



8-24-2006

DEPARTMENT OF SAFETY, EASTERN
DIVISION, vs. Subject: \$4,335.00 in U.S. Currency,
Seized From: Frankie Gentry, III, Date of Seizure:
September 26, 2005, Claimant: Frankie L. Gentry,
III.

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

IN THE MATTER OF:

**DEPARTMENT OF SAFETY,
EASTERN DIVISION,**

**DOCKET NO: 19.01-093093J
(D.O.S. Case No. E6344)**

v.

**Subject: \$4,335.00 in U.S. Currency
Seized From: Frankie Gentry, III
Date of Seizure: September 26, 2005
Claimant: Frankie L. Gentry, III.**

INITIAL DEFAULT ORDER

THIS MATTER was heard in Chattanooga, Tennessee, on August 24, 2006, before William J. Reynolds, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. William Lundy, Staff Attorney, represented the Department. Claimant failed to appear.

The issue was the proposed forfeiture of the subject property for its alleged use in violation of Tennessee Code Annotated, §§ 53-11-201 et seq. and 40-33-201 et seq.

Neither, Frankie Gentry nor his attorney of record, Donny Young, appeared at the hearing. Therefore, the Department 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 attorney's address of record. A copy of the postal green card shows Donny Young signed the notice.
2. Claimant, nor an attorney, appeared on the day of the hearing.
3. The Department 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."

ENTERED AND EFFECTIVE this 4th day of October, 2006.

W. JAY REYNOLDS
ADMINISTRATIVE JUDGE

FILED in the Administrative Procedures Division, Office of the Secretary of State, this 4th day of October, 2006.



CHARLES C. SULLIVAN, II, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION