



6-23-2010

DEPARTMENT OF SAFETY vs. One 1993  
Oldsmobile Cutlass Supreme VIN:  
1G3AG54N5P6371259, SEIZED FROM:  
Gustavo Perez DATE OF SEIZURE: 11/25/2009  
SEIZING AGENCY: Memphis P.D. CLAIMANT:  
Gustavo Perez LEINHOLDER: Did Not File

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

**IN THE MATTER OF:**

**DEPARTMENT OF SAFETY,**

**v.**

**One 1993 Oldsmobile Cutlass Supreme  
VIN: 1G3AG54N5P6371259  
SEIZED FROM: Gustavo Perez  
DATE OF SEIZURE: 11/25/2009  
SEIZING AGENCY: Memphis P.D.  
CLAIMANT: Gustavo Perez  
LEINHOLDER: Did Not File**

**DOCKET NO: 19.01-108127J  
DOS NO: J9920**

**INITIAL DEFAULT ORDER**

This matter was a “show cause” hearing set to be heard in Memphis, Tennessee, on June 23, 2010, before Lynn M. England, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Andre Thomas, Staff Attorney for the Department of Safety, represented the State.

The subject of this “show cause” hearing was to determine why the Claimant had not complied with the Order of Compromise and Settlement entered with the Department of Safety on December 21, 2009, regarding 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. The Claimant, Gustavo Perez, did not appear at the “show cause hearing” nor was

anyone present on his behalf. 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. The Claimant was sent notice of the “show cause” hearing by certified mail. The return mail receipt came back unclaimed. The Department of Safety used all reasonable means to notify the Claimant of the “show cause” hearing.
2. The Claimant failed to appear on the day of the show cause hearing.
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 the lien holder’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.”

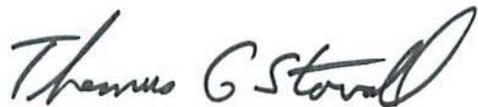
**IT IS THEREFORE ORDERED** that the State’s motion for **DEFAULT** is **Granted against the Claimant**, the Claimant’s claim is **STRICKEN**, and the above caption property order **FORFEITED** to the seizing agency.

This Initial Order entered and effective this 5th day of August, 2010.

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Lynn M. England  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this 5th day of August, 2010.



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Thomas G. Stovall, Director  
Administrative Procedures Division