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German R. Schittinni vs. Safety

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**BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF SAFETY AND HOMELAND SECURITY**

IN THE MATTER OF:

**German R. (P1728) Schittinni
2003 Nissan Altima
V.I.N. 1N4BL11D23C139286
Seized From: German R. Schittinni
Date of Seizure: August 27, 2013
Claimant: German R. Schittinni
Lien Holder: N/A**

DOCKET NO: 19.05-127778J

INITIAL DEFAULT ORDER

This matter was heard in Chattanooga, Tennessee, on August 27, 2014, before Joyce Carter-Ball, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Patrick Rice, Staff Attorney for the Department of Safety, represented the Seizing Agency.

This hearing was convened to consider the proposed forfeiture of the subject property pursuant to T.C.A. §55-10-401, 55-10-403 and 40-33-201 et seq.

The Claimant did not appear at the hearing, either in person or through legal counsel. Counsel for the Department made an oral motion pursuant to T.C.A. §4-5-309, requesting that the Claimant be held in default. The motion was granted based upon 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 a Property Forfeiture Warrant. The Claimant filed a claim seeking the return of the property, and requested that a hearing be scheduled to consider that claim.
2. The Claimant was sent notice of the hearing by certified mail at his address of record.
3. The Claimant failed to appear on the day of the hearing, August 27, 2014.
4. The State's witnesses were available and ready to go forward to prove their case.

CONCLUSIONS OF LAW AND ANALYSIS

1. Department of Safety Rule 1340-2-2-.11(2) provides, in relevant part:

The Department of Safety is entitled to rely upon the address of record in providing notice to a claimant.

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) provides, in relevant part:

Upon a default by a claimant, a claimant's claim shall be stricken by initial default order.

4. The State's motion for default being granted, it is therefore **ordered** that the Claimant's **claim is stricken from the record**. 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."

Therefore, it is hereby **ORDERED** that the subject vehicle be **forfeited to the Seizing Agency**.

IT IS SO ORDERED.

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

Joyce Carter-Ball
Administrative Judge