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11-28-2012

DEPARTMENT OF SAFETY vs. Claimant: James J. Cunningham

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

IN THE MATTER OF:

DEPARTMENT OF SAFETY

v.

**One 1983 Chevrolet Pickup
VIN No.: 1GCFC24H0DF341835
Seized From: James J. Cunningham
Date of Seizure: February 10, 2012
Claimant: James J. Cunningham
Lienholder: N/A**

**DOCKET NO: 19.05-119246J
DOS No. M5700**

INITIAL ORDER

This administrative proceeding was set to be heard November 28, 2012, in Chattanooga, Tennessee, before Bettye Springfield, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. Attorney Alyson Kennedy, with the Department of Safety, represented the State. The Claimant was not present nor was counsel present on the Claimant's behalf.

The subject of this proceeding was the proposed forfeiture of the subject vehicle, seized for operation by an individual for driving a motor vehicle under the influence of an intoxicant (DUI), 2nd offense, in violation of T.C.A. §55-10-401, §55-10-403, 40-33-201, *et seq.*

Because the Claimant was not present, counsel for the State present proof, pursuant to T.C.A. §4-5-309, for finding the Claimants to be in default. In support of its motion, the State submitted evidence that notice of hearing was mailed to the Claimant by Certified Mail and was duly delivered. Based on this evidence, it is determined that the State properly served the notice of hearing upon the Claimant. Therefore, the Claimant is found in default.

The Motion for Default is granted, pursuant to Rule 1340-2-2.17(1)(a) of the Department of Safety, which provides that a party's non-attendance at a second setting of a hearing on the merits after notice thereof is cause for holding such party in default. Pursuant to Rule 1340-2-2.17(2)(b), "[u]pon 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." The State elected to have the Claimant's claim stricken.

Accordingly, it is ORDERED that the claim of the Claimant be STRICKEN, and that the interest of the Claimant in the subject property be FORFEITED to the State.

This Initial Order entered and effective this 25 day of February, 2013

Bettye Springfield
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 25 day of February, 2013

Thomas G. Stovall, Director
Administrative Procedures Division