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Department of Safety vs. William C. McKinnon

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

IN THE MATTER OF:

TENNESSEE DEPARTMENT OF SAFETY

v.

**William McKinnon
Four Thousand Five Hundred Eighty Dollars
(\$4580)
Seized From: William McKinnon
Seizure Date: August 22, 2012
Claimant: William McKinnon**

DOCKET NO: 19.01-121210J

DOS CASE NO: N0172

NOTICE OF DEFAULT and INITIAL ORDER

This matter was set to be heard on May 9, 2013, before Kim Summers, Administrative Judge, assigned by the Secretary of State to sit for the Commissioner of the Tennessee Department of Safety. The State of Tennessee was represented by Alyson Kennedy, attorney for the Department of Safety.

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*.

The Claimant did not appear at the hearing. The State has, therefore, moved for an initial **DEFAULT** and dismissal of the case and elected to have the Claimant's claim stricken without proceeding with an uncontested hearing.

The motion for default is hereby **GRANTED** based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The property at issue was seized pursuant to law, resulting in the issuance of a Property Forfeiture Warrant. The Claimant filed a claim seeking the return of the property and requested that a hearing be scheduled to consider that claim.
2. Claimant was sent notice of the hearing by certified mail at the address of record. Postal records indicate that the notice was delivered and signed for on April 5, 2013.
3. Claimant did not appear on the day of the hearing, no attorney appeared on the Claimant's behalf, and no continuance had been requested.
4. The State had its witnesses available and was ready to proceed with the case.

CONCLUSIONS OF LAW AND ANALYSIS

1. Department of Safety Rule 1340-2-2-.11(2) provides:

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.
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)(b) states, in relevant part:

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.

4. The State's motion for default having been granted, it is therefore **ORDERED** that Claimant's **CLAIM BE STRICKEN**. The claim having been stricken, it is as if no claim had ever been filed, evoking T.C.A. § 40-33-206(c), which specifies that "If a claim . . . is not filed with the applicable agency within the time specified by this part, the seized property shall be forfeited and disposed of as provided by law."

5. Based upon the foregoing, it is hereby **ORDERED** that the matter be **DISMISSED**, and the Claimant's interest in the subject property be **FORFEITED** to the seizing agency.

6. For good cause, the Claimant may move to have the default set aside no later than ten (10) days after service of the order.

The policy reasons for this decision are to uphold the laws of the State of Tennessee while providing appropriate protections for the property rights of individuals.

This INITIAL ORDER entered and effective this the _____ day of _____ 2013.

JK Summers

KIM SUMMERS
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

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



THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE