



1-7-2009

DEPARTMENT OF SAFETY vs. \$258 in United
States Currency, Seized From: Manuel M.
Gonzalez, Date of Seizure: August 9, 2008,
Claimant: Manuel M. Gonzalez, Lien Holder:
None

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

IN THE MATTER OF:

DEPARTMENT OF SAFETY

v.

**\$258 in United States Currency
Seized From: Manuel M. Gonzalez
Date of Seizure: August 9, 2008
Claimant: Manuel M. Gonzalez
Lien Holder: None**

**DOCKET NO: 19.01-101524J
(D.O.S. Case No. H6031)**

INITIAL DEFAULT ORDER

This matter was heard Knoxville, Tennessee, on January 7, 2009, before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Lori Long, attorney for the Department of Safety, represented the State. Attorney Marcos M. Garza has made an appearance for Claimant.

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.

Manuel M. Gonzalez, Claimant, did not appear at the hearing. Claimant's attorney did appear, but left prior to commencement of the hearing. Attorney Garza apparently is no longer in contact with his client. The State therefore moved for an initial order of **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 to his attorney's address of record. A copy of the postal green card shows that it was signed for and accepted at attorney Garza's office and returned to the Department on December 3, 2008.
2. Claimant failed to appear on the day of the hearing. Claimant's attorney appeared, but did not have contact with his client. Claimant's attorney left prior to the hearing.
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 property is forfeited to the seizing agency.

This Initial Order entered and effective this 5th day of February, 2009.

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 5th day of February, 2009.



Thomas G. Stovall, Director
Administrative Procedures Division