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Ellis A. Parker vs. Safety

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

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
SAFETY**

v.

**One 1997 Mercedes E420
VIN: WDBJF72F4VA421362
One 1996 Ford F150
VIN: 1FTEF15N5TNA15907
One Pontiac Grand Prix
VIN: 1G2WJ52K1WF237836
One 1989 Buick LeSabre
VIN: 1G4HPS4C5KH463820
Miscellaneous Personal Property
(Attachment A)
Seized From: Ellis A. Parker
Date of Seizure: June 28, 2013
Claimant: Ellis A. Parker**

**DOCKET NO: 19.01-124559J
(D.O.S. Case Nos: N9833,
N9834, N9835, N9836)**

INITIAL DEFAULT ORDER

This matter was heard on January 30, 2014, before Ann M. Johnson, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Tennessee Department of Safety. Karen Litwin, attorney with the Department of Safety, represented the State. The record contains no indication that the Claimant was represented by legal counsel. Neither the Claimant nor a representative on his behalf appeared for the hearing.

The subject of this case was the proposed forfeiture of the subject property based upon the alleged violation of the Tennessee Drug Control Act.

When the Claimant failed to appear for the hearing, the attorney for the State made an oral motion pursuant to Tennessee Code Annotated § 4-5-309 and Rule 1340-2-2-.17, TENN. COMP. R. & REGS., Rules of Procedure for Asset Forfeiture Hearings, requesting that the Claimant be held in default. Based upon the record and the evidence presented, the State's motion was granted, as supported by the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Claimant's property was seized pursuant to law, resulting in the issuance of Property Forfeiture Warrants. The Claimant filed a claim seeking the return of the property, and requesting that a hearing be scheduled to consider that claim.

2. This claim was scheduled for hearing on January 30, 2014, and the Claimant was notified of the hearing time and location by certified mail sent to his address of record. On December 27, 2013, the U.S. Postal Service delivered a notice, advising him of the attempted delivery and methods by which he could claim the documents. On January 27, 2014, the State checked to see if the Claimant had claimed the packet, but he had not done so, even though he had over a month to pick up the documents or arrange for delivery. EXHIBIT 1.

3. Neither the Claimant nor an attorney on his behalf appeared at the hearing, the second or subsequent setting of the case. Based upon the Claimant's failure to appear, the State made an oral motion for the entry of an Order of Default. The State did not wish to proceed with an uncontested hearing.

CONCLUSIONS OF LAW and ANALYSIS

1. Tennessee Code Annotated § 4-5-309(a) provides that "if a party fails to attend or participate in a pre-hearing conference, hearing or other stage of a contested case, the administrative

judge . . . may hold the party in default” An order holding an absent party in default at the second or subsequent setting of a forfeiture hearing is also authorized by Rule 1340-2-2-.17(1)(a), TENN. COMP. R. & REGS., Rules of Procedure for Asset Forfeiture Hearings.

2. Rule 1340-2-2-.17(1) contains the following relevant provisions:
 - (d) No default shall be entered against a claimant for failure to attend [the hearing] except upon proof by the filing of the return receipt card, that the legal division has given notice of the hearing per Rule 1340-2-2-.11(3).
 - (e) Upon default by a party, an administrative judge may enter either an initial default order or an order for an uncontested proceeding . . .

3. A certified mail document that is unclaimed by the addressee, subsequently to be returned to the sender, is deemed to be valid service. Rule 4.04(11),

TENNESSEE RULES OF CIVIL PROCEDURE.

4. Rule 1340-2-2-.17(2)(b) specifies possible results when a claimant is held in default:

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.

(Emphasis added.)

5. The legal impact of striking a claim is to render the claim void *ab initio*, as though it had never been filed.¹ Failure to file a claim results in the forfeiture of the property for disposition as provided by law. *See*, Tennessee Code Annotated § 40-33-206(c).

6. In accordance with the law, as set forth above, it is determined that the State’s motion is well taken. The State validly served the Notice to the Claimant according to the rules cited above, as shown in EXHIBIT 1. The Claimant failed to appear at the hearing to proceed with the claim. Pursuant to the cited authority, the Claimant is hereby found to be in default.

¹ The effect of striking a pleading “is to posture the action as if [that pleading] had never been made.” *See, INVST Financial Group, Inc. v. Chem-Nuclear Systems, Inc.*, 815 F.2d 391, 404 (6th Cir. 1987).

Accordingly, it is hereby **ordered** that the Claimant's claim is stricken from the record, and dismissed. The Claimant's interest in the subject property is forfeited to the seizing agency for disposition as specified by law.

This Initial Order entered and effective this _____ day of _____ 2014.

Ann M. Johnson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this
_____ day of _____ 2014.



J. Richard Collier, Director
Administrative Procedures Division