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Lauren Evans vs. Safety

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

IN THE MATTER OF:

DEPARTMENT OF SAFETY

vs.

**One 2008 Chevrolet Impala
VIN: 2G1WT58K189189580
Seized From: Kim E. Harston
Date of Seizure: 3/17/14
Claimant: JR's Auto Sales of Union City,
Inc.
Seizing Agency: T.H.P.
Lienholder: JR's Auto Sales of Union City,
Inc.**

**DOCKET # 19.01-127465J
DOS # P7128**

INITIAL ORDER AND NOTICE OF DEFAULT

This matter came for hearing in Dyersburg, Tennessee on January 27, 2015, before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Attorney André Thomas represented the Department of Safety. No one appeared on behalf of JR's Auto Sales of Union City, Inc. (Lienholder).

This was a "show cause" hearing to determine why the subject vehicle should not be forfeited to the seizing agency because Lienholder failed to take possession of the vehicle. The Department moved for an initial order holding Lienholder in default and further requested that Lienholder's claim be stricken from the record and its interested forfeited to the seizing agency. The motion was granted based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. This vehicle was seized pursuant to the law, resulting in the issuance of a property forfeiture warrant. Lienholder filed the proper paperwork to protect its lien and secure a claim to the vehicle.
2. A previously entered order forfeited the interest of other owners/claimants in this vehicle to the seizing agency subject to Lienholder's interest. Lienholder failed to take possession of it vehicle.
3. This show-cause hearing was set for Lienholder to appear and show cause why its claim should not be stricken from the record.
4. Lienholder's attorney's office signed for and accepted notice of the hearing at Lienholder's address of record. A copy of this notice was also sent to Lienholder business address. No one appeared at the hearing on Lienholder's behalf.
5. The Department moved for an order holding Lienholder in default and that its claim be stricken from the record.

CONCLUSIONS OF LAW AND ANALYSIS

1. Department of Safety Rule 1340-2-2-.11 provides as follows:
 - (1) At a reasonable time prior to a hearing, a "Notice of Hearing" shall be filed by the Legal Division and served on all parties, per Rule 1340-2-2-.03(4).
 - (2) In serving a "Notice of Hearing," the Legal Division shall rely upon the addresses of record as given by a claimant or by claimant's counsel. Proof of service per Rule 1340-2-2-.03(4) to the addresses of record shall establish a rebuttable presumption that claimant or claimant's counsel received notice of the hearing date.
 - (3) Notice of hearing for a second or subsequent setting of the hearing will be by certified mail, return receipt requested. The return receipt card may be filed with the Legal Division and serve as a record of notification.
- (4) All claims filed against a specific seized property shall be consolidated for a single hearing.

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) states, in relevant part:

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

4. The Commissioner's ruling regarding the proper procedure for default proceedings, as set forth in the forfeiture case *In re: Taliaferro*, Docket No. 19.05-049400J (April 12, 2004) is that the Claimant's claim be stricken.

5. 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."

IT IS THEREFORE ORDERED THAT the Department's motion for default is granted, Lienholder's claim is stricken, and the above described vehicle is **FORFEITED** to the seizing agency.

This Initial Order entered and effective this _____ day of _____ 2015.

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this
_____ day of _____ 2015.

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

J. Richard Collier, Director
Administrative Procedures Division