



University of Tennessee, Knoxville
**Trace: Tennessee Research and Creative
Exchange**

Tennessee Department of State, Opinions from the
Administrative Procedures Division

Law

12-16-2013

Holmes, Tarvis D. & Titlemax of Tenn Inc vs. Safety

Follow this and additional works at: http://trace.tennessee.edu/utk_lawopinions

This Initial Order by the Administrative Judges of the Administrative Procedures Division, Tennessee Department of State, is a public document made available by the College of Law Library, and the Tennessee Department of State, Administrative Procedures Division. For more information about this public document, please contact administrative.procedures@tn.gov

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

IN THE MATTER OF:

DEPARTMENT OF SAFETY

v.

**One 2000 Mitsubishi Galant¹
VIN: 4A3AA46G6YE170811
Seized From: Tarvis D. Holmes
Date of Seizure: February 26, 2013
Claimant: Tarvis D. Holmes
Lien Holder: TitleMax of Tenn. Inc.**

**DOCKET NO: 19.01-123077J
D.O.S. Case No. N5792**

INITIAL ORDER AND NOTICE OF DEFAULT

This matter came for hearing in Memphis, Tennessee on October 1, 2013, before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Attorney Joe Bartlett represented the Department of Safety. No one appeared on Claimant's behalf.

This is an action to forfeit the subject property for its alleged use in violation of T.C.A. §53-11-201 *et seq.* and §40-33-201 *et seq.*

Since neither Claimant nor counsel appeared for the hearing, the Department moved for an initial order holding Claimant in **default** and striking Claimant's claim from the record. 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 to his address of record. Claimant received notice of the hearing. The Department is entitled to a rebuttable presumption that Claimant received notice of the hearing under its rule set forth below.

¹ There was also \$79.35 in U.S. currency seized, but no claim by Claimant for the return of this money.

2. Claimant seeks to have his sister represent his interest by a power of attorney. She is not a licensed attorney and cannot represent Claimant interest in this legal proceeding under Tennessee law.

3. Claimant failed to appear on the day of the hearing. Nor did his attorney appear on Claimant's behalf.

4. The Department 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-.11 provides as follows:

(1) At a reasonable time prior to a hearing, a "Notice of Hearing" shall be filed by the Legal Division and served on all parties, per Rule 1340-2-2-.03(4).

(2) 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. (emphasis added).

(3) Notice of hearing for a second or subsequent setting of the hearing will be by certified mail, return receipt requested. The return receipt card may be filed with the Legal Division and serve as a record of notification.

(4) All claims filed against a specific seized property shall be consolidated for a single hearing.

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) states, in relevant part:

Upon a default by a claimant, a claimant's claim shall be stricken by initial default order.

The Department'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."

IT IS THEREFORE ORDERED that the above described vehicle is forfeited to the seizing agency subject to the lien of TitleMax of Tennessee, Inc. **TitleMax should contact the seizing agency, Oakland, Tennessee Police Department – K. Brom, to protect its interest in this vehicle.**

This Initial Order entered and effective this _____ day of _____ 2013.

Steve R. Darnell
Administrative Law Judge

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



J. Richard Collier, Director
Administrative Procedures Division