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8-30-2006

DEPARTMENT OF SAFETY vs. \$2,647.00 in U.S.
Currency, Date of Seizure: July 21, 2005, Claimant:
Wesley D. Brown, Seized From: Wesley D. Brown

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

IN THE MATTER OF:

DEPARTMENT OF SAFETY

v.

**\$2,647.00 in U.S. Currency
Date of Seizure: July 21, 2005
Claimant: Wesley D. Brown
Seized From: Wesley D. Brown**

**DOCKET NO: 19.01-090245J
(D.O.S. Case No. E4081)**

INITIAL DEFAULT ORDER

This matter was heard in Memphis, Tennessee, on August 30, 2006, before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Trey Phillips, Staff Attorney for the Department of Safety, represented the State.

The subject of this hearing was 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.

Wesley Brown, Claimant, did not appear at the hearing. 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. Claimant was sent notice of the hearing by certified mail at his address of record. Claimant was no longer at his address of record with the Tennessee Department of Safety and the

U.S.P.S. was unable to forward his mail. Claimant has no notified the Department of any address change.

2. Claimant did not appear on the day of the hearing, nor did an attorney appear on Claimant's behalf.

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 Claimant'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 above described property is forfeited to the seizing agency.

This Initial Order entered and effective this 18th day of September, 2006.

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this
18th day of September, 2006.


Charles C. Sullivan II, Director
Administrative Procedures Division