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7-20-2010

DEPARTMENT OF SAFETY vs. D.O.S. Case #
K0118 One 2004 Chevrolet Silverado Truck VIN:
1GCEC14X54Z160497, Seized From: Gilberto
Recendez, Seizure Date: 11/17/09, Claimant:
Gilberto Recendez, Lienholder: None Filed Seizing
Agency: Alcoa P.D.

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

IN THE MATTER OF:]	
]	
DEPARTMENT OF SAFETY]	
]	
v.]	DOCKET # 19.05-108612J
]	D.O.S. Case # K0118
One 2004 Chevrolet Silverado Truck]	
VIN: 1GCEC14X54Z160497]	
Seized From: Gilberto Recendez]	
Seizure Date: 11/17/09]	
Claimant: Gilberto Recendez]	
Lienholder: None Filed]	
Seizing Agency: Alcoa P.D.]	

ORDER OF FORFEITURE FOLLOWING SHOW-CAUSE HEARING

This matter was heard in Knoxville, Tennessee on July 20, 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. Ms. Nina Harris, Staff Attorney for the Tennessee Department of Safety, represented the State. The Claimant was not present, either in person or through legal counsel.

This Show-Cause hearing was convened to consider the proposed forfeiture of the subject property based on allegations that its possession and/or receipt by the Claimant was in violation of Tennessee law. 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 seized vehicle, and requesting that a hearing be scheduled to consider that claim.
2. On March 18, 2010, the Department of Safety entered a Settlement Order to return the seized vehicle upon the performance of specified conditions. The Claimant failed to perform according to that Order. 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 that provision of the Order should not be put into effect. The State sent notice of the hearing time and location to the Claimant's attorney by certified mail.
4. The Claimant did not appear at the Show-Cause 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:
 - (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 Show-Cause hearing, as shown by the Postal Service notation [Hearing Exhibit #1], and he failed to appear at the hearing. Pursuant to the cited authority, the Claimant is hereby found to be in default for failing to appear at the Show-Cause hearing.

Accordingly, it is hereby ORDERED that the Claimant's claim is stricken from the record, and dismissed. The Claimant's interest in the seized property is Ordered forfeited to the Seizing Agency, the Alcoa Police Department.

Entered and effective this 27th day of July, 2010.

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 27th day of July, 2010.



Thomas G. Stovall, Director
Administrative Procedures Division