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3-8-2012

DEPARTMENT OF SAFETY vs. ONE 2005 Ford
500, VIN: 1FAFP24145G194735, Seized From:
Kendall McIntosh, Seizure Date: March 8, 2012,
Claimant: Terri McInosh, Seizing Agenc: Memphis
P.D.

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

IN THE MATTER OF:]	
]	
DEPARTMENT OF SAFETY]	
]	
v.]	DOCKET NO. 19.05-117664J
]	D.O.S. Case NO. M4453 and M4454
ONE 2005 Ford 500]	
VIN: 1FAFP24145G194735]	
Seized From: Kendall McIntosh]	
Seizure Date: March 8, 2012]	
Claimant: Terri McIntosh]	
Seizing Agency: Memphis P. D.]	

INITIAL ORDER OF DEFAULT & DISMISSAL

This matter was heard in Memphis, Tennessee on July 23, 2012, before Lynn M. England, Administrative Judge assigned by the Secretary of State, Administrative Procedures Division, sitting for the Commissioner of the Tennessee Department of Safety. Mr. Andre' Thomas, Staff Attorney for the Tennessee Department of Safety, represented the State. The Claimant was not present, either in person or through legal counsel.

The subject of this hearing was the proposed forfeiture of the subject vehicle for its alleged use or intended use to transport or in any manner facilitate the transportation, sale or receipt of drugs. (TCA §§ 53-11-451(a)(4)& 40-33-201 *et seq.*) Upon the Claimant's failure to appear at the hearing, counsel for the State made an oral motion for an order finding the Claimant to be in default, pursuant to TCA § 4-5-309. Upon full consideration of the evidence received at the hearing and the entire record in this case, the State's motion was granted. The Claimant was found to be in default, and the claim filed in this matter was stricken, as supported by the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Claimant's vehicle was seized pursuant to 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 that claim.
2. The parties negotiated an agreement to return the vehicle to the Claimant upon payment of an agreed-upon sum by a specified date. The Claimant failed to comply with the terms of that agreement. In the event of such a failure, the agreement/order provides for forfeiture of the vehicle to the seizing agency.
3. A show-cause hearing was scheduled for the Claimant to demonstrate why the forfeiture provision of the agreement should not be put into effect. The State sent notice of the hearing time and location to the Claimant by certified mail.¹
4. The Claimant did not appear at the hearing, and was not otherwise represented. Based on the Claimant's failure to appear, the State made an oral motion for the entry of an Order of Default.

CONCLUSIONS OF LAW and ANALYSIS

1. Tennessee Code Annotated § 4-5-309(a) provides that "if a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the administrative judge . . . may hold the party in default . . ." An order holding an absent party in default at the *second* setting of a forfeiture hearing is authorized by Rule 1340-2-2-.17(1)(a), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*.
2. Department of Safety Regulations governing asset forfeiture hearings also provide:
 - (d) No default shall be entered against a claimant for failure to attend [the hearing] except upon proof by the filing of the return receipt card, that the legal division has given notice of the hearing per Rule 1340-2-2-.11(3).
 - (e) Upon default by a party, an administrative judge may enter either an initial default order or an order for an uncontested proceeding . . .

¹ See, Hearing Exhibit # 1.

Rule 1340-2-2-.17(1), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*.

And, that

Upon a default by a claimant, a **claimant's claim shall be stricken by initial default order**, or, if the agency requests, the agency may proceed uncontested.

See, Rule 1340-2-2-.17(2)(b), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*. (Bold emphasis added.)

3. In accordance with the law, as set forth above, it is determined that the State's motion is well-taken. The Claimant was notified of the hearing, as shown by Hearing Exhibit #1, and failed to appear at the hearing to pursue her claim. Pursuant to the cited authority, the Claimant is hereby found to be in default for failing to appear at the hearing scheduled to consider her claim, as authorized by the cited legal authority.

Accordingly, it is hereby ORDERED that the Claimant's claim is stricken from the record, and dismissed. The Claimant's interest in the subject property is Ordered forfeited to the Seizing Agency, the Memphis Police Department, for disposition as provided by law, subject to the interest to he lienholder, CAC..

Entered and effective this 10 day of August, 2012

Lynn M. England
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 10 day of August, 2012

Thomas G. Stovall, Director
Administrative Procedures Division

