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Law

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12-5-2012

DEPARTMENT OF SAFETY vs. One 1990  
Honda Civic, VIN NO.: 1HGED3647LA090723,  
\$7.00 in U.S. Currency, One EVO Cellphone,  
Seized From: Samantha Yarborough, Date of  
Seizure: February 8, 2012, Claimant: Samantha  
Yarborough, Lien Holder: N/A

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**BEFORE THE COMMISSIONER OF THE TENNESSEE  
DEPARTMENT OF SAFETY AND HOMELAND SECURITY**

**IN THE MATTER OF:**

**DEPARTMENT OF SAFETY**

**v.**

**One 1990 Honda Civic  
VIN NO.: 1HGED3647LA090723  
\$7.00 in U.S. Currency  
One EVO Cellphone  
Seized From: Samantha Yarborough  
Date of Seizure: February 8, 2012  
Claimant: Samantha Yarborough  
Lien Holder: N/A**

**DOCKET NO: 19.01-119356J  
(D.O.S. Case No. M4012)**

**INITIAL DEFAULT ORDER**

This matter was heard in Knoxville, Tennessee, on December 5, 2012, before Rob Wilson, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Nina Harris, Staff Attorney for the Department of Safety, represented the State.

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.

Samantha Yarborough, Claimant, did not appear at the hearing. The State therefore moved for an initial **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 at her address of record. A copy of the postal green card shows Michele Yarborough signed for the notice on October 31, 2012.
2. Claimant failed to appear on the day of the hearing. Nor did an attorney appear on Claimant's behalf.
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.”

Accordingly, the 1990 Honda Civic, the U.S. Currency, and the cellphone are all forfeited to the seizing agency.

This Initial Order entered and effective this 18 day of December, 2012

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Rob Wilson  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this 18 day of December, 2012



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Thomas G. Stovall, Director  
Administrative Procedures Division