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Advance Financial vs. Safety

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

IN THE MATTER OF:

**One 2003 Chevrolet S-10
VIN NO. 1GCCS14X538244642
Seized From: Abisha Chigamira
Date of Seizure: December 20, 2013
Lien Holder: Advance Financial**

**DOCKET NO: 19.05-127832
D.O.S. Case No. P5087, P5089**

INITIAL DEFAULT ORDER

This matter was heard on September 16, 2014, before Rob Wilson, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Karen Litwin, Staff Attorney for the Department of Safety, represented the State. No one appeared on behalf of Lienholder Advance Financial.

The above referenced property was seized and forfeited to the seizing agency subject to Lienholder's claim. Lienholder has failed to take possession of the vehicle and the State set this hearing for Lienholder to show cause why the property should not be forfeited to the seizing agency since Lienholder has failed to act.

Lienholder did not appear at the hearing. The State therefore moved that Lienholder be held in **default**, Lienholder's claim be stricken, and the property be forfeited to the seizing agency. The motion was **granted** based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Lienholder was sent a letter indicating the issue involved and a copy of the docket mail to its address of record. These documents gave Lienholder proper notice of the issue and hearing location and time. Both were sent certified mail and a copy of the U.S.P.S. green card shows Lienholder received this notice.

2. Lienholder failed to appear on the day of the hearing. Nor did an attorney appear on Lienholder's behalf.

3. The State 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-.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.

2. 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.

3. The State's motion for default being granted and Lienholder's claim is 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 Lienholder's claim is hereby **STRICKEN**, and there now being no claim the 2003 Chevrolet S-10 is forfeited to the seizing agency.

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

Rob Wilson
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