



6-22-2011

DEPARTMENT OF SAFETY vs. One 2001
Chevrolet Impala VIN: 2G1WF55K019208847,
Seized From: Everette Conley, Date of Seizure:
October 12, 2010, Claimant: Porsha L. Featherson,
Lien Holder: None

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

IN THE MATTER OF:

DEPARTMENT OF SAFETY

v.

**One 2001 Chevrolet Impala
VIN: 2G1WF55K019208847
Seized From: Everette Conley
Date of Seizure: October 12, 2010
Claimant: Porsha L. Featherson
Lien Holder: None**

**DOCKET NO: 19.01-113028J
D.O.S. Case No. K9246**

INITIAL ORDER AND NOTICE OF DEFAULT

This matter was heard in Memphis, Tennessee, on June 22, 2011, 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 Andre Thomas represented the Department of Safety. Claimant was not present nor was anyone present on Claimant's behalf.

This was a "show cause" hearing to determine why the subject vehicle should not be forfeited to the seizing agency because the Claimant failed to comply with the "proposed civil settlement agreement and release of liability" entered on December 3, 2010. The Department moved for an initial order holding Claimant in default, and that her interest in the vehicle 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. This vehicle was seized pursuant to the law, resulting in the issuance of a Property Forfeiture Warrant. The Claimant filed a claim seeking the return of the vehicle, and requesting that a hearing be scheduled to consider the claim.

2. On December 3, 2010, the parties negotiated a settlement agreement to award possession of the vehicle to the Claimant upon compliance with certain conditions. This agreement was titled “proposed civil settlement agreement and release of liability.” The Claimant failed to comply with the terms of the agreement. In the event of such a failure, the agreement provides for forfeiture of the vehicle to the seizing agency.

3. A show-cause hearing was set for June 22, 2011, for the Claimant to appear and demonstrate why the forfeiture provision of the agreement should not be put into effect.

4. Claimant was sent notice of the show cause hearing to her address of record via certified mail. This mail was returned to the Department with a notation from the U.S. postal service indicating that it left notices at Claimant’s address on May 7, 2011, and again on May 20, 2011. However, Claimant did not collect her mail, and the correspondence was returned to the Department marked “unclaimed” on May 27, 2011.

5. Claimant did not appear for the hearing. The Department moved for an order of default as to Claimant and the forfeiture provisions of the parties’ agreement be enforced. Further, the Department moved that Claimant’s claim be stricken from the record.

6. The Department made all reasonable attempts to notify Claimant of the hearing.

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 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), is that the Claimant's claim be stricken.

4. 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 Department's motion for default is granted, Claimant's claim is stricken, and the above described vehicle is **FORFEITED** to the seizing agency.

This Initial Order entered and effective this 27th day of July, 2011.

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 27th day of July, 2011.



Thomas G. Stovall, Director
Administrative Procedures