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January 2015

## Carl Smith vs. Safety

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

<b>IN THE MATTER OF:</b>	]	
	]	
<b>DEPARTMENT OF SAFETY</b>	]	
	]	
v.	]	<b>DOCKET # 19.05-129353J</b>
	]	<b>D.O.S. Case # P4952</b>
<b>One 2003 Buick LeSabre</b>	]	
<b>VIN: 1G4HR54K33U158486</b>	]	
<b>Seized From: Carl Smith</b>	]	
<b>Seizure Date: 1/3/14</b>	]	
<b>Claimant(s): Tierra Mitchell</b>	]	
	]	<b>Armando Anderson</b>
<b>Lienholder: Budget Financial Inc.</b>	]	

**ORDER OF FORFEITURE FOLLOWING SHOW-CAUSE HEARING**

This matter was heard in Memphis, Tennessee on September 18, 2014, before Michael Begley, Administrative Judge assigned by the Secretary of State, Administrative Procedures Division, sitting for the Commissioner of the Tennessee Department of Safety. Mr. Andre Thomas, Staff Attorney for the Tennessee Department of Safety, represented the State. Claimant did not appear at the hearing, either in person or through legal counsel.

This Show-Cause hearing was convened to consider the proposed forfeiture of the subject due to Claimant’s failure to comply with the provisions of a previous Order. Upon Claimant’s failure to appear at the hearing, counsel for the State made an oral motion for an order finding Claimant to be in default, pursuant to TCA § 4-5-309. Upon full consideration of the evidence received at the hearing and the entire record in this case, the State’s motion was granted. Claimant was found to be in default, as supported by the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

1. The vehicle was seized pursuant to law, resulting in the issuance of a Property Forfeiture Warrant. On May 29, 2014, the Department of Safety issued an Order of Compromise and

Settlement notifying Claimant of the forfeiture and outlining the process by which she could recover the property. Claimant failed to perform according to the terms of that Order.

3. In the event of such a failure, the Order provides for a Show-Cause hearing to be held to allow Claimant to show why her interest should not be forfeited to the Seizing Agency. A Show-Cause hearing was scheduled, and the State sent notice of the hearing time and location to Claimant by certified mail.

4. Claimant failed to appear at the Show-Cause hearing and was not otherwise represented. Based on Claimant's failure to appear, the State made an oral motion for the entry of an Order of Default.

### 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 is authorized by Rule 1340-2-2-.17(1)(a), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*.

2. Department of Safety Regulations governing asset forfeiture hearings also provide:

(e) Upon default by a party, an administrative judge may enter either an initial default order or an order for an uncontested proceeding . . .

Rule 1340-2-2-.17(1), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*.

And, that

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.

See, Rule 1340-2-2-.17(2)(b), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*. (Bold emphasis added.)

3. In accordance with the law, as set forth above, it is determined that the State's motion is well-taken. The State properly notified Claimant of the Show-Cause hearing, as shown by the

Postal Service notation, and Claimant failed to appear at the hearing. Pursuant to the cited authority, Claimant is hereby found to be in default for failing to appear at the Show-Cause hearing.

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Accordingly, it is hereby ORDERED that Claimant's interest in the seized property is Ordered forfeited to the Seizing Agency, subject to the lien of Budget Financial Inc.

Entered and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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Michael Begley, 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