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Hershell E., Jr. Freels vs. Safety

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

IN THE MATTER OF:

One 2000 Chrysler Sebring
V.I.N.: 3C3EL55H6YT267641
Seized from: Hershell E. Freels, Jr.
Seizure date: 5/11/13
Lienholder/
Claimant: Check Into Cash of TN
Seizing Agency: T.H.P.

DOCKET # 19.05-125613J
DOS # N8411

INITIAL ORDER OF DEFAULT & DISMISSAL

This matter was heard in Knoxville, Tennessee on April 15, 2014, before J. Randall LaFevor, Administrative Judge assigned by the Secretary of State, Administrative Procedures Division, sitting for the Commissioner of the Tennessee Department of Safety. Ms. Nina Harris, Staff Attorney for the Tennessee Department of Safety, represented the State. No one representing the Lienholder was present.

This matter was scheduled as a Show-Cause Hearing, to permit the Lienholder to demonstrate why its interest should not be forfeited for failure to comply with a previous Order issued by the Commissioner. Upon the Lienholder's failure to appear at the Show-Cause Hearing, counsel for the State made an oral motion for an Order finding the Lienholder to be in default, pursuant to TCA § 4-5-309. Upon full consideration of the evidence received at the hearing and the entire record in this case, the State's motion was granted. The Lienholder was found to be in default, and its claim to the subject property was dismissed, as supported by the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Claimant's vehicle was seized pursuant to law, resulting in the issuance of a Property Forfeiture Warrant. The Lienholder filed a notice of its interest, and sought possession of the vehicle to secure that interest.

2. On December 23, 2011, an Order was entered, awarding the seized property to the seizing agency, subject to the Lienholder's interest. The Lienholder failed to take possession of the vehicle pursuant to the terms of that Order. In such event, the Order provides for forfeiture of the Lienholder's interest to the Seizing Agency.

3. A Show-Cause Hearing was scheduled on February 10, 2014, for the Lienholder to demonstrate why its interest in the vehicle should not be forfeited, as provided in the Order. The Lienholder was notified of the hearing time and location by certified mail. See Hearing Exhibit #1.

4. The Lienholder did not appear at the show-cause hearing, and was not otherwise represented. Based on the Lienholder's failure to appear, the State made an oral motion for the entry of an Order of Default.

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 is authorized by Rule 1340-2-2-.17(1)(a), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*.

2. Department of Safety Regulations governing asset forfeiture hearings also provide:

(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 . . .

Rule 1340-2-2-.17(1), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*.

And, that

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.

See, Rule 1340-2-2-.17(2)(b), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*. (Bold emphasis added.)

3. In accordance with the law, as set forth above, it is determined that the State's motion is well-taken. Upon filing a claim for property, a Lienholder is treated as a Claimant for the purpose of applying the laws related to property forfeiture. The Lienholder was notified of the show-cause hearing, as shown by Hearing Exhibit #1, and failed to appear at the hearing. Pursuant to the cited authority, the Lienholder is hereby found to be in default for failing to appear at the show-cause hearing scheduled to consider its claim.

Accordingly, it is hereby ORDERED that the Lienholder's claim is dismissed. The subject property is Ordered forfeited to the Seizing Agency, the Tennessee Highway Patrol, for disposition as provided by law.

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.



Thomas G. Stovall, Director
Administrative Procedures Division