



12-3-2012

DEPARTMENT OF SAFETY vs. One 2000
Chevrolet Tahoe (CTA), VIN:
1GNEC13R74R168679, Seized From: Davoris
Banks, Date of Seizure: April 2, 2012, Claimant:
Davoris Banks, Lien Holder: Did Not File

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

IN THE MATTER OF:

DEPARTMENT OF SAFETY

v.

One 2000 Chevrolet Tahoe (CTA)¹

VIN: 1GNEC13R74R168679

Seized From: Davoris Banks

Date of Seizure: April 2, 2012

Claimant: Davoris Banks

Lien Holder: Did Not File²

DOCKET NO: 19.01-119176J

D.O.S. Case No. M5474

INITIAL ORDER AND NOTICE OF DEFAULT

This matter came for hearing in Nashville, Tennessee on December 3, 2012, before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Attorney Hillary Edwards represented the Department of Safety.

This is a show cause hearing for Claimant to appear and show why he failed to comply with a settlement agreement he previously entered into with the Department.

Claimant nor his attorney appeared for the hearing. The Department moved for an initial order holding Claimant in **default** and that Claimant's claim be stricken. The motion was **granted** based upon the following findings of fact and conclusions of law.

¹ \$490 in U.S. currency, a TV, an X-Box, and a Playstation 3 were also seized. No claim was filed for this property and the Commissioner's designee entered an order forfeiting this property on August 22, 2012.

² The Department's technical record indicates Derrick Teal held a lien on this vehicle, but failed to file the necessary paperwork to protect his interest. Teal's interest is forfeited by operation of law.

FINDINGS OF FACT

1. Notice of the hearing was delivered to Claimant's attorney. This notice was received by attorney Burton's office on November 5, 2012. The Department is entitled to a rebuttable presumption that Claimant received notice of the hearing under its rule set forth below.

2. Claimant failed to appear on the day of the hearing. Nor did an attorney appear on Claimant's behalf.

3. Claimant entered into a settlement agreement with the department that obligated him to pay the Department \$6,700 in cash to gain the return of this seized vehicle. This agreement was effective August 22, 2012. The agreement allowed Claimant 30 days to make this payment. The agreement provided that if the payment was not made in 30 days the vehicle would be forfeited to the seizing agency.

4. Claimant failed to make the payment of \$6,700, and the Department set this show cause hearing seeking forfeiture of the vehicle. The Department 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-.11 provides as follows:

(1) At a reasonable time prior to a hearing, a "Notice of Hearing" shall be filed by the Legal Division and served on all parties, per Rule 1340-2-2-.03(4).

(2) In serving a "Notice of Hearing," the Legal Division shall rely upon the addresses of record as given by a claimant or by claimant's counsel. Proof of service per Rule 1340-2-2-.03(4) to the addresses of record shall establish a rebuttable presumption that claimant or claimant's counsel received notice of the hearing date. (Emphasis added).

(3) Notice of hearing for a second or subsequent setting of the hearing will be by certified mail, return receipt requested. The return receipt card may be filed with the Legal Division and serve as a record of notification.

(4) All claims filed against a specific seized property shall be consolidated for a single hearing.

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) states, in relevant part:

Upon a default by a claimant, a claimant's claim shall be stricken by initial default order.

The Department'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 vehicle be forfeited to the seizing agency.

This Initial Order entered and effective this 23 day of January, 2013

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 23
day of January, 2013

A handwritten signature in black ink that reads "Thomas G. Stovall". The signature is written in a cursive style with a large, sweeping initial 'T'.

Thomas G. Stovall, Director
Administrative Procedures Division