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Flagg, Frederick & Credit Accept Corp 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 2006 Ford Mustang
VIN: 1ZVFT80N565132711
Seized From: Frederick Flagg
Date of Seizure: October 10, 2013
Claimant: Frederick Flagg
Lien Holder: Credit Acceptance Corp.**

**DOCKET NO: 19.01-125640J
D.O.S. Case No. P2941**

INITIAL ORDER AND NOTICE OF DEFAULT

This matter came for hearing in Memphis, Tennessee on April 16, 2014, before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Attorney Andre Thomas represented the Department of Safety. No one appeared on behalf of Claimant.

This is an action to forfeit the subject property for its alleged use in violation of T.C.A. §53-11-201 *et seq.* and §40-33-201 *et seq.*

Since neither Claimant nor counsel appeared for the hearing, the Department moved for an initial order holding Claimant in **default** and striking Claimant's claim from the record. The motion was **granted** based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Department sent notice of the hearing to Claimant's address of record. The notice of hearing was returned to the Department by the U.S.P.S. with notations indicating that it attempted delivery on March 11 and March 21, 2014. On both occasions the U.S.P.S. left notice at Claimant's address advising him how to collect his mail. Claimant failed to collect his mail

and the U.S.P.S. returned the mail to the Department on March 26, 2014. This is the only address the Department has for Claimant and has made all reasonable attempts to contact Claimant.

2. Claimant failed to appear on the day of the hearing. Nor did his attorney appear on Claimant's behalf.
3. The Department had its witnesses available and was ready to go forward to prove its case.

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.

The Department's motion for default being granted, it is therefore **ordered** that Claimant's **claim be stricken**. The claim being 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."

IT IS THEREFORE ORDERED that the above described vehicle is forfeited to the seizing agency subject to the lien of Credit Acceptance Corp. Credit Acceptance Corp. should contact the seizing agency to preserve its lien on this vehicle.¹

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.



J. Richard Collier, Director
Administrative Procedures Division

¹ Ryan Jackson, Memphis Police Department, OCU, is the official that seized this vehicle.