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2-15-2011

DEPARTMENT OF SAFETY vs. D.O.S. Case #
L0127 One 1986 Nissan VIN:
1N6ND01S4GC324827, Seized From: Thomas
K. Boland, Date of Seizure: 10/25/10, Claimant:
Thomas K. Boland Seizing Agency: Crump P. D.,
Lienholder: None Filed

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

IN THE MATTER OF:]	
]	
DEPARTMENT OF SAFETY]	
]	
v.]	DOCKET # 19.05-111349J
]	D.O.S. Case # L0127
One 1986 Nissan]	
VIN: 1N6ND01S4GC324827]	
Seized From: Thomas K. Boland]	
Date of Seizure: 10/25/10]	
Claimant: Thomas K. Boland]	
Seizing Agency: Crump P. D.]	
Lienholder: None Filed]	

INITIAL DEFAULT ORDER

This matter was heard in Jackson, Tennessee, on February 15, 2011, before J. Randall LaFevor, Administrative Judge assigned by the Secretary of State, Administrative Procedures Division, sitting for the Commissioner of the Tennessee Department of Safety. Mr. Joe Bartlett, Staff Attorney for the Tennessee Department of Safety, represented the State. The Claimant was not present and was not represented by counsel.

This administrative proceeding was initiated to consider the proposed forfeiture of the subject vehicle for its alleged operation by an individual whose driving privileges were revoked for driving a motor vehicle under the influence of an intoxicant (TCA §§ 55-10-401 *et seq.*, 55-50-504 & 40-33-201 *et seq.*) The Claimant sought permission to proceed as a pauper, pursuant to Rule 1340-2-2-.07(5)(e), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*. His request was denied by the Commissioner, and he requested a hearing, pursuant to Rule 1340-2-2-.07(5)(g), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*. A hearing was scheduled to consider his request. Upon the Claimant's failure to appear at the hearing, counsel for the State made an oral motion for an order finding the Claimant to be in default, pursuant to TCA § 4-5-309. Upon full consideration of the evidence received at

the hearing and the entire record in this case, the State's motion was granted, as supported by 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 vehicle, and requesting that a hearing be scheduled to consider that claim. The Claimant filed a *Uniform Civil Affidavit of Indigency*, as provided by Departmental Regulation, requesting permission to proceed as a pauper, without filing a cost bond
2. The Commissioner determined that the Claimant would not be allowed to proceed on his "pauper's oath," and the Claimant requested a hearing on the issue of his indigence. A hearing on that issue was scheduled and the Claimant was notified of the hearing time and location by certified mail.
3. The State's notification was duly delivered to the Claimant's address of record.¹
4. The Claimant did not appear at the hearing, and was not otherwise represented. Based on the Claimant's failure to appear, the State made an oral motion for the entry of an Order of Default.

CONCLUSIONS OF LAW and ANALYSIS

1. Tennessee Code Annotated § 4-5-309(a) provides that "if a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the administrative judge . . . may hold the party in default . . ." An order holding an absent party in default is also authorized by Rule 1340-2-2-.17(1)(a), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*.
2. Department of Safety Regulations governing asset forfeiture hearings further provide:

¹ See, Hearing Exhibit #1.

(d) No default shall be entered against a claimant for failure to attend [the hearing] except upon proof by the filing of the return receipt card, that the legal division has given notice of the hearing per Rule 1340-2-2-.11(3).

(e) Upon default by a party, an administrative judge may enter either an initial default order or an order for an uncontested proceeding . . .

Rule 1340-2-2-.17(1), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*.

3. Specifically with respect to Indigency/Pauper's Oath hearings, Departmental Regulations provide that a Claimant's failure to file a request to proceed as a pauper in a timely manner "is deemed a waiver of claimant's right to a hearing on the improper cost bond or pauper's oath and shall result in rejection of the claim. . ." Rule 1340-2-2-.07(5)(g), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*.

4. In accordance with the law, as set forth above, it is determined that the State's motion is well-taken. The Claimant was notified of the hearing, as shown by the certified return receipt, and failed to appear at the hearing to pursue his request for indigency status. Pursuant to the cited authority, the Claimant is hereby found to be in default for failing to appear at the hearing that was scheduled to consider his request.

Accordingly, it is hereby ORDERED that the Claimant's request to proceed upon a pauper's oath is stricken from the record, and dismissed. If the Claimant still wishes to pursue his claim for return of the seized vehicle, **he must file the cost bond or pay the required filing fee within ten (10) days of receipt of this Order.** In the event he fails to do so, his claim will be stricken from the record without further proceedings, and the vehicle shall be forfeited to the Seizing Agency, the Crump Police Department, for disposition as provided by law.

Entered and effective this 22nd day of February, 2011.

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 22nd day of February, 2011.

A handwritten signature in black ink that reads "Thomas G. Stovall". The signature is written in a cursive style with a large, looped initial 'T' and 'S'.

Thomas G. Stovall, Director
Administrative Procedures Division