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October 2014

## Cynthia Matthews vs. Safety

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

**IN THE MATTER OF:**

**TENNESSEE DEPARTMENT OF  
SAFETY AND HOMELAND  
SECURITY**

**DOCKET NO: 19.01-125212J  
(D.O.S. Case No. N7228, N7230)**

**v.**

**One 2004 Nissan Maxima  
VIN NO.: 1N4BA41E34C817402  
On 2008 Porsche Cayenne  
VIN NO: WP1AA29P98LA25923  
Assorted Electrical Equipment  
Seized From: Cynthia Matthews  
Date of Seizure: April 11, 2013  
Claimant: Cynthia Matthews  
Lien Holder: N/A**

**CORRECTED INITIAL DEFAULT ORDER<sup>1</sup>**

This matter was heard in Memphis, Tennessee, on March 18, 2014, before Rob Wilson, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Andre Thomas, Staff Attorney for the Department of Safety, and Steve Jones, Esq., Assistant District Attorney General represented the State. Claimant Cynthia Matthews was represented by Jake E. Erwin, Esq.

The subject of this hearing was the proposed forfeiture of the subject property for its alleged use in violation of T.C.A. §53-11-201 et seq. and §40-33-201 et seq.

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<sup>1</sup>The original Initial Order issued on April 1, 2014 contained a typographical error in the VIN number. This corrected Order does not alter the outcome of this matter.

Cynthia Matthews, Claimant, did not appear at the hearing. The State therefore moved for an initial **default** and dismissal of the case, and also filed a motion for an order deeming answers admitted. The motions were **granted** based upon the following findings of fact and conclusions of law.

### **FINDINGS OF FACT**

1. Claimant's Counsel was sent notice of the hearing by certified mail at his address of record. A copy of the postal green card shows that the notice was signed for by a Ms. Mackey on February 7, 2014.
2. Claimant and Counsel failed to appear on the day of the hearing.
3. The State had its witnesses available and was ready to go forward to prove its case.
4. In November of 2013 Counsel for the State filed interrogatories, request for production of documents, and requests for admissions. Claimant has failed to respond.

### **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. Tenn. R. Civ. Procedure 36.01, Request for Admission, provides that each matter requested is deemed admitted if not answered or objected to within 30 days from the date of service. Accordingly, the State's Request for Admission numbers 1-6, filed in November of 2013, is deemed ADMITTED.

4. The State'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."

Accordingly, the above captioned vehicles and assorted electrical equipment are hereby forfeited to the seizing agency.

This Initial Order entered and effective this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

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Rob Wilson  
Administrative Judge

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

*J. Richard Collier*

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J. Richard Collier, Director  
Administrative Procedures Division