



11-17-2009

DEPARTMENT OF SAFETY vs. One 1 1995
Lincoln Town Car Serial No.:
1LNLM81WXS620003, Seized From: Clifford
Nelson, Date of Seizure: May 23, 2009, Claimant:
Clifford Nelson, 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 (1) 1995 Lincoln Town Car
Serial No.: 1LNLM81WXS620003
Seized From: Clifford Nelson
Date of Seizure: May 23, 2009
Claimant: Clifford Nelson
Lien Holder: N/A**

**DOCKET NO: 19.05-105435J
D.O.S. No. J4662**

INITIAL DEFAULT ORDER

This matter was heard in Knoxville, Tennessee on November 17, 2009, before Marion P. Wall, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Attorney Lori Long represented the Department of Safety, and Claimant was not represented by an attorney.

The subject of this hearing was the proposed forfeiture of the above described property for its alleged use in violation of T.C.A. §55-10-401 et seq., §55-50-504 et seq., and §40-33-201 et seq.

Law enforcement officers necessary for the Department of Safety to prove its case did not appear for the hearing. The Claimant, therefore, moved for an order of default and dismissal of the forfeiture warrant. The motion was granted based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Department of Safety has been unable to secure the attendance of law enforcement witnesses necessary to prove its case.

2. Claimant was present and prepared to go forward in defense of this action.

CONCLUSIONS OF LAW AND ANALYSIS

1. The Department of Safety bears the burden of proof as to the use of the above described property in violation of T.C.A. §55-10-401 et seq., and §55-50-504 et seq., Rule 1340-2-2-.15 (4)

2. The A.P.A. authorizes the entry of an order of default if a party fails to participate at a hearing of a contested case. T.C.A. §4-5-309.

3. The Department of Safety, as noted above, is unable to participate in this contested hearing because of the reluctance of the necessary officers to attend and give testimony.

IT IS THEREFORE ORDERED that the Department of Safety is held in default and the forfeiture warrant is dismissed. The seizing agency shall return the above described vehicle to Claimant, and the Department of Safety shall refund any cost bond that may have been filed by Claimant.

This Initial Order entered and effective this 16th day of February, 2010.

Marion P. Wall
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 16th day of February, 2010.



Thomas G. Stovall, Director
Administrative Procedures Division

