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12-6-2011

DEPARTMENT OF SAFETY vs. Cameron Y.
K2550 Smith Two hundred twenty-five \$225.00,
Seized from: Cameron Y. Smith, Seizure date:
February 10, 2010, Claimant: Cameron Y. Smith,
Lien Holder: N/A

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

IN THE MATTER OF:

**Cameron Y. (K2550) Smith
Two hundred twenty-five (\$225.00)
Seized from: Cameron Y. Smith
Seizure date: February 10, 2010
Claimant: Cameron Y. Smith
Lien Holder: N/A**

DOCKET NO: 19.01-115000J

NOTICE OF DEFAULT AND INITIAL ORDER

This matter was set to be heard on December 6, 2011, before Joyce Carter-Ball, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Nina Harris, Staff Attorney for the Department of Safety, represented the Seizing Agency.

The subject of this hearing was the proposed forfeiture of the subject property based on allegations that its possession and/or receipt was in violation TCA §53-11-201 et seq and §40-33-201 et seq. Upon the Claimant's failure to appear at the **show-cause 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 her claim to the subject property was stricken, as supported by the following Finding of Facts and Conclusions of Law.

FINDINGS OF FACT

1. The subject vehicle 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 subject vehicle, and requesting that a hearing be scheduled to consider her claim.

2. The Parties negotiated an agreement to award custody of the subject vehicle to the Claimant upon her compliance with certain conditions. The Claimant failed to comply with the terms of that agreement. In the event of such a failure, the agreement provides for forfeiture of the subject vehicle to the seizing agency.

3. A show-cause hearing was scheduled on December 6, 2011 for the Claimant to demonstrate why the forfeiture provision of the agreement should not be put into effect. The Claimant was notified of the hearing time and location by certified mail.

4. The Claimant did not appear at the show-cause 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 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).

- (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. Department of Safety Rule 1340-2-2-.11(2) provides, in relevant part:

The Department of Safety is entitled to rely upon the address of record in providing notice to a claimant.

- 4. 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 property, a Claimant is treated as a Claimant for the purpose of applying the laws related to property forfeiture. The Claimant was notified of the hearing 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 his 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.

This Initial Order entered and effective this 15th day of December, 2011.

Joyce Carter-Ball
Administrative Judge