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Tennessee Department of State, Opinions from the  
Administrative Procedures Division

Law

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7-12-2006

DEPARTMENT OF SAFETY vs. 0 \$732.00 in  
U.S. Currency, SEIZED FROM: Daniel Cheney  
DATE OF SEIZURE: December 27, 2004  
CLAIMANTS: Daniel Cheney LIENHOLDER:  
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 # 19.01-086271J</b>
	]	<b>D.O.S. # D-7930</b>
<b>\$732.00 in U.S. Currency</b>	]	
<b>SEIZED FROM:</b>	]	<b>Daniel Cheney</b>
<b>DATE OF SEIZURE:</b>	]	<b>December 27, 2004</b>
<b>CLAIMANTS:</b>	]	<b>Daniel Cheney</b>
<b>LIENHOLDER:</b>	]	<b>None</b>

**SECOND ORDER OF DEFAULT AND DISMISSAL**

This matter was heard in Memphis, Tennessee on July 12, 2006, before J. Randall LaFevor, Administrative Judge assigned by the Secretary of State, sitting for the Commissioner of the Tennessee Department of Safety. Mr. Trey Phillips, Staff Attorney for the Tennessee Department of Safety, represented the State. Neither the Claimant nor his legal counsel appeared for the hearing.

This matter was previously scheduled for hearing on January 3, 2006, at which time the Claimant failed to appear, resulting in the entry of an *Initial Default Order* by William J. Reynolds, Administrative Judge, on April 3, 2006. Subsequent to the entry of that Order, a person named Mary Cox Tucker <sup>1</sup> filed a letter with the Administrative Procedures Division, seeking reconsideration of the default order. Based on the contents of that letter, Judge Reynolds granted her request for a new hearing, which was scheduled for July 12, 2006.

The subject of this re-hearing was the proposed forfeiture of U.S. currency based on allegations that its possession and/or receipt by the Claimant was in violation of the

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<sup>1</sup> The letter from Ms. Tucker did not specify the relationship that exists, if any, between her and the Claimant. However, since the Claimant was represented by legal counsel throughout these proceedings, only the Claimant's attorney should have been permitted to file pleadings, including a request for reconsideration, on his behalf. It is unclear from the record why Ms. Tucker was deemed to have standing in this matter. Nonetheless, based on the remand order, a new hearing was convened on July 12, 2006.

Tennessee Drug Control Act. 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 Tennessee Code Annotated § 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 property was seized pursuant to law, resulting in the issuance of a Property Forfeiture Warrant. The Claimant filed a claim seeking the return of the currency, and requesting that a hearing be scheduled to consider that claim.
2. The claim was scheduled for hearing on July 12, 2006, and the Claimant's attorney was notified of the hearing time and location by certified mail.<sup>2</sup>
3. The Claimant did not appear at the hearing.<sup>3</sup> 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 at the *second* setting of a forfeiture hearing 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:
  - (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).

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<sup>2</sup> See Hearing Exhibit # 1.

<sup>3</sup> This was the second (or subsequent) setting of this forfeiture hearing.

(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. The legal impact of striking a claim is to render the claim void *ab initio*, as though it had never been filed.<sup>4</sup> Failure to file a claim results in the forfeiture of the property for disposition as provided by law. *See*, Tennessee Code Annotated § 40-33-206(c).

4. In accordance with the law, as set forth above, it is determined that the State's motion is well-taken. The Claimant was notified of the hearing by certified letter to his attorney of record, as shown by the certified return receipt, and failed to appear at the hearing to pursue his claim. Pursuant to the cited authority, the Claimant is hereby found to be in default for failing to appear at the hearing scheduled to consider his claim.

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

Entered and effective this 2nd day of August , 2006.

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J. Randall LaFevor, Administrative Judge

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<sup>4</sup> The effect of striking a pleading "is to posture the action as if [that pleading] had never been made." *See*, *INVST Financial Group, Inc. v. Chem-Nuclear Systems, Inc.*, 815 F.2d 391, 404 (6th Cir. 1987).

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this 2nd day of August 2006.

Handwritten signature of Charles C. Sullivan, II in cursive script.

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Charles C. Sullivan, II, Director  
Administrative Procedures Division