



4-12-2013

DEPARTMENT OF SAFETY vs. One 1996
Dodge Intrepid, VIN: 2B3HD46T2TH270896,
Seized From: Arch C. Evans, Date of Seizure: July
24, 2012, Claimant: Lilly Title Loans, Lienholder:
Lilly Title Loans

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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 1996 Dodge Intrepid
VIN: 2B3HD46T2TH270896
Seized From: Arch C. Evans
Date of Seizure: July 24, 2012
Claimant: Lilly Title Loans
Lienholder: Lilly Title Loans**

**DOCKET NO: 19.05-120832J
D.O.S. Case No. M9681**

INITIAL ORDER AND NOTICE OF DEFAULT

This matter was heard on April 12, 2013 at the Highway Patrol Headquarters in Fall Branch, Tennessee, before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety and Homeland Security (Department). Attorney Nina Harris was present on behalf of the Department. No one appeared for the hearing on behalf Lienholder.

This was a “show cause” hearing to determine why the subject vehicle should not be forfeited to the seizing agency because Lienholder failed to take possession of the vehicle. The Department moved for an initial order holding Lienholder in default and further requested that Lienholder’s claim be stricken from the record and its interested forfeited to the seizing agency. The motion was granted based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. This vehicle was seized pursuant to the law, resulting in the issuance of a property forfeiture warrant. Lienholder, Lilly Title Loans, filed the proper paperwork to protect its lien and secure a claim to the vehicle.
2. By order entered January 24, 2013, the interest of Arch Evans in this vehicle was forfeited to the seizing agency subject to Lienholder's interest. This order provided, "if lienholder fails to take custody of the captioned vehicle on or before thirty (30) days from the date of this order, this matter shall be brought up on motion by the seizing agency for the lienholder to show cause why their interest should not be forfeited."
3. This show-cause hearing was set for April 12, 2013, for Lienholder to appear and demonstrate why the forfeiture provision of the previous order should not be put into effect.
4. Lienholder's representative signed for and accepted notice of the hearing on March 19, 2013. No one appeared at the hearing on Lienholder's behalf.
5. The Department moved for an order holding Lienholder in default and that the forfeiture provisions of the previous order be enforced.

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.

4. The Commissioner's ruling regarding the proper procedure for default proceedings, as set forth in the forfeiture case *In re: Taliaferro*, Docket No. 19.05-049400J (April 12, 2004) is that the Claimant's claim be stricken.

5. 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 Department's motion for default is granted, Lienholder's claim is stricken, and the above described vehicle is **FORFEITED** to the seizing agency.

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

Steve R. Darnell
Administrative Law Judge

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

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

Thomas G. Stovall, Director
Administrative Procedures