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March 2015

## Kendrick Watson 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: 19.01-129101J  
SAFETY NO: P4813**

**v.**

**One 2011 Jaguar JLC  
VIN: SAJWA2GE5BMV07073  
Seized from: Kendrick Watson  
Date of Seizure: December 16, 2013  
Claimant: Kendrick Watson  
Lienholder: None filed**

**INITIAL ORDER AND NOTICE OF DEFAULT**

This matter was heard in Memphis, Tennessee, on March 18, 2015, before Rachel L. Waterhouse, Administrative Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety and Homeland Security. Andre Thomas, Staff Attorney for the Department of Safety and Homeland Security (Department), represented the seizing agency. The Claimant was not present nor was anyone present on the Claimant's behalf.

This is an action to forfeit the subject property for its alleged use in violation of T.C.A. § 53-11-201 *et. seq.* and § 40-33-201 *et. seq.*

Since neither the Claimant nor counsel appeared for the hearing, the Department moved for an initial order holding the Claimant in **default** and striking the Claimant's claim from the record. The motion was **granted** based upon the following findings of fact and conclusions of law.

## FINDINGS OF FACT

1. The Claimant, through his attorney John Keith Perry, Jr. of the Sparkman, Zummach & Perry law firm, filed a claim seeking the return of the above-described property, and requesting that a hearing be scheduled to consider the claim.

2. The Claimant's attorney was sent notice of the March 18, 2015, hearing by certified mail and, after receiving the notice, the Claimant's attorney sent a letter to the Department's attorney saying he had a scheduling conflict and couldn't attend on March 18, 2015. However, this request for another continuance did not comply with a prior Order dated December 15, 2014.

3. March 18, 2015, was the fifth setting of this case for final hearing. After the last continuance, Administrative Judge Steve Darnell issued an Order that said:

**Claimant's counsel must make any objection he has with the new hearing date within seven business days of receiving notice. Any objection must be by properly filed motion with the Administrative Procedures Division and schedule with the assigned ALJ for hearing by the movant. If Claimant fails to make such motion or schedule his motion for hearing, any objection to the hearing date and/or time will be deemed waived. This matter will not be continued again under any other circumstances.** (Emphasis in original).

4. Since the Claimant's attorney's February 19, 2015, letter to the Department's attorney requesting a continuance did not comply with the prior Order's requirements as set forth above, Judge Darnell sent an email to all parties involved on February 26, 2015, declining to take action on the letter request and stating that the "matter remains set for final hearing on March 18, 2015, at 1 p.m. as previously noticed by the Department."

5. Thereafter, no party or counsel filed a motion with the Administrative Procedures Division.

6. The Claimant and his attorney failed to appear on the day of the hearing.

7. The Department had its witnesses available and was ready to go forward to prove its case.

### CONCLUSIONS OF LAW AND ANALYSIS

1. Department of Safety Rule 1340-2-2-.11, TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*, 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) , TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*, 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) , TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*, states, in relevant part:

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

The Department'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."

**IT IS THEREFORE ORDERED** that the above-described property is forfeited to the seizing agency.

**This Order entered and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2015.**

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**RACHEL L. WATERHOUSE  
ADMINISTRATIVE JUDGE  
ADMINISTRATIVE PROCEDURES DIVISION  
OFFICE OF THE SECRETARY OF STATE**