



2-15-2012

Bays, Victoria D. & Capital One L7129
vs. TENNESSEE DEPARTMENT OF
SAFETY. One 2006 Acura TL VIN NO.:
19UUA655X6A063343, Seized From: Victoria
Davis, Date of Seizure: May 18, 2011, Claimant:
Capital One and Victoria D Bays, Lien Holder:
Capital One

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

IN THE MATTER OF:

**Bays, Victoria D. & Capital One
(L7129)
vs.**

**DOCKET NO: 19.01-115820J
(D.O.S. Case No. L7129)**

**TENNESSEE DEPARTMENT OF
SAFETY**

.

**One 2006 Acura TL
VIN NO.: 19UUA655X6A063343
Seized From: Victoria Davis
Date of Seizure: May 18, 2011
Claimant: Capital One and Victoria D
Bays
Lien Holder: Capital One**

INITIAL DEFAULT ORDER

This matter was heard while sitting in Fall Branch, on Feb. 15th, 2012, before the Honorable Dewayne Bunch, 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 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.

Capital One, 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 at his address of record. A copy of the postal green card shows Josa Pace signed for the notice on Jan. 27th, 2012.
2. Claimant failed to appear on the day of the hearing. Nor did an 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. TCA 4-5-309 provides that if a party fails to attend or participate in a prehearing 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 the failure to attend 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 of 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(b), TENN. COMP. R & REGS, Rules of procedure for asset forfeiture hearings.

3. The Lienholder was notified of the show cause hearing and failed to appear at the hearing. Accordingly the Lienholder is found to be in default by failing to appear at the hearing.

4. 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."

5.

Accordingly, it is hereby ORDERED the Lienholder's claim is DISMISSED and the Auto is awarded to the seizing agency.

This Initial Order entered and effective this 15th day of March, 2012.

Dewayne Bunch
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 15th day of March, 2012.

A handwritten signature in black ink that reads "Thomas G. Stovall". The signature is written in a cursive style with a large, looped initial "T".

Thomas G. Stovall, Director
Administrative Procedures Division