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February 2013

Department of Safety vs. \$1,916.00 in U.S. currency,
Seized From: Kenneth L. Hodges, Date of Seizure:
July 21, 2012, Claimant: Kenneth L. Hodges, Lien
Holder: None

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

IN THE MATTER OF:

Department of Safety

v.

\$1,916.00 in U.S. currency
Seized From: Kenneth L. Hodges
Date of Seizure: July 21, 2012
Claimant: Kenneth L. Hodges
Lien Holder: None

DOCKET NO: 19.01-120126J
D.O.S. Case No. M9290

INITIAL ORDER AND NOTICE OF DEFAULT

This matter was heard Jackson, Tennessee, on February 13, 2013, before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Joe Bartlett, Staff Attorney for the Department of Safety, represented the Department.

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.*

Claimant, Kenneth L. Hodges, did not appear at the hearing. The Department therefore moved for an initial order holding Claimant in **default** and striking his claim. 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. A copy of return receipt shows Estella Smith signed for the notice on January 4, 2013.
2. Claimant failed to appear on the day 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-.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 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 \$1,916.00 in U.S. currency is forfeited to the seizing agency.

This Initial Order entered and effective this 19 day of March, 2013

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 19 day of March, 2013



Thomas G. Stovall, Director
Administrative Procedures Division