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September 2014

## Robert T. Rosenbaum vs. 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.**

**One 2000 Toyota Camry  
VIN: 4T1BG22K4YU667829  
Seized From: Robert T. Rosenbaum  
Date of Seizure: February 9, 2014  
Claimant: Robert T. Rosenbaum  
Lien Holder: None<sup>1</sup>**

**DOCKET NO: 19.05-127034J  
D.O.S. Case Nos. P6902 & P6910**

**INITIAL ORDER AND NOTICE OF DEFAULT**

This matter came for hearing in Knoxville, Tennessee on July 23, 2014, 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 Patrick Rice represented the Department of Safety. No one appeared on Claimant's behalf.

This is an action to forfeit the subject property for its alleged use in violation of T.C.A. §55-10-401 et seq., §55-50-504 et seq., and §40-33-201 et seq.

Since neither Claimant nor 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 Claimant's address of record. The U.S.P.S. attempted to deliver the notice to Claimant, but no authorized recipient was available to accept the certified mail. The U.S.P.S. left notice at Claimant's residence of how to

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<sup>1</sup> The technical record indicates that Tennessee Title Loans held a lien on this vehicle, but failed to file the requisite paperwork with the Department after the Department gave it proper notice to do so.

collect his mail or have it redelivered. When no one contacted the U.S.P.S. the notice of hearing was returned to the Department as unclaimed. Claimant has not provided the Department any other contact information. The Department has made all reasonable attempts to notify Claimant of the hearing.

2. Claimant failed to appear on the day of the hearing. Nor did an 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.

(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.

(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 above described vehicle is forfeited to the seizing agency.

This Initial Order entered and effective this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

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Steve R. Darnell  
Administrative Law Judge

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



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J. Richard Collier, Director  
Administrative Procedures Division