



7-8-2008

DEPARTMENT OF SAFETY vs. One 1994
Crown Ford Victoria, VIN:
2FALP74W0RX119672, Seized From: Matthew
White, Date of Seizure: February 13, 2008,
Claimant: Shaina M. Harvey, Lien Holder: N/A

Follow this and additional works at: http://trace.tennessee.edu/utk_lawopinions

This Initial Order by the Administrative Judges of the Administrative Procedures Division, Tennessee Department of State, is a public document made available by the College of Law Library, and the Tennessee Department of State, Administrative Procedures Division. For more information about this public document, please contact administrative.procedures@tn.gov

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

IN THE MATTER OF:

DEPARTMENT OF SAFETY

v.

**One 1994 Crown Ford Victoria
VIN: 2FALP74W0RX119672
Seized From: Matthew White
Date of Seizure: February 13, 2008
Claimant: Shaina M. Harvey
Lien Holder: N/A**

**DOCKET NO: 19.05-099600J
D.O.S. Case No. H0938**

INITIAL DEFAULT ORDER

This matter was heard at Highway Patrol Headquarters 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. §55-50-504 et seq. and §40-33-201 et seq.

Shaina M. Harvey, 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. A copy of the postal green card shows Dolly Frazier signed for the notice on June 12, 2008.
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.

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