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7-31-2006

DEPARTMENT OF SAFETY vs. One 1993 Ford
F250VIN NO.: 1FTHX25G1PKB97002, Seized
From: Donald Kotrola, Date of Seizure: January 1,
2006, Claimant: Donald Kotrola, 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 1993 Ford F250
VIN NO.: 1FTHX25G1PKB97002
Seized From: Donald Kotrola
Date of Seizure: January 1, 2006
Claimant: Donald Kotrola
Lien Holder: N/A**

**DOCKET NO: 19.05-092933J
(D.O.S. Case No. E8763)**

INITIAL DEFAULT ORDER

This matter was heard in Chattanooga, Tennessee, on July 31, 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. William Lundy, 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.

Donald Kotrola, 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 to his address of record. This notice was returned unclaimed by the USPS. Further, the returned notice indicated the USPS made at least 3 attempts to deliver the notice over a fifteen day period.

2. Claimant failed to appear on the day of the hearing, nor did his 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.

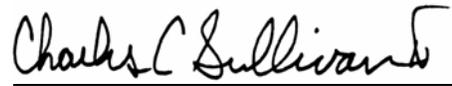
3. The State's motion for default being granted, it is therefore **ordered** that Claimant's **claim be stricken**. The claim being stricken, it is as if no claim had ever been filed, which constructively evokes T.C.A. §40-33-206(c). That section states: "If a claim . . . is not filed with the applicable 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 vehicle is forfeited to the seizing agency.

This Initial Order entered and effective this 16th day of August 2006.

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this
16th day of August 2006.

A handwritten signature in black ink that reads "Charles C. Sullivan, II". The signature is written in a cursive style with a horizontal line underneath the name.

Charles C. Sullivan, II, Director
Administrative Procedures Division