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7-8-2008

DEPARTMENT OF SAFETY vs. One 1991 Lexus
LS400, VIN: JT8UF11E5M0086121, Seized
From: Gregory Wheeler, Date of Seizure: February
7, 2008, Claimant: Gregory Wheeler, Lien Holder:
Yates Auto Sales

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

IN THE MATTER OF:

DEPARTMENT OF SAFETY

v.

**One 1991 Lexus LS400
VIN: JT8UF11E5M0086121
Seized From: Gregory Wheeler
Date of Seizure: February 7, 2008
Claimant: Gregory Wheeler
Lien Holder: Yates Auto Sales**

**DOCKET NO: 19.01-099595J
D.O.S. Case No. H1320**

INITIAL DEFAULT ORDER

This matter was heard at Highway Patrol Headquarter in Fall Branch, Tennessee, on July 8, 2008 before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Nina Harris, Staff Attorney for the Department of Safety, represented the State.

The subject of this hearing was the proposed forfeiture of the subject property for its alleged use in violation of T.C.A. §53-11-201 et seq. and §40-33-201 et seq.

Gregory Wheeler, Claimant, did not appear at the hearing. The State therefore moved for an initial **default** and dismissal of the case. The motion was **granted** 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 which was the Washington County Detention City. Said mail was returned as undeliverable with not ability to forward.
2. Claimant failed to appear on the day of the hearing. Nor did an attorney appear on Claimant's behalf.
3. The State had its witnesses available and 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 State'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 T.C.A. §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 that the above described vehicle is forfeited to the seizing agency subject to the lien of Yates Auto Sales.

This Initial Order entered and effective this 25th day of July, 2008.

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 25th day of July, 2008.



Thomas G. Stovall, Director
Administrative Procedures Division