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11-9-2010

TENNESSEE DEPARTMENT OF SAFETY vs.
Davis, Janice A. & Ellis, Mark A. K2086 Five
thousand five hundred \$5,500.00 in U.S. Currency,
Seized From: Rolando Jackson, Date of Seizure:
February 11, 2010, Claimants: Janice Davis & Mark
Ellis, Lienholder: N/A

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

IN THE MATTER OF:

**Davis, Janice A. & Ellis, Mark A.
(K2086)**

**Five thousand five hundred
(\$5,500.00) in U.S. Currency**

Seized From: Rolando Jackson

Date of Seizure: February 11, 2010

Claimants: Janice Davis & Mark Ellis

Lienholder: N/A

DOCKET NO: 19.01-110291J

INITIAL DEFAULT ORDER

This matter was heard in Nashville, Tennessee, on November 9, 2010, before Joyce Carter-Ball, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Orvil Orr, Staff Attorney for the Department of Safety, represented the Seizing Agency.

This hearing was convened to consider the proposed forfeiture of the subject property pursuant to T.C.A. §53-11-201 et seq, 40-33-201 et seq.

The Claimants did not appear at the hearing, either in person or through legal counsel. Counsel for the Department made an oral motion pursuant to T.C.A. §4-5-309, requesting that the Claimants be held in default. The motion was granted based upon the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Claimants' property was seized pursuant to law, resulting in the issuance of a Property Forfeiture Warrant. The Claimants filed a claim seeking the return of the property, and requesting that a hearing be scheduled to consider that claim.
2. The Claimants were sent notice of the hearing by certified mail at their address of record.
3. The Claimants failed to appear on the day of the hearing, November 9, 2010.
4. The State's witnesses were available and ready to go forward to prove its case.

CONCLUSIONS OF LAW AND ANALYSIS

1. Department of Safety Rule 1340-2-2-.11(2) provides, in relevant part:

The Department of Safety is entitled to rely upon the address of record in providing notice to a claimant.
2. 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.
3. Department of Safety Rule 1340-2-2-.17(2) provides, in relevant part:

Upon a default by a claimant, a claimant's claim shall be stricken by initial default order.
4. The State's motion for default being granted, it is therefore **ordered** that the Claimant's **claim is stricken from the record**. 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.”

Accordingly, it is hereby ORDERED that the seized property be **forfeited to the Seizing Agency**.

This Initial Order entered and effective this 23rd day of November, 2010.

Joyce Carter-Ball
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 23rd day of November, 2010.



Thomas G. Stovall, Director
Administrative Procedures Division