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October 2013

## Davey L. Weeks vs. Safety

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

<b>IN THE MATTER OF:</b>	]		
	]		
<b>DEPARTMENT OF SAFETY</b>	]		
	]		
<b>v.</b>	]	<b>DOCKET NO.</b>	<b>19.01-123092J</b>
	]	<b>D.O.S. Case NO.</b>	<b>N7382</b>
<b>One 2011 Pontiac Sunbird</b>	]		
<b>VIN: 1G2JB12401715816</b>	]		
<b>Seized From: Davey Weeks</b>	]		
<b>Seizure Date: April 13, 2013</b>	]		
<b>Claimant: Davey Weeks</b>	]		
<b>Seizing Agency: Memphis PD/OCU</b>	]		

**INITIAL DEFAULT ORDER**

This matter was heard in Memphis, Tennessee, on September 25, 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. Andre' Thomas, 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, 53-11-451 and §40-33-201 et seq.

Claimant, Davey Weeks, 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 her address of record. A copy of the USPS mail receipt shows an the certified mail was delivered at that address on August 21, 2013.
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."

The property is therefore forfeited to the seizing agency, the Memphis PD/OCU.

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.

\_\_\_\_\_  
J. Richard Collier, Director  
Administrative Procedures Division