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12-2-2008

DEPARTMENT OF SAFETY, EASTERN
DIVISION, vs. Property: \$4,416. 00 in U.S.
Currency, Seized From: Timothy Underwood,
Date of Seizure: May 14, 2008, Claimant: Shante D.
Brown, Agency: Knoxville Police Department

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

IN THE MATTER OF:

**DEPARTMENT OF SAFETY,
EASTERN DIVISION,**

v.

**Property: \$4,416. 00 in U.S. Currency
Seized From: Timothy Underwood
Date of Seizure: May 14, 2008
Claimant: Shante D. Brown
Agency: Knoxville Police Department**

**DOCKET NO: 19.01-101229J
D.O. S. CASE NO. H5579**

INITIAL DEFAULT ORDER

This Matter was heard in Knoxville, Tennessee on December 2, 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, Shante D. Brown, 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.*

Shante D. Brown, 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 was permitted to proceed *ex parte*, based on the following findings and conclusions:

FINDINGS OF FACT

1. Claimant was sent notice of the hearing by certified mail at the address of record. A copy of the return receipt reveals "S. Brown" signed for the Notice on November 10, 2008. Accordingly, the evidence is sufficient for actual and valid service.

2. The claimant did not 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: Shante D. Brown, 1117 Twin Hill Lane, Knoxville, TN 37932. This is the same address furnished to the Department from the Claimant on September 8, 2008 on the "Petition For Hearing."

3. It appears Claimant chose not to pursue the claim by Failing To Appear or otherwise prosecute the claim. This conduct indicates voluntarily giving up of the 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.

7. There is no lien of record.

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 10th day of December, 2008.

WILLIAM J. REYNOLDS
ADMINISTRATIVE JUDGE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 10th day of December, 2008.



THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION