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6-23-2010

DEPARTMENT OF SAFETY vs. One 1992 Ford  
Mustang VIN: 1FACP42E6NF113728 One 2000  
Dodge Durango VIN: 1B4HX28NXYF263109  
\$1,891 in U.S. Currency, Seized From: James C.  
Horne, Date of Seizure: September 22, 2009,  
Claimant: James C. Horne, Lien Holder: N/A

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

**IN THE MATTER OF:**

**Department of Safety**

**v.**

**One 1992 Ford Mustang  
VIN: 1FACP42E6NF113728  
One 2000 Dodge Durango  
VIN: 1B4HX28NXYP263109  
\$1,891 in U.S. Currency  
Seized From: James C. Horne  
Date of Seizure: September 22, 2009  
Claimant: James C. Horne  
Lien Holder: N/A**

**DOCKET NO: 19.01-107707J  
D.O.S. Nos. J8541, J8542, J8544**

**INITIAL DEFAULT ORDER**

This matter came for consideration before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Attorney Nina Harris represents the Department of Safety and Claimant is represented by attorney Michael Ritter of Oak Ridge.

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.

Pursuant to the Department's motion of May 26, 2010, an order was entered on June 10, 2010, directing Claimant to comply with the Department's discovery request no later than June 23, 2010. Said order clearly informed Claimant that if he failed to comply with the Department's discovery request, he would be declared in default and his claim dismissed. By motion filed of record on July 16, 2010, the Department's counsel asserts that Claimant had failed to comply

with discovery request and had not complied with the order of June 23, 2010. Claimant has not responded to the Department's motion for default. The Department an initial order holding Claimant in default and dismissal of Claimant's claim. The motion was **granted** based upon the following findings of fact and conclusions of law.

### **FINDINGS OF FACT**

1. The Department served Claimant with discovery request on February 2, 2010. Claimant failed to complete and return the requested discovery as required. The Department filed a motion to compel Claimant to comply with its discovery request on May 26, 2010. Claimant did not respond to this motion.

2. On June 23, 2010, an order was entered directing Claimant to comply with the Department's discovery request no later than June 23, 2010. Claimant has failed to comply with this mandate. Said order advised Claimant that if he failed to comply with the order, he would be held in default and his claim dismissed.

3. The Department moved that Claimant be held in default and his claim be stricken.

### **CONCLUSIONS OF LAW AND ANALYSIS**

1. "If a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the administrative judge or hearing officer, hearing the case alone, or agency, sitting with the administrative judge or hearing officer, may hold the party in default and either adjourn the proceedings or conduct them without the participation of that party, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings." T.C.A. § 4-5-309 (a).

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 Department'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 above described vehicles and U.S. currency is forfeited to the seizing agency.

This Initial Order entered and effective this 12th day of August, 2010.

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Steve R. Darnell  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 12th day of August, 2010.



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Thomas G. Stovall, Director  
Administrative Procedures Division