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November 2014

MILLARD MURPHY vs. Safety

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

IN THE MATTER OF:

**TENNESSEE DEPARTMENT
OF SAFETY**

vs.

**DOCKET NO: 19.05-128863J
DOS Case # Q0311 & Q0322**

One 2001 Dodge Truck

VIN: 1B7HC16Y91S712171

Seized From: M. Lee Murphy

Seizure Date: 7/1/14

Claimant: Millard Murphy

Seizing Agency: Newbern P. D.

Lien Holder: None Filed

INITIAL ORDER GRANTING DEFAULT AGAINST SEIZING AGENCY

This contested administrative case was heard in Dyersburg, Tennessee on November 24, 2014, before J. Randall LaFevor, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. Mr. Andre Thomas, Staff Attorney for the Department of Safety, was present; however, no witnesses appeared on behalf of the Seizing Agency. The Claimant appeared *pro se*.

The subject of the proceeding was the proposed forfeiture of the subject property seized for alleged violations of the State's DUI-related property forfeiture laws.

At the outset of the hearing, the Claimant made an oral motion pursuant to Tennessee Code Annotated, Section 4-5-309, and Rule 1340-2-2-.17 of the Department of Safety, for an order finding the Seizing Agency to be in default for its witnesses' failure to appear and prosecute its Forfeiture Warrant. In support of that motion, documentary evidence was entered proving that notice of this hearing was sent to the Seizing Agency by certified mail, and was duly received. Prior to the commencement of the hearing, the Seizing Agency did not contact the Department of Safety or the Administrative Judge to seek a continuance of the hearing. On the date of the hearing, the Seizing Agency's witness failed to appear at the hearing. It was therefore DETERMINED that the Seizing Agency failed to attend the hearing after receiving

proper service. The Seizing Agency was found to be in DEFAULT, and the hearing proceeded without the participation of the Seizing Agency. The Agency's attorney was unable to prove the Agency's case in the absence of the witness.

State law provides that, "If a party fails to attend or participate in a . . . hearing or other stage of a contested case, the administrative judge . . . may hold the party in default and either adjourn the proceedings or conduct them without the participation of that party." TENN. CODE ANN. § 4-5-309(a). The Seizing Agency failed to appear at the hearing after being duly notified, and thereby failed to prosecute its Forfeiture Warrant.

Accordingly, it is ORDERED that the Forfeiture Warrant filed in this matter is hereby DISMISSED, and the subject property shall be returned to the Claimant immediately. **The Claimant shall not be assessed any storage fees or other costs associated with this action as long as he claims his vehicle within five (5) working days following receipt of this Order.**

This Initial Order 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 _____ 2015.



J. Richard Collier, Director
Administrative Procedures Division