ordered.

This Order entered and effective this \_\_\_\_\_day of May, 2014.

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Joyce Grimes Safley  
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