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September 2014

Grissom, Heather L. & Titlemax of TN Inc vs. Safety

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

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
SAFETY AND HOMELAND
SECURITY,**

v.

**One 2005 MINI COOPER
VIN: WMWRF3341TF62369
Seized From: Heather L. Grissom
Date of Seizure: February 20, 2014
Claimant: Heather L. Grissom
Lien Holder: Titlemax of TN Inc.**

**DOCKET NO: 19.05-127935J
(D.O.S. Case Nos: P6201 and
P6202)**

INITIAL DEFAULT ORDER

This matter was heard on September 23, 2014, before Ann M. Johnson, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Tennessee Department of Safety and Homeland Security. Robert Broome, attorney with the Department of Safety, represented the State. According to the record, the Claimant was represented by attorney John P. Parsons. Neither the Claimant nor her attorney appeared for the hearing.

The subject of this case was the proposed forfeiture of the subject vehicle a based upon the alleged violation of driving on a revoked license and a second DUI within five years.

When the Claimant failed to appear for the hearing, the attorney for the State made a motion pursuant to Tennessee Code Annotated § 4-5-309 and Rule 1340-2-2-.17, TENN. COMP. R. & REGS., Rules of Procedure for Asset Forfeiture Hearings, requesting that the

Claimant be held in default. Based upon the record and the evidence presented, the State's motion was granted, as supported by 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 requesting that a hearing be scheduled to consider that claim.

2. This claim was scheduled for hearing on September 23, 2014, and the Claimant was notified of the hearing time and location by certified mail sent to her attorney's address of record. This notice was received and signed for by the attorney's office on August 12, 2014.

3. Neither the Claimant nor her attorney appeared at the hearing, the second or subsequent setting of the case. Based upon the Claimant's failure to appear, the State made a motion for the entry of an Order of Default. The State did not wish to proceed with an uncontested hearing.

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 at the second or subsequent setting of a forfeiture hearing is also authorized by Rule 1340-2-2-.17(1)(a), TENN. COMP. R. & REGS., Rules of Procedure for Asset Forfeiture Hearings.

2. Rule 1340-2-2-.17(1) contains the following relevant provisions:

(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 . . .

3. Rule 1340-2-2-.17(2)(b) specifies possible results when a claimant is held

in default:

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.

(Emphasis added.)

4. The legal impact of striking a claim is to render the claim void *ab initio*, as though it had never been filed.¹ Failure to file a claim results in the forfeiture of the property for disposition as provided by law. *See*, Tennessee Code Annotated § 40-33-206(c).

5. In accordance with the law, as set forth above, it is determined that the State's motion is well taken. The State notified the Claimant according to the rules cited above, as shown by the certified return receipt. The Claimant failed to appear at the hearing to proceed with the claim. Pursuant to the cited authority, the Claimant is hereby found to be in default.

Accordingly, it is hereby **ordered** that the Claimant's claim is stricken from the record, and dismissed. The Claimant's interest in the subject property is forfeited to the seizing agency, subject to any valid lien, for disposition as specified by law.

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

Ann M. Johnson
Administrative Judge

¹ The effect of striking a pleading "is to posture the action as if [that pleading] had never been made." *See, INVST Financial Group, Inc. v. Chem-Nuclear Systems, Inc.*, 815 F.2d 391, 404 (6th Cir. 1987).

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

A handwritten signature in black ink that reads "J. Richard Collier". The signature is written in a cursive style with a large initial "J".

J. Richard Collier, Director
Administrative Procedures Division