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Albert, IV Bayless 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.

**2001 Mazda Protege
VIN: JM1BJ222010473429
Three Hundred Eight-Six Dollars (\$386) in
United States Currency
Seized from: Albert Bayless, IV
Claimant: Albert Bayless, IV
Seizure Date: September 6, 2013
Lienholder: EC Motors & Performance**

**DOCKET NO: 19.01-127869J
DOS CASE NO: P2219**

NOTICE OF DEFAULT and INITIAL ORDER

This matter was set to be heard on September 17, 2014, 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. Patrick Rice, attorney for the Department of Safety, represented the State. The claimant did not appear for the hearing, nor did anyone appear on the claimant's behalf.

This hearing was a "show cause" hearing to determine why the subject vehicle should not be forfeited to the State because the claimant had failed to abide by the terms of the March 24, 2014 Order of Compromise and Settlement. Since the claimant did not appear at the show-cause hearing, 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 Claimant's property was seized pursuant to law, resulting in the issuance of a Property Forfeiture Warrant. The Claimant filed a claim seeking the return of the property and requesting that a hearing be scheduled to consider that claim.

2. The Claimant subsequently entered into an Order of Compromise and Settlement, effective March 24, 2014; however, the Claimant failed to fulfill the requirements of this agreement, and the case was rescheduled so that the Claimant could show the reasons for his failure to comply.

3. The Order of Compromise and Settlement specified that the property would be forfeited to the Seizing Agency if Claimant failed to comply within thirty days.

4. The record contains no indication that the Claimant has complied with the Order of Compromise and Settlement.

5. The show-cause hearing was scheduled for September 17, 2014, and the Claimant was notified of the hearing time and location by certified mail sent to the address of record. This notice was unclaimed as of the date of the hearing.

6. The Claimant did not appear at the hearing.

CONCLUSIONS OF LAW and ANALYSIS

1. Claimant's failure to comply with the Order of Compromise and Settlement results in forfeiture of the property to the seizing agency in accordance with the terms of the agreement.

2. 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.

3. Pursuant to RULE 4.04(11) of the TENNESSEE RULES OF CIVIL PROCEDURE, the return of the notice as “Unclaimed - Refused” is deemed to be actual service:

When service of summons, process, or notice is provided for or permitted by registered or certified mail under the laws of Tennessee and the addressee or the addressee’s agent refuses to accept delivery and it is so stated in the return receipt of the United States Postal Service, the written return receipt if returned and filed in the action shall be deemed an actual and valid service of the summons, process, or notice. Service by mail is complete upon mailing. For purposes of this paragraph, the United States Postal Service notation that a properly addressed registered or certified letter is “unclaimed,” or other similar notation, is sufficient evidence of the defendant’s refusal to accept delivery.

4. 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.

5. Department of Safety Rule 1340-2-2-.17(2)(b) states, in relevant part:

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.

6. The State made reasonable attempts at service of the notice upon the claimant, which are deemed, under the law, to be actual service.

7. Because the Claimant was absent from the hearing, he could not show cause why the vehicle should not be forfeited and was found to be in **DEFAULT**.

8. It is, therefore, **ORDERED** that the claim be **STRICKEN**, the legal impact of which is to render the claim void *ab initio*, as though it had never been filed.¹

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).

9. 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).

10. Based upon the foregoing, the matter is **DISMISSED**, and Claimant's interest in the subject property is **FORFEITED** to the seizing agency, subject to any valid lienholder's claim.

11. Should good cause exist for Claimant's failure to appear / participate in the hearing, Petitioner 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

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 _____ 2015.

J. Richard Collier

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