



10-28-2010

DEPARTMENT OF SAFETY vs. One 1 2002
Ford Ranger VIN: 1FTYR10U32TA13439, Seized
from: Jamie T. Cope, Date of Seizure: March 11,
2009, Claimant: Jamie T. Cope Lien holder: Did
Not File

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

IN THE MATTER OF:

DEPARTMENT OF SAFETY

v.

**DOCKET NO: 19.01-110081J
DOS NO: J2870**

**One (1) 2002 Ford Ranger
VIN: 1FTYR10U32TA13439
Seized from: Jamie T. Cope
Date of Seizure: March 11, 2009
Claimant: Jamie T. Cope
Lien holder: Did Not File**

INITIAL DEFAULT ORDER

This matter was heard in Nashville, Tennessee, on October 28, 2010, before Marion P. Wall, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Attorney Orvil Orr attorney for the Tennessee Department of Safety represented the Department. The Claimant was not present and not represented by counsel.

This was a “show-cause” hearing to determine if the Claimant’s interest in the subject vehicle should be forfeited to the seizing agency due the Claimant’s failure to comply with the Order of Compromise entered on March 3, 2010.

It is determined that the Claimant of the subject property having been properly served failed to make an appearance at the “show cause” hearing and to comply with the Order of Compromise entered on March 3, 2010. This decision is based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The above property was seized pursuant to the law, resulting in the issuance of a Property Forfeiture Warrant. The Claimant had thirty (30) days from March 3, 2010, to take custody of the property.

2. The Claimant and the Claimant's attorney were notified through USPS certified mail by the Department of Safety regarding the show-cause hearing scheduled for October 28, 2010. Therefore, it is determined that the State complied with applicable laws and regulations regarding service to the Claimant.

3. The Claimant was not present and was not represented by counsel for the scheduled hearing on October 28, 2010.

4. The Department made an oral motion for an Order of Default and dismissal of Claimant's claim due to the Claimant's failure to appear.

CONCLUSIONS OF LAW

1. The Department as the moving party in this case has the burden to introduce evidence that would by a preponderance of the evidence prove the issues should be resolved in its favor. Rule 1360-4-1-.02.

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.

4. The State'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 State's motion for **DEFAULT** is **GRANTED** **against the Claimant**, the **Claimant's** claim is **STRICKEN**, and the above caption property ordered **FORFEITED** to the seizing agency.

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

Marion P. Wall
Administrative Law Judge

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

Thomas G. Stovall, Director
Administrative Procedures Division