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10-23-2005

DEPARTMENT OF SAFETY vs. \$564.00 in U.S.
Currency, Seized From: Dana Porter, Date of
Seizure: June 19, 2006, Claimant: Dana Porter

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

IN THE MATTER OF:]	
]	
DEPARTMENT OF SAFETY]	
]	
v.]	DOCKET # 19.01-093752J
]	D.O.S. Case # F 3410
\$564.00 in U.S. Currency]	
Seized From: Dana Porter]	
Date of Seizure: June 19, 2006]	
Claimant: Dana Porter]	

INITIAL DEFAULT ORDER

This matter was heard on October 23, 2005, 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 in Memphis, Tennessee. Mr. Joe Bartlett, Staff Attorney for the Tennessee Department of Safety, represented the State. The Claimant was not present and was not represented by counsel.

The subject of this hearing was the proposed forfeiture of the subject currency based on allegations that its possession and/or receipt by the Claimant was in violation of the Tennessee Drug Control Act. The Claimant sought permission to proceed as a pauper, pursuant to Rule 1340-2-2-.07(5)(e), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*. His request was denied by the Commissioner, and he requested a hearing, pursuant to Rule 1340-2-2-.07(5)(g), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*. A hearing was scheduled to consider his request. 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 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. The Claimant filed a *Uniform Civil Affidavit of Indigency*, as provided by Departmental Regulation, requesting permission to proceed as a pauper, without filing a cost bond
2. The Commissioner rejected the "pauper's oath," and the Claimant requested a hearing on the issue of indigence. A hearing on that issue was scheduled and the State sent the Claimant a notice of the hearing time and location by certified mail.
3. The Postal Service was unable to deliver the State's Notice to the Claimant's address of record.¹
4. 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 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 also 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 further provide:

¹ See, *Hearing Exhibit #1*, Notification of Postal Service's failed attempt to deliver the Notice of Hearing.

(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.)

3. Specifically with respect to Indigency/Pauper's Oath hearings, Departmental Regulations provide that a Claimant's failure to pursue a request to proceed as a pauper in a timely manner "is deemed a waiver of claimant's right to a hearing on the improper . . . pauper's oath and shall result in rejection of the claim. . ." Rule 1340-2-2-.07(5)(g), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*. By failing to appear at the hearing, the Claimant is deemed to have abandoned his request for a hearing. Thus, the Commissioner's rejection of his request to proceed as a pauper becomes effective, as of the original date of that rejection.

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, as shown by the certified return receipt, and failed to appear at the hearing to pursue his request for indigency status. Pursuant to the cited authority, the Claimant is hereby found to in default for failing to appear at the hearing scheduled to consider his request to proceed as a pauper. The Claimant's claim is, therefore, not supported by either a proper cost bond or pauper's oath, as required by law, and no contested case proceeding will be convened to consider

his claim. Rule 1340-2-2-.07(5), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*.

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 Memphis Police Department, for disposition as provide by law.

Entered and effective this 1st day of November, 2006.

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 1st day of November, 2006.



Charles C. Sullivan, II, Director
Administrative Procedures Division