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Holly B. Wampler 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 1998 Chevrolet Malibu
VIN: 1G1NE52M2W6180682
Seized From: Holly B. Wampler
Date of Seizure: September 14, 2012
Claimant: Holly B. Wampler
Lien Holder: None**

**DOCKET NO: 19.01-124697J
D.O.S. Case No. N1288**

INITIAL ORDER AND NOTICE OF DEFAULT

This matter was heard in Knoxville, Tennessee on December 3, 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. Nina Harris, Staff Attorney for the Department of Safety, represented the seizing agency. Claimant was not present nor was anyone present on Claimant's behalf.

This was a "show cause" hearing to determine why the subject vehicle should not be forfeited to the Seizing Agency because the Claimant has failed to comply with the Order of Compromise and Settlement entered on April 5, 2013. The Department moved for an initial order holding Claimant in default and striking his claim from the record. The motion was granted based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. This vehicle was seized pursuant to the law, resulting in the issuance of a Property Forfeiture Warrant. The Claimant filed a claim seeking the return of the vehicle, and requesting that a hearing be scheduled to consider the claim.
2. The parties negotiated an agreement to award possession of the vehicle to the Claimant upon compliance with certain conditions. The Claimant failed to comply with the terms of the agreement. In the event of such a failure, the agreement provides for forfeiture of the vehicle to the seizing agency.
3. This show cause hearing was set for the Claimant to appear and demonstrate why the forfeiture provision of the agreement should not be put into effect.
4. Claimant was sent notice of the hearing by certified mail to his address of record. The return receipt from the U.S. Postal Service indicates it could not deliver Claimant's mail, but left her notice at her home of how to collect her mail. Claimant failed to appear for the hearing.
5. The Department moved that Claimant be held in default, the claim stricken from the record, and seized property forfeited to the seizing agency. The Department's motion was granted.

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.

(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.

4. The Commissioner's ruling regarding the proper procedure for default proceedings, as set forth in the forfeiture case *In re: Taliaferro*, Docket No. 19.05-049400J (April 12, 2004), is that the Claimant's claim be stricken.

5. The claim being stricken, it is as if no claim had ever been filed, which 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 Department's motion for default is granted, Claimant's claim is stricken, and the above described vehicle is **FORFEITED** to the seizing agency.

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

Steve R. Darnell
Administrative Law Judge

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

A handwritten signature in cursive script that reads "J. Richard Collier".

J. Richard Collier, Director
Administrative Procedures Division