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Department of Safety vs. Robert F. Jr. Decker

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

In the matter of:

**TENNESSEE DEPARTMENT
OF SAFETY,**

)
)
)
) **Docket No. 19.05-120046J**
)
)

) **Department of Safety**
) **Case No. M8913**
)
)

v.

)
)
) **2006 FORD F150**
) **VIN #1FTRF12W76NA26281**
) **SEIZED FROM: ROBERT F. DECKER, JR.**
) **SEIZURE DATE: JULY 15, 2012**
) **CLAIMANT: ROBERT F. DECKER, JR.**
) **LIENHOLDER: N/A**
)

**INITIAL ORDER GRANTING
STATE'S MOTION FOR DEFAULT
AND
FORFEITURE OF VEHICLE**

NOTICE OF DEFAULT

This matter came on to be heard on February 5, 2013, before Joyce Grimes Safley, Administrative Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety in Memphis, Tennessee. Mr. André Thomas, attorney for the Department of Safety, represented the Department of Safety or the State. Claimant was not present, nor was anyone present on his behalf.

The subject of this hearing was the proposed forfeiture of the above referenced vehicle seized for its alleged use in violation of Tennessee's DUI statutes, for alleged use of this vehicle in violation of T.C.A §55-50-504 (driving a vehicle on a revoked license due to DUI).

FINDINGS OF FACT

1. The State showed that it had served notice of the hearing upon the Claimant via Certified Mail (return receipt requested).

2. Claimant did not accept the Notice of Hearing via Certified Mail, and the Notice of Hearing was returned to the Department of Safety.

3. Rule 4.04 (11) of the *TENNESSEE RULES OF CIVIL PROCEDURE* addresses service of notice when such notice is mailed by return-receipt mail and is returned “unclaimed”. It states as follows:

When service of a summons, process, or notice is provided for or permitted by registered or certified mail under the laws of Tennessee and the addressee or the addressee’s agent refuses to accept delivery and it is so stated in the return receipt of the United States Postal Service, the written return receipt if returned and filed in the action shall be deemed an actual and valid service of the summons, process, or notice. Service by mail is complete upon mailing. For purposes of this paragraph, the United States Postal Service notation that a properly addressed registered or certified letter is “unclaimed,” or other similar notation, is sufficient evidence of the defendant’s refusal to accept delivery. [effective July 1, 2004.]

4. It is determined that the State made reasonable and proper efforts to serve the notice upon the Claimant.

5. It is determined that the State complied with applicable laws and regulations regarding notice to claimant, and took all reasonable steps to serve Claimant.

6. Claimant did not appear at the hearing, nor did anyone appear on her behalf.

CONCLUSIONS OF LAW

1. The Administrative Procedures Act, T.C.A. §4-5-309, sets forth the procedure for default hearings:

(a) If a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the administrative judge or hearing officer, hearing the case alone,... may hold the party in default and either adjourn the proceedings or conduct them without the participation of that party, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

2. T.C.A. §4-3-2008 states:

The Commissioner of Safety has the authority to establish and promulgate such rules and regulations governing the administration and operation of the department as may be deemed necessary by the commissioner and which are not inconsistent with the laws of this state.

3. Rule 1340-2-2-.17 of *The Rules of Tennessee Department of Safety* sets forth the Department of Safety's procedure for default and uncontested proceedings as follows:

Default and Uncontested Proceedings.

(1) Default. The motion for default may be in writing or oral.

(a) The failure of a party to attend or to participate in a prehearing conference, ***a party's non-attendance at a second setting of a hearing on the merits in a case or a party's non-attendance at another stage of contested case proceedings after notice thereof are each causes for holding such party in default pursuant to T.C.A. §4-5-309.***

(c) In any situation set out in parts (a) and (b)n of this rule, a motion may be made to hold the absent party in default and to enter an initial default order or to continue on an uncontested basis.

(e) Upon default by a party, an administrative judge may enter either an initial default order or an order for an uncontested proceeding.

4. Rule 1340-2-2-.17(2)(b) of *The Rules of Tennessee Department of Safety*, states: "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."

5. The State showed that it had made reasonable attempts at service of the notice of the hearing upon the Claimant at the address of record. The return mail receipt showing that the notice of hearing was mailed to the Claimant and received by Claimant was made Exhibit 1 at the hearing.

6. T.C.A. §40-33-201 provides that property, including conveyances or vehicles, shall be subject to forfeiture under the provisions of T.C.A. §55-10-403(k) and T.C.A. §55-50-504(h).

7. It is determined that the Claimant failed to participate in the hearing of this matter.

Accordingly, pursuant to 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), the Claimant's claim is **STRICKEN**, the State's motion for **DEFAULT** is **GRANTED**, and the above captioned vehicle is ordered **FORFEITED** to the seizing agency.

It is so ordered.

This Order entered and effective this _____ day of May, 2013.

Joyce Grimes Safley
Administrative Judge

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