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4-5-2010

DEPARTMENT OF SAFETY vs. D.O.S. Case #
J7174 One 2002 Ford Explorer VIN:
1FMDU62E42UB11059, Seized From: Wayne
Gaither, Jr., Seizure Date: 8/24/09, Claimant:
Lechesshia Beasley Seizing Agency: Memphis P.D.,
Lienholder: Credit Acceptance Corp.

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

IN THE MATTER OF:]	
]	
DEPARTMENT OF SAFETY]	
]	
v.]	DOCKET # 19.01-107176J
]	D.O.S. Case # J7174
One 2002 Ford Explorer]	
VIN: 1FMDU62E42UB11059]	
Seized From: Wayne Gaither, Jr.]	
Seizure Date: 8/24/09]	
Claimant: Lechesshia Beasley]	
Seizing Agency: Memphis P.D.]	
Lienholder: Credit Acceptance Corp.]	

ORDER OF FORFEITURE FOLLOWING SHOW-CAUSE HEARING

This matter was heard on April 5, 2010, 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 in Memphis, Tennessee. Mr. Andre Thomas, Staff Attorney for the Tennessee Department of Safety, represented the State. The Claimant was not present, either in person or through legal counsel.

This Show-Cause hearing was convened to consider the proposed forfeiture of the subject property based on allegations that its possession and/or receipt by the Claimant was in violation of the Tennessee Drug Control Act. Upon the Claimant's failure to appear at the Show-Cause 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. The Claimant was found to be in default, and the claim filed in this matter was stricken, 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 property.
2. On October 20, 2009, an Order was entered that provided for the return of certain property upon the performance of specified conditions. The Claimant failed to perform according to that Order. In the event of such a failure, the Order provides for forfeiture of the vehicle to the Seizing Agency.
3. A Show-Cause Hearing was scheduled on April 5, 2010, for the Claimant to demonstrate why her interest in the vehicle should not be forfeited, as provided in the Order. The Claimant was notified of the hearing time and location by certified mail. See Hearing Exhibit #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 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 also provide:
 - (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*.

And, that

Upon a default by a claimant, a **claimant's claim shall be stricken by initial default order**, or, if the agency requests, the agency may proceed uncontested.

See, Rule 1340-2-2-.17(2)(b), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*. (Bold emphasis added.)

3. In accordance with the law, as set forth above, it is determined that the State's motion is well-taken. After the State's proper notification of the Claimant, she failed to appear at the Show-Cause hearing. Pursuant to the cited authority, the Claimant is hereby found to be in default for failing to appear at the Show-Cause hearing scheduled to consider her claim.

Accordingly, it is hereby ORDERED that the Claimant's claim is stricken from the record, and dismissed. The Claimant's interest in the seized property is Ordered forfeited to the Seizing Agency, the Memphis Police Department, subject to the interest of the Lien Holder, Credit Acceptance Corporation.

Entered and effective this 19th day of April, 2010.

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 19th day of April, 2010.



Thomas G. Stovall, Director
Administrative Procedures Division