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Department of Safety vs. Robert A. Snelling & City Car Inc

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

IN THE MATTER OF:

One 2003 GMC Sierra
VIN: 1GTEK19T23E223599
\$86.00 US Currency and miscellaneous
personal property
Seized from: Robert Snelling
Date of Seizure: December 10, 2011
Claimant: Robert Snelling
Lienholder: City Car, Inc.

DOCKET NO: 19.01-121018J
DOS NO: M2013

INITIAL ORDER

This matter was set to be heard on April 29, 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. Nina Harris, Staff Attorney for the Department of Safety, represented the Seizing Agency. No one was present on behalf of the Claimant, Robert Snelling.

This hearing was held to allow the Claimant's attorney, Erik Herbert, to show cause why he failed to pay the administrative cost bond associated with this matter.

Mr. Herbert, counsel for Claimant, did not appear at the hearing. The State therefore moved for an initial **default** against Mr. Herbert. The motion was **granted** based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The aforementioned property was seized pursuant to law, resulting in the issuance of a Property Forfeiture Warrant.

2. A Petition for hearing along with surety for the cost bond was filed with the Department of Safety on January 11, 2012 by Erik R. Herbert, attorney for Robert Snelling.

2. An order of delegation and forfeiture was issued by Deborah Martin, Commissioner's Designee on November 13, 2012 as to the 2003 GMC Sierra. The Order states that "Administrative costs be taxed against the Petitioner (Robert Snelling).

3. The parties entered into a settlement agreement regarding the return of the personal property.

4. On October 16, 2012, the Department of Safety sent letters to Mr. Herbert notifying him that the administrative costs in this matter have not been paid.

5.

3. A show-cause hearing was scheduled on April 29, 2013 to allow Mr. Herbert to present evidence why the cost bond has not been paid. On March 12, 2013, Mr. Herbert was mailed notice of the hearing time and location

4. Mr. Herbert failed to appear at the hearing.

5. Based on his failure to appear, the State made an oral motion for the entry of an Order of Default against him.

CONCLUSIONS OF LAW

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. Department of Safety Rule 1340-2-2-.07, (6) Debarment. No check, surety, or bond shall be accepted from any person that has failed to pay costs pursuant to a previous cost bond within thirty (30) days of notice by the department to pay. A claim accompanied by a cost bond from a debarred

attorney or bonding company shall not commence a contested case proceeding.

4. The State's motion for default being granted, it is therefore **ordered** that the Erik Herbert, attorney for the Claimant pay the \$350.00 cost bond for which he signed as surety.

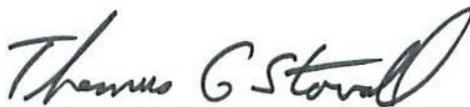
5. Failure to pay the cost bond within thirty (30) days of the date of this order shall result in Mr. Herbert not being allowed to post as surety with the Department of Safety in the future pursuant to Department of Safety Rule 1340-2-2-.07 (6).

It is so ORDERED.

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