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January 2016

Jon Gibson vs. Safety

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January 28, 2016

Commissioner Bill Gibbons
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Tennessee Department of Safety &
Homeland Security
Legal Division
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Jon A. Gibson
4721 Lynngate Drive
Memphis, TN 38141

RE: In the Matter of: Jon (Q9090) Gibson Docket No. 19.05-134947J

Enclosed is an *Amended Notice of Default and Dismissal* rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/llp
Enclosure

**BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF SAFETY AND HOMELAND SECURITY**

IN THE MATTER OF:)	
)	
TENNESSEE DEPARTMENT OF SAFETY,)	
)	
v.)	DOCKET NO: 19.05-134947J
)	Safety Case No. Q 9090
ONE 2004 Ford Mustang)	
VIN: 1FAFP42R54F176916)	
)	
Seized From: Jon Gibson)	
Date of Seizure: 05/26/15)	
Claimant: Jon Gibson)	
Seizing Agency: Shelby County Sheriff's Dept.)	
Lienholder: American Acceptance)	

AMENDED NOTICE OF DEFAULT AND INITIAL ORDER¹

This matter was set to be heard on December 10, 2015, before Jerome Cochran, Administrative Judge, assigned by the Secretary of State to sit for the Commissioner of the Tennessee Department of Safety and Homeland Security (the Department) in Memphis, Tennessee. Joe Bartlett, Staff Attorney, represented the Department. The Claimant, Jon Gibson, was not present nor was an attorney present on his behalf.

The subject of this hearing was the proposed forfeiture of the subject vehicle. The matter was heard upon the Department's motion to be granted an Initial Default Order due to the Claimant's failure to appear at the hearing after receiving proper notice thereof. After consideration of the record it is determined that the Department's motion is proper and should be **GRANTED**. It is further **ORDERED** that the subject property should be **FORFEITED** to the

¹ Order amended only to remove clause regarding "subject to any valid lien" and storage fees due to the Department addressing the issue prior to hearing. This does not effect the Claimant's right for reconsideration of the original Order.

seizing agency, subject to any valid interest of the lienholder, American Acceptance. This decision is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The subject of this hearing was the seizure of a 2004 Ford Mustang from Jon Gibson by the Shelby County Sheriff's Department on May 26, 2015. The Claimant, Jon Gibson, filed a petition for the return of the subject vehicle and requested that a hearing be scheduled to consider that claim.

2. The Claimant was sent notice of the hearing by certified mail to his address of record. Postal records indicate that the notice was left for the Claimant on November 6, 2015.

3. The Claimant did not appear on the day of the hearing, no attorney appeared on his behalf, and no continuance had been requested.

4. The Department had its witnesses available and was ready to proceed with the case.

CONCLUSIONS OF LAW and ANALYSIS

1. TENN. COMP. R. & REG. 1340-2-2-.11(2) (2007),¹ RULES OF PROCEDURE FOR ASSET FORFEITURE HEARINGS, provides:

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.

¹ These RULES were revised on March 10, 2015; however, because these revisions were after the January 5, 2015, filing of the claim in this case, the December 2007 RULES are still applicable to this appeal.

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FINDINGS OF FACT

1. The subject of this hearing was the seizure of a 2004 Ford Mustang from Jon Gibson by the Shelby County Sheriff's Department on May 26, 2015. The Claimant, Jon Gibson, filed a petition for the return of the subject vehicle and requested that a hearing be scheduled to consider that claim.

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¹ These RULES were revised on March 10, 2015; however, because these revisions were after the January 5, 2015, filing of the claim in this case, the December 2007 RULES are still applicable to this appeal.

2. TENN. COMP. R. & REG. 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. TENN. COMP. R. & REG. 1340-2-2-.17(2)(b) states, in relevant part:

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.

4. The State's motion for default having been granted, it is therefore **ORDERED** that Claimant's **CLAIM BE STRICKEN**. The claim having been stricken, it is as if no claim had ever been filed, evoking TENN. CODE ANN. § 40-33-206(c), which specifies that "If a claim . . . is not filed with the applicable agency within the time specified by this part, the seized property shall be forfeited and disposed of as provided by law."

5. Based upon the foregoing, it is hereby **ORDERED** that the Claimant's claim be **STRICKEN**, the matter **DISMISSED**, and the Claimant's interest in the subject property **FORFEITED** to the seizing agency.

The policy reasons for this decision are to uphold the laws of the State of Tennessee while providing appropriate protections for the property rights of individuals.

It is so ORDERED.

Entered and effective this the 25th day of January 2016.



JEROME COCHRAN
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

20th day of January 2016.

J. Richard Collier

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