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Bryce Gaither 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: 19.05-130401J
D.O.S. Case No. Q1408**

V.

**One 1999 Ford F150
VIN:1FTZX1722XNC09222
Seized from: Byron Manuel
Date of Seizure: August 7, 2014
Claimant: Bryce Gaither
Lienholder: Mainline Motors**

INITIAL ORDER AND NOTICE OF DEFAULT

This matter was heard in Memphis, Tennessee, on March 19, 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. Joe Bartlett, 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 was a "show cause" hearing to determine why the subject vehicle should not be forfeited to the Seizing Agency because the Claimant has failed to comply with the Order of Compromise and Settlement previously entered. Upon the Claimant's failure to appear for the hearing, the Department moved for an initial order granting default and dismissal of the Claimant's claim. The motion was granted based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The vehicle was seized pursuant to the law, resulting in the issuance of a Property Forfeiture Warrant. The Claimant filed a claim seeking the return of the vehicle, and requesting that a hearing be scheduled to consider the claim.

2. The Claimant and the Department negotiated an agreement to award possession of the vehicle to the Claimant upon compliance with certain conditions, as evidenced by the November 10, 2014 Order of Compromise and Settlement. The Claimant failed to comply with the terms of the agreement. In the event of such a failure, the agreement provides for forfeiture of the vehicle to the seizing agency “subject to any other valid claims which may have been filed in this case.”

3. Subsequent to the seizure, Mainline Motors filed a notice of its interest in the vehicle.

4. A show-cause hearing was set for March 19, 2015, for the Claimant to appear and demonstrate why the forfeiture provision of the agreement should not be put into effect.

5. The Department sent notice of the hearing time and location to the Claimant by certified mail to his address of record with the Department. The Claimant signed for and accepted notice of the show-cause hearing on February 27, 2015. Neither the Claimant nor an attorney representing the Claimant appeared at the hearing.

6. Based on the Claimant’s failure to appear for the hearing, the Department moved for an order of default as to the Claimant and for the forfeiture provisions of the parties’ agreement to be enforced. The Motion specifically requested forfeiture subject to the lien of Mainline Motors.

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. Tennessee Code Annotated § 4-5-309(a) provides: “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 at the second setting of a forfeiture hearing is authorized by Rule 1340-2-2-.17(1)(a), TENN. COMP. R. & REGS., *Rules of Procedure for Asset Forfeiture Hearings*.

3. 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.

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

Forfeiture Hearings states, in relevant part:

(b) 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 the Claimant's claim be stricken. The claim being stricken, it is as if no claim had ever been filed, which constructively evokes Tennessee Code Annotated §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**, the Claimant's claim is stricken, and the above described vehicle is **FORFEITED** to the seizing agency, subject to the interest of the lienholder.

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

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

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



**J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE**