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9-20-2010

DEPARTMENT OF SAFETY vs. One 1973 Ford
LTDVIN: 3U64S101770, Seized From: James R.
Goodale, Date of Seizure: November 17, 2008,
Claimant: James R. Goodale, Lien Holder: N/A

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

IN THE MATTER OF:

DEPARTMENT OF SAFETY

v.

One 1973 Ford LTD

VIN: 3U64S101770

Seized From: James R. Goodale

Date of Seizure: November 17, 2008

Claimant: James R. Goodale

Lien Holder: N/A

DOCKET NO: 19.01-109560J

D.O.S. Case No. H8844

INITIAL ORDER AND NOTICE OF DEFAULT

This matter was heard in Nashville, Tennessee, on September 20, 2010, before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Orvil Orr, attorney for the Department of Safety, and Jon Michael, attorney with Metro Nashville Department of Law, represented the seizing agency. Claimant was not present, but his attorney of record, Dana Nero, did appear at the hearing.

This was a “show cause” hearing to determine why the subject vehicle should not be forfeited to the Seizing Agency because the Claimant has failed to comply with the Order of Compromise and Settlement entered on August 26, 2009. The Department moved for an initial order of default and dismissal of Claimant’s claim. The motion was granted based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. This vehicle was seized pursuant to the law, resulting in the issuance of a Property Forfeiture Warrant. The Claimant filed a claim seeking the return of the vehicle, and requesting that a hearing be scheduled to consider the claim.

2. The Parties negotiated an agreement to award possession of the vehicle to the Claimant upon compliance with certain conditions. The Claimant failed to comply with the terms of the agreement. In the event of such a failure, the agreement provides for forfeiture of the vehicle to the seizing agency.

3. A show-cause hearing was set for September 20, 2010, for the Claimant to appear and demonstrate why the forfeiture provision of the agreement should not be put into effect. Claimant was not preset, but his attorney was present for the hearing. Attorney Nero was not able to contest the matter without her client.

4. The Department moved for an order of default as to Claimant and the forfeiture provisions of the parties' agreement be enforced.

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 Commissioner's ruling regarding the proper procedure for default proceedings, as set forth in the forfeiture case *In re: Taliaferro*, Docket No. 19.05-049400J (April 12, 2004), is that the Claimant's claim be stricken.

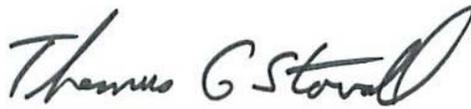
4. The claim being stricken, it is as if no claim had ever been filed, which constructively evokes T.C.A. §40-33-206(c). That section states: "If a claim . . . is not filed with the applicable agency within the time specified . . . the seized property shall be forfeited and disposed of as provided by law."

IT IS THEREFORE ORDERED THAT the Department's motion for default is granted, and the above described vehicle is **FORFEITED** to the seizing agency.

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

Steve R. Darnell
Administrative Law Judge

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



Thomas G. Stovall, Director
Administrative Procedures