



5-10-2007

DEPARTMENT OF SAFETY vs. ONE 1993
Dodge Dakota VIN #: 1B7FL23X9PS266007,
Seized From: Earl R. Osler, Date of Seizure:
December 31, 2006, Claimant: Earl R. Osler,
Lienholder: None Filed

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

IN THE MATTER OF:]	
]	
DEPARTMENT OF SAFETY]	
]	
v.]	DOCKET # 19.05-095543J
]	D.O.S. Case # F 8813
ONE 1993 Dodge Dakota]	
VIN#: 1B7FL23X9PS266007]	
Seized From: Earl R. Osler]	
Date of Seizure: December 31, 2006]	
Claimant: Earl R. Osler]	
Lienholder: None Filed]	

INITIAL DEFAULT ORDER

This matter was heard in Humboldt, Tennessee on May 10, 2007, before J. Randall LaFevor, Administrative Judge assigned by the Secretary of State, Administrative Procedures Division, sitting for the Commissioner of the Tennessee Department of Safety. The Seizing Agency was represented by Mr. Trey Phillips, Staff Attorney for the Department of Safety. The Claimant was not present either in person or through legal counsel.

This hearing was convened to consider the proposed forfeiture of the subject vehicle for a second or subsequent offense of driving under the influence. (TCA §§ 55-10-401 *et seq.* & 40-33-201 *et seq.*) Upon the Claimant's failure to appear at the 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 the claim filed in this matter was stricken, as supported by the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Claimant's vehicle was seized pursuant to law, resulting in the issuance of a Property Forfeiture Warrant. The Claimant filed a claim seeking the return of the vehicle, and requesting that a hearing be scheduled to consider that claim.
2. A hearing on the claim was scheduled for hearing on May 10, 2007, and the State sent the Claimant notification of the hearing time and location by certified mail.
3. The Postal Service was unable to deliver the State's Notice to the Claimant's address of record.¹
4. The Claimant did not appear at the hearing,² 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 at the *second* setting of a forfeiture hearing 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 . . .

¹ See, *Hearing Exhibit #1*, Notification of Postal Service's failed attempt to deliver the Notice of Hearing.

² This was the second (or subsequent) setting of this forfeiture hearing.

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. The legal impact of striking a claim is to render the claim void *ab initio*, as though it had never been filed.³ Failure to file a claim results in the forfeiture of the property for disposition as provided by law. *See*, Tennessee Code Annotated § 40-33-206(c).

4. In accordance with the law, as set forth above, it is determined that the State's motion is well-taken. The State made reasonable efforts to notify the Claimant of the hearing, as shown by the Postal Service notation, and he failed to appear at the hearing to pursue his claim. 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.

Accordingly, it is hereby ORDERED that the Claimant's claim is stricken from the record, and dismissed. The Claimant's interest in the subject property is Ordered forfeited to the Seizing Agency, the Jackson Police Department, for disposition as provided by law.

Entered and effective this 15th day of May, 2007.

J. Randall LaFevor, Administrative Judge

³ The effect of striking a pleading "is to posture the action as if [that pleading] had never been made." *See*, *INVST Financial Group, Inc. v. Chem-Nuclear Systems, Inc.*, 815 F.2d 391, 404 (6th Cir. 1987).

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 15th day of May, 2007.

Handwritten signature of Charles C. Sullivan, II in black ink.

Charles C. Sullivan, II, Director
Administrative Procedures Division