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5-1-2013

Department of Safety vs. Roxanne R. Percival

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**BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF SAFETY AND HOMELAND SECURITY**

IN THE MATTER OF:

**One 1994 Honda Accord
VIN NO.: 1HGCD556XRA078712
Seized From: Roxanne Percival
Date of Seizure: July 12, 2012
Claimant: Roxanne Percival
Lien Holder:**

**DOCKET NO: 19.01-120525j
(D.O.S. Case No. M8972)**

INITIAL DEFAULT ORDER

This matter was heard in Nashville, Tennessee, on March 12, 2013, before Lynn M. England, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Hillary Edwards, Staff Attorney for the Department of Safety, represented the State.

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.

Roxanne Percival, Claimant, did not appear at the hearing. The State therefore moved for an initial **default** and dismissal of the case. 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 the postal green card shows February 15, 2013 the Notice was returned as undeliverable.
2. Claimant failed to appear on the day of the hearing. Nor did an attorney appear on Claimant's behalf.
3. The State 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:

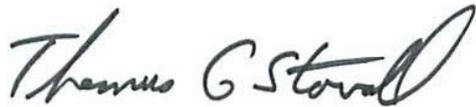
Upon a default by a claimant, a claimant's claim shall be stricken by initial default order.
3. The State's motion for default being granted, it is therefore **ordered** that Claimant's **claim be stricken**. The claim being stricken, it is as if no claim had ever been filed, which constructively evokes 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.”

This Initial Order entered and effective this _____ day of _____ 2013.

Lynn M. England
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this _____ day of _____ 2013.



Thomas G. Stovall, Director
Administrative Procedures Division