



6-20-2011

DEPARTMENT OF SAFETY vs. One 1994
Acura Legend VIN: JH4KA7671RC008833,
Seized From: Claude D. Branyan, Date of Seizure:
March 15, 2011, Claimant: Claude D. Branyan,
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 1994 Acura Legend
VIN: JH4KA7671RC008833
Seized From: Claude D. Branyan
Date of Seizure: March 15, 2011
Claimant: Claude D. Branyan
Lien Holder: None**

**DOCKET NO: 19.01-113038J
D.O.S. Case No. K3848**

INITIAL DEFAULT ORDER

This matter was heard in Memphis, Tennessee, on June 20, 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.

The subject of this hearing was the proposed forfeiture of the subject property for its alleged use in violation of T.C.A. §53-11-201 et seq. and §40-33-201 et seq.

Claimant did not appear at the hearing. The Department therefore moved for an initial order of **default** and that Claimant's claim be stricken. 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 at his address of record. A copy of the postal green card shows Carl Andersen signed for the notice on May 4, 2011. The Department is entitled to a rebuttable presumption that Claimant received notice of the hearing under its rule below.
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.** (Emphasis added).
 - (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 be forfeited to the seizing agency.

This Initial Order entered and effective this 28th day of July, 2011.

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 28th day of July, 2011.



Thomas G. Stovall, Director
Administrative Procedures Division