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5-9-2013

Department of Safety vs. Gloria Davis & Citi Financial Auto

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

IN THE MATTER OF:

**TENNESSEE DEPARTMENT
OF SAFETY**

vs.

**One 2006 Nissan Sentra
VIN: 3N1CB51D26L529955
Seized From: Frederick Lewis
Date of Seizure: 4/9/12
Claimant: Gloria Davis
Lienholder: CitiFinancial Auto**

**DOCKET # 19.01-121036J
DOS # M5621**

ORDER GRANTING SHOW-CAUSE DEFAULT

This matter was heard in Memphis, Tennessee on April 25, 2013, before Rob Wilson, Administrative Judge assigned by the Secretary of State, Administrative Procedures Division, sitting for the Commissioner of the Tennessee Department of Safety. Andre Thomas, Staff Attorney for the Tennessee Department of Safety, represented the State. The Lienholder was not present, either in person or through legal counsel.

Upon the Lienholder's failure to appear at the hearing, counsel for the State made an oral motion for an order finding the Lienholder to be in default, pursuant to TCA § 4-5-309. Upon full consideration of the evidence received at the hearing and the entire record in this case, the State's motion was granted. The Lienholder was found to be in default, and the claim filed in this matter was stricken, as supported by the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Claimant's vehicle was seized pursuant to law, resulting in the issuance of a Property Forfeiture Warrant. The Claimant filed a claim seeking the return of the vehicle, and requesting that a hearing be scheduled to consider that claim.
2. On October 2, 2012, the vehicle was forfeited subject to the lien of CitiFinancial Auto. CitiFinancial Auto failed to take custody of the vehicle.
3. A show-cause hearing was scheduled for the lienholder to demonstrate why the forfeiture provision of the agreement should not be put into effect. The State sent notice of the hearing time and location to the lienholder by certified mail.
4. Neither the lienholder nor an attorney representing the lienholder appeared for the hearing. Based on the lienholder's failure to appear, the State made an oral motion for the entry of an Order of Default.

CONCLUSIONS OF LAW and ANALYSIS

1. Tennessee Code Annotated § 4-5-309(a) provides that "if a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the administrative judge . . . may hold the party in default . . ." An order holding an absent party in default at the *second* setting of a forfeiture hearing is authorized by Rule 1340-2-2-.17(1)(a), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*.
2. Rule 1340-2-2-.17(1), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*.
And, that

Upon 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.

See, Rule 1340-2-2-.17(2)(b), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*. (Bold emphasis added.)

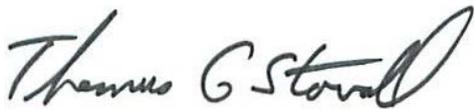
3. In accordance with the law, as set forth above, it is determined that the State's motion is well-taken. The lienholder was notified of the hearing, and failed to appear at the hearing to pursue its claim. Pursuant to the cited authority, the lienholder is hereby found to be in default for failing to appear at the hearing scheduled to consider its claim, as authorized by the cited legal authority.

Accordingly, it is hereby ORDERED that the lienholder's claim is stricken from the record, and dismissed. The lienholder's interest in the 2006 Nissan Sentra is ordered forfeited to the Seizing Agency.

Entered and effective this _____ day of _____, 2013.

Rob Wilson, 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