



1-12-2012

DEPARTMENT OF SAFETY vs. One 1992
Nissan 240S VIN: JN1MS34P9PW306757,
Seized From: Robert S. Essary, Date of Seizure:
April 20, 2011, Claimant: Robert S. Essary, Lien
Holder: None

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

IN THE MATTER OF:

DEPARTMENT OF SAFETY

v.

**One 1992 Nissan 240S
VIN: JN1MS34P9PW306757
Seized From: Robert S. Essary
Date of Seizure: April 20, 2011
Claimant: Robert S. Essary
Lien Holder: None**

**DOCKET NO: 19.01-115403J
D.O.S. Case No. L5432**

INITIAL ORDER AND NOTICE OF DEFAULT

This matter was heard Jackson, Tennessee, on January 12, 2012, before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Attorney Andre Thomas represented the Department of Safety (Department).

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.

Claimant, Robert S. Essary, did not appear at the hearing. The Department moved that he be held in default and that his claim be stricken. 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. A copy of the postal green card shows Charles J. Essary signed for the notice on December 8, 2011.
2. Claimant failed to appear on the day of the hearing. Nor did an attorney appear on Claimant's behalf.
3. The Department 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 Department'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 Claimant’s claim is stricken, and the above described vehicle be forfeited to the seizing agency.

This Initial Order entered and effective this 7 day of February, 2012

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 7 day of February, 2012



Thomas G. Stovall, Director
Administrative Procedures Division