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Johnny R. Rushing vs. Safety

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

IN THE MATTER OF:

**TENNESSEE DEPARTMENT
OF SAFETY**

vs.

**DOCKET # 19.05-124503J
DOS # N9790**

One 1997 Chevrolet GK1

VIN: 2GCEK19R9V1247102

Seized From: Johnny R. Rushing

Date of Seizure: 7/11/13

Claimant: Johnny R. Rushing

Seizing Agency: T.H.P.

Lienholder: None Filed

INITIAL DEFAULT ORDER

This matter was heard in Dyersburg, Tennessee, on January 28, 2014, before J. Randall LaFevor, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Mr. Andre Thomas, Staff Attorney for the Department of Safety, represented the State on behalf of the Seizing Agency.

This hearing was convened to consider the proposed forfeiture of the seized property pursuant to T.C.A. §53-11-201, §55-10-401, §55-50-504 and/or §40-33-201, et seq.

The Claimant did not appear at the hearing, either in person or through legal counsel. The State therefore moved for a Default Order and dismissal of the case. The motion was granted based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Notice of the hearing was sent to the Claimant's address of record. [See Hearing Exhibit #1, establishing completed notification or reasonable efforts.]
2. The Claimant failed to appear on the day of the hearing, and no attorney appeared on the Claimant's behalf.
3. The State's witnesses were available and ready to proceed when the case was called.

CONCLUSIONS OF LAW AND ANALYSIS

1. 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.

2. 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.

3. Having granted the State's motion for default, Rule 1340-2-2-.17(2) requires that the Claimant's claim be stricken from the record. Once a claim is 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."

Accordingly, IT IS HEREBY ORDERED that the Claimant is found to be in default, the claim is stricken from the record, and the Claimant's interest in the subject property is forfeited to the Seizing Agency, the Tennessee Highway Patrol.

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

J. Randall LaFevor, 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