



3-2-2011

DEPARTMENT OF SAFETY vs. 1999 FORD  
CONTOUR VIN: #1FAFP663XXK218462,  
SEIZED FROM: CALVIN BEECH, SEIZURE  
DATE: JANUARY 6, 2010 CLAIMANT:  
TERESA KIMBER LIENHOLDER: TITLEMAX

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

<b>DEPARTMENT OF SAFETY,</b>	)	
	)	<b>Docket No. 19.05-109769J</b>
	)	
	)	<b>Department of Safety</b>
	)	<b>Case No. K0896</b>
	)	
<b>v.</b>	)	
	)	
<b>1999 FORD CONTOUR</b>	)	
<b>VIN: #1FAFP663XXK218462</b>	)	
<b>SEIZED FROM: CALVIN BEECH</b>	)	
<b>SEIZURE DATE: JANUARY 6, 2010</b>	)	
<b>CLAIMANT: TERESA KIMBER</b>	)	
<b>LIENHOLDER: TITLEMAX</b>	)	

**INITIAL ORDER AND NOTICE OF DEFAULT**

This matter was heard in Memphis, Tennessee, on March 2, 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. Andre Thomas, Staff Attorney for the Department of Safety, represented the seizing agency. Lienholder, TitleMax, was not present nor was anyone present on its behalf.

This was a “show cause” hearing to determine why the subject vehicle should not be forfeited to the Seizing Agency because Lienholder has failed to take possession of the vehicle or otherwise enforce its lien after entry of the initial order on November 12, 2010. The Department moved for an initial order holding Lienholder in default and forfeiture of the vehicle 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. Claimant failed to appear at the hearing set on September 30, 2010, in Memphis, Tennessee and Claimant was held in default.

2. Lienholder, TitleMax, filed documents with the Department reflecting that it had a valid lien on the seized vehicle. TitleMax's correspondence with the Department indicated that its legal mail should be directed to TitleMax, Attn: Keri Bell, Paralegal, 15 Bull Street, Ste. 200, Savannah, GA 31401.

3. An initial order was entered on November 12, 2010, holding Claimant in default and forfeiting the vehicle to the seizing agency subject to the lien of Titlemax. TitleMax has not contacted the seizing agency to take possession of the vehicle or taken steps to otherwise protect its security interest.

4. A show-cause hearing was set for March 2, 2011, for Lienholder to appear and demonstrate why its interest in the vehicle should not also be forfeited to the seizing agency.

5. Lienholder sent a letter to the Department dated January 28, 2011, confirming that it had received a copy of the notice of hearing for the show-cause hearing. Lienholder did not appear for the hearing, nor has it taken any steps to protect its interest in the seized vehicle since it received the notice of hearing. The vehicle has remained stored by the seizing agency.

5. The notice to Lienholder clearly advised it that if it did not appear at the hearing, the Department would move to have its interest in the vehicle forfeited to the seizing agency. The Department moved for an order of default as to Lienholder and that its interest in the seized vehicle also be forfeited to the seizing agency so that it may be disposed of as provided by law.

**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, Lienholder claim is stricken, and the above described vehicle is **FORFEITED** to the seizing agency.

This Initial Order entered and effective this 11th day of April, 2011.

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Steve R. Darnell  
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this 11th day of April, 2011.

Handwritten signature of Thomas G. Stovall in cursive script.

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Thomas G. Stovall, Director  
Administrative Procedures