



11-1-2007

DEPARTMENT OF SAFETY, MIDDLE
DIVISION, vs. Subject One U.S.
\$13,555.00. Subject One 1991 Lincoln Towncar
VIN NO.: 1LNCM81WOMY692685, Seized
From: James E. Rucker, Date of Seizure: 31 May
2007, Claimant: Lula J. Rucker, Lien Holder:
None Agency: Maury County Sheriff

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

IN THE MATTER OF:

**DEPARTMENT OF SAFETY,
MIDDLE DIVISION,**

v.

**Subject One: U.S. \$13,555.00.
Subject One: 1991 Lincoln Towncar
VIN NO.: 1LNCM81WOMY692685
Seized From: James E. Rucker
Date of Seizure: 31 May 2007
Claimant: Lula J. Rucker
Lien Holder: None
Agency: Maury County Sheriff**

DOCKET NO: 19.01-097192J

D.O.S. Case No. G3709

INITIAL DEFAULT ORDER

THIS MATTER was heard in Nashville, Tennessee, on 01 November 2007, before William J. Reynolds, Administrative Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Orvil Orr represented the Department. The claimant, Lula J. Rucker, 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.*

LULA J. RUCKER, Claimant, did not appear at the hearing. Therefore, the Department moved for an initial **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 certified return receipt was signed by Berry Hardin on October 2, 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: 3077 Jim Warren Road, Spring Hill, TN 37174. The same address provided by the Claimant on the "Petition for Hearing" dated June 28, 2007.

4. The Return Receipt is signed . The Department was not given an alternative address and has no reason to know the whereabouts of the Claimant.

5. It appears Lula J. Rucker chose not to pursue her claim by not providing a forwarding address to the U. S. Postal Service, nor informing the Department of any change of address, and Failing To Appear or otherwise prosecute her claim. Her conduct indicates she voluntarily gave up her sole remedy and opportunity to be heard.

6. *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."

7. 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 7th day of November, 2007.

WILLIAM J. REYNOLDS
ADMINISTRATIVE JUDGE

FILED in the Administrative Procedures Division, Office of the Secretary of State, this 7th day of November, 2007.

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' and 'S'.

THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION