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5-21-2008

, DEPARTMENT OF SAFETY vs. One 1991
Lexus 400, VIN: JT8UF11E2M0047910, One
Tomberlin CrossFire Go-Kart, VIN:
HT8HWK4FX50006784, Seized From: Billy R.
Thompson, Date of Seizure: February 22, 2007,
Claimant: Rosa Thompson, Lien Holder: None

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

IN THE MATTER OF:

Department of Safety,

v.

One 1991 Lexus 400

VIN: JT8UF11E2M0047910

One Tomberlin CrossFire Go-Kart

VIN: HT8HWK4FX50006784

Seized From: Billy R. Thompson

Date of Seizure: February 22, 2007

Claimant: Rosa Thompson

Lien Holder: None

DOCKET NO: 19.01-096971J

D.O.S. Case No. G1213

INITIAL DEFAULT ORDER

This matter was heard in Memphis, Tennessee, on May 21, 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. Joe Bartlett, 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.

Rosa Thompson, 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 her address of record. This mail was returned marked “unclaimed” by the U.S.P.S., and further indicates the U.S.P.S. attempted to deliver and/or left notice of the mail on April 10, 19, and 24.

Claimant had previously been held in default by order entered November 27, 2007, but this order was set aside upon Claimant’s motion to reconsider. Proof of service which prompted the November 27, 2007 order appears to have been signed and accepted by Billy Thompson at Claimant’s address of record. Claimant moved for reconsideration of that default order claiming she did not receive notice of the hearing.

2. Claimant failed to appear on the day of the hearing. Nor did an attorney appear on Claimant’s behalf. The Department has made all reasonable attempts to provide notice of the hearing to Claimant. Claimant has failed to accept her mail after three attempts at delivery.

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 describe vehicles are forfeited to the seizing agency.

This Initial Order entered and effective this 19th day of June, 2008.

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 19th day of June, 2008.



Thomas G. Stovall, Director
Administrative Procedures Division