



11-7-2007

DEPARTMENT OF SAFETY, WESTERN
DIVISION, vs. One 1996 Cadillac DeVilleVin:
1G6KD52Y5TU257314, Seized From: Larry
Lemons, Seizure Date: 29 April 2007, Claimant:
Mischelle P. Lemons, Lienholder: NoneAgency:
Millington Police Department

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

IN THE MATTER OF:

**DEPARTMENT OF SAFETY,
WESTERN DIVISION,**

v.

**DOCKET NO: 19.01-097419J
DOS DOCKET No: G3127**

**One: 1996 Cadillac DeVille
Vin: 1G6KD52Y5TU257314
Seized From: Larry Lemons
Seizure Date: 29 April 2007
Claimant: Mischelle P. Lemons
Lienholder: None
Agency: Millington Police Department**

INITIAL DEFAULT ORDER

THIS MATTER was heard in Memphis, Tennessee, on 27 November 2007, before William J. Reynolds, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Trey Phillips represented the Department. The claimant, Mischelle P. Lemons, failed to appear.

THE SUBJECT of this hearing 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.*

MISCHELLE P. LEMONS, Claimant, did not appear at the hearing. Therefore, the Department moved for an initial order of default and dismissal of the case. The

motion was granted, and the Department permitted to proceed *ex parte*, 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 her address of record. A copy of the return receipt reveals Larry L. Lemons signed for the notice on or about October 19, 2007.

2. Claimant failed to appear on the day of the hearing. Nor did an attorney appear on Claimant's behalf. The Department forwarded Notice through the U.S. Mail Return Receipt Requested to: Mischelle P. Lemons, 1672 Sadler School Road, Brighton, TN 38011. The same address provided by the Claimant on the "Petition for Hearing" dated May 25, 2007.

3. The returned envelope bears the signature of Larry L. Lemons. The notation on the envelope is deemed "actual and valid service".

4. It appears Mischelle P. Lemons, chose not to pursue her claim by Failing To Appear or otherwise prosecute her claim. Her conduct indicates she voluntarily gave up her sole remedy and opportunity to be heard.

5. *The Rules of Procedure For Asset Forfeiture Hearings, Rule 1340-2-2-.17 (g), provides that "No party shall be required by the administrative judge to call or inquire as to the whereabouts of a missing party."*

6. 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 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 *Tennessee Code Annotated, §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 the subject property be forfeited to the seizing agency and disposed of as provided by law.

ORDERED AND ENTERED this 11th day of December, 2007.

WILLIAM J. REYNOLDS
ADMINISTRATIVE JUDGE

FILED in the Administrative Procedures Division, Office of the Secretary of State, this 11th day of December, 2007.

Handwritten signature of Thomas G. Stovall in black ink.

THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION