



11-19-2008

DEPARTMENT OF SAFETY, EASTERN
DIVISION, vs. One 1990 Suzuki, VIN NO.
JS1VS51A2L2101998, Seized From: Waymon L.
McMahan, Date of Seizure: May 8, 2008, Claimant:
Waymon L. McMahan, Agency: Warren County
Sheriff's Dept

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

IN THE MATTER OF:

**DEPARTMENT OF SAFETY,
EASTERN DIVISION,**

v.

**One: 1990 Suzuki
VIN NO. JS1VS51A2L2101998
Seized From: Waymon L. McMahan
Date of Seizure: May 8, 2008
Claimant: Waymon L. McMahan
Agency: Warren County Sheriff's Dept.**

**DOCKET NO: 19.05-101099J
D.O. S. CASE NO. H3705**

INITIAL DEFAULT ORDER

This Matter was heard in Chattanooga, Tennessee on November 19, 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, Waymon McMahan, 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 §55-10-401 et seq.* and *§40-33-201 et seq.*

Waymon McMahan, 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 address of record. A copy of the envelope reveals Waymon McMahan signed for the certified mail on October 20, 2008.

2. The claimant did not appear on the day of the hearing, nor did an 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.

7. There is no lien of record.

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 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