



12-4-2008

DEPARTMENT OF SAFETY, EASTERN
DIVISION, vs. One 2001 Ford Ranger Truck, VIN
NO. 1FTYR10C31TA10921, Seized From:
Willard J. Gunter III, Date of Seizure: May 14, 2008,
Claimant: Willard J. Gunter III, Agency: Fentress
County Sheriff's Office, LienHolder: None

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

IN THE MATTER OF:

**DEPARTMENT OF SAFETY,
EASTERN DIVISION,**

v.

**One: 2001 Ford Ranger Truck
VIN NO. 1FTYR10C31TA10921
Seized From: Willard J. Gunter III
Date of Seizure: May 14, 2008
Claimant: Willard J. Gunter III
Agency: Fentress County Sheriff's Office
LienHolder: None**

**DOCKET NO: 19.01-101228J
D.O. S. CASE NO. H2363**

INITIAL DEFAULT ORDER

This Matter was heard in Knoxville, Tennessee on December 4, 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. Lori Long represented the Department. The claimant, Willard J. Gunter III, 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.*

Willard J. Gunter III, 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 his attorney's address of record. A copy of the postal green card shows signature for receipt of notice.

2. The claimant did not appear on the day of the hearing, nor did his attorney appear on Claimant's behalf.

3. It appears Claimant chose not to pursue his claim by Failing To Appear or otherwise prosecute his claim. His conduct indicates he voluntarily gave up his sole remedy and opportunity to be heard.

4. *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."

5. The Department was ready to go forward to prove its case.

6. The subject property appears of record to be unencumbered.

7. Counsel for the Claimant, Randall A. York, indicated, by letter dated August 19, 2008, the matter had been settled. However, as of the date of the hearing an Order had not been received by the Department.

CONCLUSIONS OF LAW AND ANALYSIS

1. *Department of Safety Rule 1340-2-2-.17(1) (d) (e)* 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 is forfeited to the seizing agency.

ORDERED AND ENTERED this 11th day of December, 2008.

WILLIAM J. REYNOLDS
ADMINISTRATIVE JUDGE

FILED in the Administrative Procedures Division, Office of the Secretary of State, this 11th day of December, 2008.



THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION