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6-9-2005

DEPARTMENT OF SAFETY vs. DOS Case  
No.D1841 Other: \$1,169.00 in U.S. Currency,  
Seized From: James A. Reed, Seizure Date: May 15,  
2004, Claimant: James A. Reed, Lien Holder: None

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

<b>IN THE MATTER OF:</b>	)	
	)	
<b>DEPARTMENT OF SAFETY</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. 19.01-074707J</b>
	)	<b>DOS Case No.D1841</b>
<b>Other: \$1,169.00 in U.S. Currency</b>	)	
<b>Seized From: James A. Reed</b>	)	
<b>Seizure Date: May 15, 2004</b>	)	
<b>Claimant: James A. Reed</b>	)	
<b>Lien Holder: None</b>	)	

**INITIAL ORDER OF DEFAULT AND DISMISSAL**

This matter was heard on June 9, 2005, before Phillip D. Barber, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety in Knoxville, Tennessee. Will Lundy, Staff Attorney for the Department of Safety, represented the State. Claimant was not present nor represented by counsel.

The subject of this hearing was the proposed forfeiture of the subject property based on allegations that its possession and/or receipt by the Claimant was in violation of the TCA §§55-50-504 & 40-33-201 et seq. 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 its claim

to the subject property was stricken, as supported by the following Findings of Fact and Conclusions of Law.

### **FINDINGS OF FACT**

The Claimant's property was seized pursuant to the law, resulting in the issuance of a Property Forfeiture Warrant. The Claimant filed a claim seeking the return of the property, and requesting that a hearing be scheduled to consider their claims.

A hearing was scheduled for the Claimant to perfect the claim. The Claimant was notified of the hearing time and location by certified mail. See Hearing Exhibit #1.

The Claimant did not appear at the 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**

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.

Department of Safety Regulations governing asset forfeiture hearings also provide:

- (d) No default shall be entered against a claimant for failure to attend [the hearing] except upon proof by the filing of the return receipt card, that the legal division has given notice of the hearing per Rule 1340-2-2-.11(3).
- (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.)

In accordance with the law, as set forth above, it is determined that the State's motion is well-taken. Upon filing a claim for the subject property, the Claimant was notified of the hearing, as shown by Hearing Exhibit #1, and 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 hearing scheduled to consider its claim, as authorized by the cited legal authority.

Accordingly, it is hereby ORDERED that the Claimant's claim is stricken from the record, and dismissed. The subject property is Ordered forfeited to the Seizing Agency for disposition as provided by law.

It is so ordered.

Entered this 20<sup>th</sup> day of July, 2005.

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Phillip D. Barber  
Administrative Law Judge