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6-23-2009

DEPARTMENT OF SAFETY vs. \$3600.00 in U.S.
Currency, Seized from: Steven J. Fuss, Wayne
County Sheriff's Department, Date of Seizure: July
25, 2008, Claimant: Steven J. Fuss

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

IN THE MATTER OF:)	
)	FORFEITURE PROCEEDING
DEPARTMENT OF SAFETY)	
)	
v.)	DOCKET NO. 19.01-102296J
)	DOS No. H5898
\$3600.00 in U.S. Currency)	
Seized from: Steven J. Fuss)	
Wayne County Sheriff's Department)	
Date of Seizure: July 25, 2008)	
Claimant: Steven J. Fuss)	

INITIAL ORDER

This matter was heard on June 23, 2009, in Lawrenceburg, 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. Orvil Orr, Staff Attorney for the Tennessee Department of Safety, represented the State. Claimant Steven J. Fuss was represented by John Conley of Columbia.

The subject of this hearing was the proposed forfeiture of \$3600.00 from Claimant Steven J. Fuss by the Wayne County Sheriff's Department.

After consideration of the record, it is DETERMINED that the subject \$3600.00 should be RETURNED to Claimant Steven J. Fuss. This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On July 25, 2008, the Wayne County Sheriff's Department received a call from the Department of Children's Services (DCS) requesting assistance at Claimant Steven J. Fuss'

residence. DCS employees wanted to interview Claimant's children. Several officers responded including a supervisor with a K-9.

2. A search was not obtained by either the Sheriff's Department or DCS.

3. The DCS employee knocked on the residence door; no answer. DCS employees had checked the other building. The Sheriff's Department nor DCS employees found anybody at home.

4. Chief Gerald Baer told the supervisor to walk the dog around the out houses on the property because he had "a suspicion on some things that was going on down there." Chief Gerald Baer doesn't remember if the K-9 was utilized before or after Claimant arrived home.

5. Claimant Fuss pulled into the driveway and was immediately taken from his vehicle and handcuffed.

6. The search revealed 14.2 grams of marijuana and \$3,600.00.

7. The \$3,600.00 was seized.

CONCLUSIONS OF LAW

1. Pursuant to T.C.A. 53-11-451(a)(6)(A), "Goods subject to forfeiture – Seizure-
Disposition-

(a) The following are subject to forfeiture: ...

(6)(A) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of the Tennessee Drug Control Act of 1989... compiled in parts 3 and 4 of this chapter and title 39, chapter 17, part 4, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act, ... to the extent of the interest of an owner, by reason of any act or omission established by such owner to have been committed or omitted without such owner's knowledge or consent; ..."

2. It is CONCLUDED that the State failed to carry its burden of proof by a preponderance of the evidence, or as the more probable conclusion, that the seized \$3,600.00 are proceeds from the sale of drugs in violation of the Tennessee Drug Control Act, thus making the \$3,600.00 subject to forfeiture, pursuant to the provisions of T.C.A. § 53-11-451(a)(4).

3. It is CONCLUDED that the search of Claimant's premises was a warrant less search and the search was without probable cause.

4. It is CONCLUDED that the 14.2 grams of marijuana was for personal use.

5. It is CONCLUDED that the testimony of Chief Gerald Baer is not credible. This conclusion is based on the witness's demeanor at the hearing, the witness's ability to remember, and the believability of his testimony based on the circumstances in this matter.

6. It is ORDERED that the seized \$3,600.00 in U.S. currency SHALL BE RETURNED to Claimant, Steven J. Fuss.

This Initial Order entered and effective this 25th day of August, 2009.

John Hicks
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State this 25th day of August, 2009.

Thomas G. Stovall, Director
Administrative Procedures