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6-9-2011

Brett A. L3110 Cox vs. One 2003 Nissan Xterra
VIN NO.: 5N1ED28Y93C647141, Seized From:
Brett Allen Cox, Date of Seizure: Jan. 29, 2011,
Claimant: BRETT A COX, Lien Holder: Citizens
Savings and Loan

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

IN THE MATTER OF:

Brett A. (L3110) Cox

v.

**One 2003 Nissan Xterra
VIN NO.: 5N1ED28Y93C647141
Seized From: Brett Allen Cox
Date of Seizure: Jan. 29, 2011
Claimant: BRETT A COX
Lien Holder: Citizens Savings and
Loan**

**DOCKET NO:19.05-112811J
(D.O.S. Case No. L3110)**

INITIAL DEFAULT ORDER

This matter was heard while sitting in Knoxville, Tennessee, on June 9th, 2011, before the Honorable Dewayne Bunch, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Nina Harris, Staff Attorney for the Department of Safety, represented the State.

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.

Brent A Cox, Claimant, did not appear at the hearing. The State therefore moved for an initial **default** and dismissal of the case. 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 electronic notice shows that notice was left at the claimant's address of record on May 14, 2011.
2. Claimant failed to appear on the day of the hearing. Nor did an attorney appear on Claimant's behalf.
3. The State 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-.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 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.”

This Initial Order entered and effective this 21st day of June, 2011.

Dewayne Bunch
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 21st day of June, 2011.



Thomas G. Stovall, Director
Administrative Procedures Division