



3-18-2008

DEPARTMENT OF SAFETY, MIDDLE  
DIVISION, vs. SERGIO VILLARCE  
MARTINEZ, a.k.a. SERGIO vs. MARTINEZ, One  
1995 GMC Safari, Vin: 1GKDM19W0SB544271,  
One 1994 GMC SAFARI, VIN:  
1GKDM19W7RB512458, Seized From: Sergio  
Villrce, Seizure Date: December 29, 2006,  
Claimant: Sergio Villarce, Lienholder: No  
Perfected Lien, Agency: Metro Narcotics Unit

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

**IN THE MATTER OF:**

**DEPARTMENT OF SAFETY,  
*MIDDLE DIVISION,***

**v.**

**SERGIO VILLARCE MARTINEZ,  
*a.k.a. SERGIO V. MARTINEZ,***

**One: 1995 GMC Safari  
Vin: 1GKDM19W0SB544271  
One: 1994 GMC SAFARI  
VIN: 1GKDM19W7RB512458  
Seized From: Sergio Villrce  
Seizure Date: December 29, 2006  
Claimant: Sergio Villarce  
Lienholder: No Perfected Lien  
Agency: Metro Narcotics Unit**

**DOCKET NO: 19.01-098383J  
DOS DOCKET Nos: F9214  
F9215**

**AMENDED INITIAL DEFAULT ORDER**

**THIS MATTER** came to be heard 08 April 2008 on Motion of the Department to correct the Default Order dated 20 March 2008. The Motion was received by the Administrative Procedures Division on April 3, 2008. No response, contact, or pleading has been received.

The matter was heard in Nashville, Tennessee, on 18 March 2008, before William J. Reynolds, Administrative Law 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, Sergio Villarce Martinez, failed to appear. An Initial Order of Default was issued. Therein it inadvertently did not describe the total property to be forfeited. Pursuant to *TRCP, Rule 60* , comes the Department; and

Orvil Orr made Motion To Correct the original Initial Order and forfeit the vehicle described in Department of Safety Case No. F9215, being one 1994 GMC Safari (VIN#1GKDM19W7RB512458), which was inadvertently omitted in the original Initial Order of Default. Said Motion is well taken; and

**IT IS THEREFORE ORDERED** the subject property, i.e. including but not limited to one 1994 GMC Safari (VIN#1GKDM19W7RB512458), is forfeited to the seizing agency to be disposed of as provided by law. Otherwise, the terms and conditions, findings and conclusions, remain in full force and effect and appear as follows:

**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.*

**SERGIO VILLARCE MARTINEZ**, 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 his address of record. A copy of the envelope reveals three attempts at delivery and an “Unclaimed” notation.

2. Neither claimant, nor an attorney, appeared on the day of the hearing. The Department forwarded Notice through the U.S. Mail Return Receipt Requested to him at: Sergio Villarce Martinez, 500 Cheyenne, Lot #298, Madison, TN 37115. The same address provided by the petitioner on his “Petition for Hearing” dated February 15, 2007. Additionally, the Department forwarded Notice to Big Spring Correctional Institute, 2001 Rickabaugh Drive, Big Spring, Texas 79720-7702.

3. The envelopes bear the notation “unclaimed” “return to sender unclaimed unable to forward”. The Department was not given an alternative address and has no reason to know the whereabouts of the Claimant. The notation on the envelope is deemed “actual and valid service” pursuant to *TRCP, Rule 4.05(5)*.

4. It appears Sergio Villarce Martinez, chose not to pursue his claim by Failing To Appear or otherwise prosecute the claim. His conduct indicates he voluntarily gave up his 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 9th day of April, 2008.

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**WILLIAM J. REYNOLDS**  
**ADMINISTRATIVE JUDGE**

**FILED** in the Administrative Procedures Division, Office of the Secretary of State, this 9th day of April, 2008.

A handwritten signature in black ink that reads "Thomas G. Stovall". The signature is written in a cursive style with a large, looping initial 'T' and 'S'.

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**THOMAS G. STOVALL, DIRECTOR  
ADMINISTRATIVE PROCEDURES DIVISION**