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4-5-2010

DEPARTMENT OF SAFETY vs. D.O.S. Case #  
J2693 ONE 2004 Mitsubishi Lancer VIN:  
JA3AJ26E74U027581, Seized From: Brian K.  
Murphy, Seizure Date: 4/2/09, Claimant: Tameaca  
Simon Seizing Agency: Somerville P.D.,  
Lienholder: Crescent Bank & Trust

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

<b>IN THE MATTER OF:</b>	]	
	]	
<b>DEPARTMENT OF SAFETY</b>	]	
	]	
<b>v.</b>	]	<b>DOCKET # 19.05-107185J</b>
	]	<b>D.O.S. Case # J2693</b>
<b>ONE 2004 Mitsubishi Lancer</b>	]	
<b>VIN: JA3AJ26E74U027581</b>	]	
<b>Seized From: Brian K. Murphy</b>	]	
<b>Seizure Date: 4/2/09</b>	]	
<b>Claimant: Tameaca Simon</b>	]	
<b>Seizing Agency: Somerville P.D.</b>	]	
<b>Lienholder: Crescent Bank &amp; Trust</b>	]	

**INITIAL ORDER OF DEFAULT & DISMISSAL**

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.

The subject of this hearing was 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 §§ 55-50-504 & 40-33-201 *et seq.*) 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. 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 vehicle 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.
2. On August 21, 2009, an Order was entered returning the vehicle to the Claimant upon the performance of certain conditions. The Claimant failed to comply with the terms of that agreement. 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 for the Claimant to demonstrate why the forfeiture provision of the Order should not be put into effect. The State sent notice of the hearing time and location to the Claimant by certified mail.
4. The Postal Service delivered the State's Notice to the Claimant's address of record.<sup>1</sup>
5. 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:

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<sup>1</sup> See, Hearing Exhibit # 1.

(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. The State properly notified the Claimant of the hearing, as shown by the Postal Service notation, and she failed to appear at the hearing to pursue her claim. Pursuant to the cited authority, the Claimant is hereby found to be in default for failing to appear at the hearing scheduled to consider her claim.

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Accordingly, it is hereby ORDERED that the Claimant's claim is stricken from the record, and dismissed. The Claimant's interest in the subject property is Ordered forfeited to the Seizing Agency, the Somerville Police Department, subject to the legal interest of the Lien Holder, Crescent Bank & Trust, for disposition as provided by law.

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

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J. Randall LaFevor, Administrative Judge

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

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

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Thomas G. Stovall, Director  
Administrative Procedures Division