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11-6-2008

DEPARTMENT OF SAFETY vs. One 1992 Ford
Explorer, Vin : 1FMDU34X2NUC59129, Seized
From: Leonard Fox, Date of Seizure: February 27,
2008, Claimant: Leonard Fox

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

IN THE MATTER OF:

DEPARTMENT OF SAFETY

v.

**One 1992 Ford Explorer
Vin : 1FMDU34X2NUC59129
Seized From: Leonard Fox
Date of Seizure: February 27, 2008
Claimant: Leonard Fox**

**DOCKET NO: 19.05-100949J
DOS Case No. H1322**

INITIAL ORDER OF DEFAULT AND DISMISSAL

This administrative proceeding was heard on November 6, 2008, in Memphis, Tennessee, before John Hicks, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. Joe Bartlett, Staff Attorney for the Department of Safety, represented the State. Claimant, Leonard Fox, was not present nor represented by counsel.

The subject of this hearing was the proposed forfeiture of the subject vehicle based on allegations that its possession and/or receipt by the Claimant was in violation of the Tennessee Drug Control Act (TCA §53-11-201 & §40-33-201 et seq). Upon the Claimant's failure to appear at the show-cause 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 his claim to the subject property 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 the 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 their claims.

2. The parties negotiated an agreement to award custody of the vehicle to the Claimant upon his compliance with certain conditions. The Claimant failed to comply with the terms of that agreement. In the event of such a failure, the agreement provides for forfeiture of the vehicle to the seizing agency.

3. A show-cause hearing was scheduled on November 6, 2008 for the Claimant to demonstrate why the forfeiture provision of the agreement should not be put into effect. The Claimant was notified of the hearing time and location by certified mail. See Hearing Exhibit #1.

4. The Claimant did not appear at the show-cause hearing 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 state of a contested case, the administrative judge. . . may hold the party in default. . . ." An order holding an absent party in default 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 1340-32-2-.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. .

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. In accordance with the law, as set forth above, it is determined that the State's motion is well taken. Upon filing a claim for property, the Claimant was notified of the hearing, as shown by Hearing Exhibit #1, and failed to appear at the hearing. Pursuant to the cited authority, the Claimant is hereby found to be in default for failing to appear at the hearing scheduled to consider its claim, as authorized by the cited legal authority.

Accordingly, it is hereby ORDERED that the Claimant's claim is stricken from the record and dismissed. The subject property is ORDERED forfeited to the seizing agency for disposition as provided by law.

This Initial Order entered and effective this 3rd day of December, 2008.

John Hicks
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 3rd day of December, 2008.

Thomas G. Stovall, Director
Administrative Procedures Division

NOTICE OF DEFAULT

NOTICE IS HEREBY GIVEN THE CLAIMANT HAS BEEN HELD IN DEFAULT FOR FAILURE TO APPEAR AT A HEARING ON THE MERITS AFTER RECEIVING ADEQUATE NOTICE. T.C.A. §4-5-309. CLAIMANT HAS 15 DAYS FROM THE EFFECTIVE DATE OF THIS ORDER TO REQUEST THAT THIS FINDING OF DEFAULT BE SET ASIDE. SUCH A REQUEST MUST BE DIRECTED TO:

THE OFFICE OF THE SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
WILLIAM R. SNODGRASS TENNESSEE TOWER
312 ROSA L. PARKS AVENUE, 8TH FLOOR
NASHVILLE, TENNESSEE 37243

A REQUEST TO HAVE THE FINDING OF DEFAULT SET ASIDE SHOULD INCLUDE THE REASONS SUFFICIENT TO JUSTIFY THE CLAIMANT'S FAILURE TO ATTEND. IF CLAIMANT DOES NOT REQUEST THE DEFAULT BE SET ASIDE OR OTHERWISE APPEAL THE ACCOMPANYING INITIAL ORDER, THE INITIAL ORDER WILL BECOME A FINAL ORDER SUBJECT TO COURT REVIEW. ANY QUESTIONS REGARDING THIS NOTICE OF DEFAULT OR THE STEPS NECESSARY TO HAVE IT SET ASIDE SHOULD BE SUBMITTED TO THE ADMINISTRATIVE PROCEDURES DIVISION BY LETTER OR BY CALLING (615) 741-7008.