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12-30-2013

## Emmett, Jr. Wright vs. Safety

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

**IN THE MATTER OF:**

**DEPARTMENT OF SAFETY**

**v.**

**One 1991 Chevrolet Camaro  
VIN: 1G1FP23E5ML111990  
Seized From: Phillip A. Conway  
Date of Seizure: November 23, 2012  
Claimant: Emmett Wright, Jr.  
Lien Holder: None**

**DOCKET NO: 19.05-123146J  
D.O.S. Case No. N2853**

**INITIAL ORDER AND NOTICE OF DEFAULT**

This matter came for hearing in Jackson, Tennessee on October 9, 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. §55-10-401 *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 her address of record. The notice of hearing was signed for and accepted by Emmett Wright on September 6, 2013. The Department is entitled to a rebuttable presumption that Claimant received notice of the hearing under its rule set forth below.

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

3. 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.

This Initial Order entered and effective this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

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Steve R. Darnell  
Administrative Law Judge

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



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J. Richard Collier, Director  
Administrative Procedures Division