



7-1-2010

DEPARTMENT OF SAFETY, Petitioner, vs. One
1999 GMC Yukon VIN: 1GKEK13R8XJ731266,
SEIZED FROM: George Barnard III DATE OF
SEIZURE: 10/30/2009 CLAIMANT: George
Barnard III SEIZING AGENCY: Carter County
Sheriff's Department LEINHOLDER: Did Not
File

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

IN THE MATTER OF:

**DEPARTMENT OF SAFETY,
Petitioner,**

v.

**One 1999 GMC Yukon
VIN: 1GKEK13R8XJ731266
SEIZED FROM: George Barnard III
DATE OF SEIZURE: 10/30/2009
CLAIMANT: George Barnard III
SEIZING AGENCY: Carter County
Sheriff's Department
LEINHOLDER: Did Not File**

**DOCKET NO: 19.05-108921J
DOS DOCKET NO: J9396**

INITIAL ORDER
OF DEFAULT AND DISMISSAL

This matter was heard on July 1, 2010, in Fall Branch, Tennessee, before Marion P. Wall, Administrative Law Judge, assigned by the Secretary of State and sitting for the Commissioner of the Tennessee Department of Safety. Ms. Nina Harris, Staff Attorney for the Department of Safety, represented the Seizing Agency. The Claimant, George Barnard III, was not present nor was anyone present on his behalf.

The subject of this hearing was the proposed forfeiture of the above referenced vehicle for its alleged use in violation of T.C.A. §55-50-504, §55-10-403, and §40-33-201. The State introduced evidence that the Claimant had been properly notified of the

hearing and moved to dismiss the Claimant's claim and enter a default against the Claimant.

FINDINGS OF FACT

1. The state showed that it had served notice of the hearing upon the Claimant.

The signed return mail receipt showing that the notice of hearing was mailed to the Claimant and was made Exhibit 1 (collective) at the hearing.

2. It is determined that the State complied with the applicable laws and regulations regarding notice.

CONCUSLION OF LAW AND LEGAL ANALYSIS

1. The Administrative Procedures Act, T.C.A. §4-5-309, sets forth the procedure for default hearings:

(a) 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,... 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.

2. T.C.A. §4-3-2008 states:

The Commissioner of Safety has the authority to establish and promulgate such rules and regulations governing the administration and operation of the department as may be deemed necessary by the commissioner and which are not inconsistent with the laws of this state.

3. Rule 1340-2-2-.17 of The Rules of Tennessee Department of Safety sets forth the Department of Safety's procedure for default and uncontested proceedings as follows:

Default and Uncontested Proceedings.

(1) Default. The motion for default may be in writing or oral.

(a) The failure of a party to attend or to participate in a prehearing conference, a party's non-attendance at a second setting of a hearing on the merits in a case or a party's non-attendance at another stage of contested case proceedings after notice thereof are each causes for holding such party in default pursuant to T.C.A. §4-5-309.

(c) In any situation set out in parts (a) and (b) of this rule, a motion may be made to hold the absent party in default and to enter an initial default order or to continue on an uncontested basis.

(e) Upon default by a party, an administrative judge may enter either an initial default order or an order for an uncontested proceeding.

4. Rule 1340-2-2-.17(2)(b) of The Rules of Tennessee Department of Safety, states: "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."

5. The State showed that it obtained service of the notice of the hearing upon the Claimant. The return mail receipt showing that the notice of hearing was mailed to the Claimant was made Exhibit 1 at the hearing.

6. The above referenced seized vehicle upon reasonable belief was used in violation of T.C.A. §55-50-504, §55-10-403, and §40-33-201.

7. It is determined that the Claimant failed to participate in the hearing regarding this matter.

Accordingly, pursuant to the Commissioner's ruling regarding the proper procedure for default proceedings, as set forth in the forfeiture case *In re: Taliaferro*, Docket No. 19.05-049400J (April 12, 2004), the Claimant's claim is **STRICKEN**, the

State's motion for **DEFAULT** is **GRANTED against the Claimant**, and the above caption property is order **FORFETIED** to the seizing agency.

This Initial Order entered and effective this 24th day of August, 2010.

Marion P. Wall
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 24th day of August, 2010.



Thomas G. Stovall, Director
Administrative Procedures Division