



11-26-2012

DEPARTMENT OF SAFETY vs. One Apple
Computer, Monitor, Keyboard, and Piano
Keyboard, Serial No. N53390GRNAF, Seized
From: Derrick S. Holden, Date of Seizure: June 14,
2011, Claimant: Derrick S. Holden, Lien Holder:
None

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

IN THE MATTER OF:

DEPARTMENT OF SAFETY

v.

**One Apple Computer, Monitor,
Keyboard, and Piano Keyboard
Serial No. N53390GRNAF
Seized From: Derrick S. Holden
Date of Seizure: June 14, 2011
Claimant: Derrick S. Holden
Lien Holder: None**

**DOCKET NO: 19.01-119184J
D.O.S. Case No. L6801**

INITIAL ORDER AND NOTICE OF DEFAULT

This matter came for hearing in Nashville, Tennessee on November 26, 2102, before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Attorneys Joe Bartlett and Hillary Edwards represented the Department of Safety.

This is an action to forfeit the subject property for its alleged use in violation of T.C.A. §53-11-201 et seq. and §40-33-201 et seq. Claimant entered into a settlement agreement with the Department on January 13, 2012, but has failed to comply with the terms of the agreement. The Department set this hearing for Claimant to appear and show why the property should not be forfeited to the seizing agency.

Claimant did not appear for the hearing. The Department therefore 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.

FINDINGS OF FACT

1. Claimant was sent notice of the hearing by certified mail at his address of record. 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 date of the hearing. Nor did an attorney appear on Claimant's behalf.
3. 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 Apple computer and attachments are 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



Thomas G. Stovall, Director
Administrative Procedures Division