



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

Tennessee Department of State, Opinions from the
Administrative Procedures Division

Law

1-3-2014

Jaclyn L. Ellis 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.

1996 Ford Taurus

VIN: 1FALP52U2TA320222

Seized from: Erik Johnston

Date of Seizure: May 6, 2013

Claimant: Jaclyn Ellis

Lienholder: TitleMax

DOCKET NO: 19.05-123551J

DOS CASE NO: N8367

INITIAL ORDER

This matter was heard on November 6, 2013, in Knoxville, Tennessee, before Kim Summers, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. Ms. Nina Harris, attorney for the Department of Safety, represented the State.

The purpose of this hearing was to consider the proposed forfeiture of the subject property for its alleged use in violation of T.C.A. § 55-50-504, *et seq* and T.C.A. 40-33-101 *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 to her address of record. Postal records indicate that the notice was unclaimed as of November 1, 2013.

3. Claimant did not appear on the day of the hearing, and no attorney appeared on the Claimant's behalf. 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. Pursuant to RULE 4.04(11) of the TENNESSEE RULES OF CIVIL PROCEDURE, the return of the notice as "Unclaimed - Refused" is deemed to be actual service:

When service of 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.

3. 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.

4. 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.

5. Service of the notice on the claimant is deemed to be actual and valid pursuant to the State's reasonable attempts at service and the Claimants refusal to accept service.

6. 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."

7. 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, subject to any valid lienholder's claim.

8. 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.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the _____ day of _____ 2014.

DK 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 _____ 2014.

J. Richard Collier

J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE