STATE OF MICHIGAN

COURT OF APPEALS

COMMUNITY BOWLING CENTERS, Petitioner-Appellant,	UNPUBLISHED August 12, 2004
v	No. 247937 Tax Tribunal
CITY OF TAYLOR, Respondent-Appellee.	LC No. 00-284232

Before: Hoekstra, P.J., and Cooper and Kelly, JJ.

PER CURIAM.

Petitioner Community Bowling Centers appeals as of right an opinion and judgment of the Michigan Tax Tribunal (the tribunal) following rehearing. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Background

Petitioner appealed to the tribunal challenging the amount of property taxes assessed by respondent City of Taylor on petitioner's computerized scoring machines. On its 2001 personal property tax return, petitioner included the scoring equipment in Schedule F as computer equipment and software. Equipment in Schedule F is valued on a seven-year expected life, and the scoring equipment would have been valued at forty-four percent of its acquisition cost on the 2001 return. Respondent disagreed with this classification and taxed the scoring equipment under Schedule B as machinery and equipment. Items in Schedule B are valued on a thirteen-year expected life, and the scoring equipment was valued at seventy-six percent of its acquisition cost. Petitioner appealed to the tribunal and was diverted into the small claims division.[1] Following the unfavorable disposition of the original hearing, petitioner moved for and was granted a rehearing. The tribunal judge once again ruled in favor of respondent at the rehearing.

[1] Petitioner filed several concurrent appeals with the tribunal as it operated bowling alleys using the same scoring equipment in several communities. The concurrent appeals were held in abeyance pending the tribunal's decision in this matter.

II. Denial of Motion to Transfer

Petitioner contends that the tribunal improperly denied its motion to transfer this case before rehearing from the small claims division to the entire tribunal, and that as a result of this error, petitioner was subjected to the unconstitutional, unwritten rules of procedure applicable to the small claims division alone. The tribunal's denial of petitioner's motion to transfer involves the interpretation of administrative rules which is a question of law reviewed de novo.[2]

The Tax Tribunal Rules of Practice and Procedure[3] provide separate procedural rules for matters before the entire tribunal and matters before the small claims division.[4] Matters placed before the small claims division are heard by either a hearing officer—an administrative law judge—or a hearing referee—a non-tribunal individual authorized to hear matters before the small claims division.[5] Matters before the entire tribunal are heard by a member of the tribunal—an appointed tribunal judge with quasi-judicial powers.[6] "A property tax matter *may* be heard in the small claims division" where the "state equalized valuation in contention is not more than $100,000.00."[7] The small claims division is elective, however, and the petitioner may opt to remove the matter to the entire tribunal.[8] A party must file a motion to transfer the matter at least fourteen days before the scheduled hearing.[9] If the tribunal has already notified the parties of the hearing date, the parties must appear at the scheduled hearing, unless otherwise ordered.[10]

The tribunal treats hearings and rehearings differently. Rule 205.1348 provides for the rehearing of matters before the small claims division as follows:

> (1) A party may request a rehearing or reconsideration of a decision by a hearing officer or referee by filing a written request for a rehearing with the tribunal and submitting a copy to the opposing party within 21 days of the entry of the opinion and judgment by the hearing officer or hearing referee. The request shall

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[2] *Aaronson v Lindsay & Hauer Internatl, Ltd*, 235 Mich App 259, 270; 597 NW2d 227 (1999).

[3] 1999 AC R 205.1101 *et seq.*

[4] See MCL 205.761 (authorizing the use of a small claims division in the Michigan Tax Tribunal).

[5] 1999 AC R 205.1101(f), (g).

[6] 1999 AC R 205.1101(i). See also *Shapiro Bag Co v Grand Rapids*, 217 Mich App 560, 563; 552 NW2d 185 (1996), citing *Hodgson v City of Birmingham*, 199 Mich App 490, 491; 502 NW2d 748 (1993) (construing a former version of the administrative rule as follows: "A tribunal member means a tribunal judge as opposed to a hearing officer or referee.")

[7] 1999 AC R 205.1310(1)(d) (emphasis added). See also MCL 205.762(1).

[8] MCL 205.762(3); MCL 205.764.

[9] 1999 AC R 205.1315(1).

[10] *Id.*

> demonstrate good cause as to why a rehearing shall be held. The opposing party may file a response to the request for rehearing within 14 days after service of the request on the party. The rehearing, if granted, shall be conducted at a site to be determined by the tribunal as provided by R 205.1335 and shall not be limited to the evidence presented to the hearing officer or hearing referee.
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> (2) The party who requests the rehearing shall also file with the tribunal, or include as a part of the request for a rehearing, a statement attesting to the service of the request on the opposing party. The statement shall specify the date and method by which the request was served on the opposing party.
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> (3) For purposes of this rule, service of the request on the opposing party may be accomplished by mailing the request to the opposing party's last known address by first-class mail or by delivery in person as provided in rule 2.107 of the Michigan Rules of Court.
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> (4) For purposes of this rule, "good cause" means any of the following:
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> (a) Error of law.
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> (b) Mistake of fact.
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> (c) Fraud.
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> (d) Any other reason the tribunal deems sufficient and material.[11]

Rule 205.1348 indicates that a motion for rehearing must be filed with the tribunal, but neglects to indicate before whom the proceedings are to be heard. In the absence of an applicable administrative rule, proceedings in the tribunal are governed by Michigan statutes and court rules.[12] The Tax Tribunal Act[13] provides that a party proceeding under the small claims division may request a rehearing *by a tribunal member* within twenty days of a hearing referee's order.[14]

Petitioner argues that the tribunal erred in failing to transfer its rehearing from the small claims division to the entire tribunal. However, such a transfer is not required. First, we note that a rehearing need only be heard by a member of the tribunal. Petitioner's rehearing was, in fact, heard by a tribunal judge. Second, we note that hearings and rehearings are treated differently, as separate administrative rules were created to govern each individual proceeding.

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[11] 1999 AC R 1348.

[12] 1999 AC R 205.1111(4); *Herald Co v Tax Tribunal*, 258 Mich App 78, 88; 669 NW2d 862 (2003).

[13] MCL 205.701 *et seq.*

[14] MCL 205.762(3). See also *Shapiro Bag Co*, *supra* at 563; *Hodgson*, *supra* at 491.

It is clear from the plain language of Rule 205.1315, that a party only has the right to transfer a *hearing*, not a rehearing. Petitioner *never* moved to transfer the original hearing to the entire tribunal. As petitioner's rehearing was heard by a proper individual and petitioner was not entitled to transfer its rehearing to the entire tribunal, petitioner has failed to establish that any error occurred.

However, petitioner also asserts that placing rehearings before the small claims division, if properly ordered, violated its due process rights as the small claims division limits the presentation of a case through a series of "unwritten rules." The conduct of trials before a small claims division is governed by the Revised Judicature Act.[15]

> In hearings before the small claims division, witnesses shall be sworn. The judge shall conduct the trial in an informal manner so as to do substantial justice between the parties according to the rules of substantive law but shall not be bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications, the sole object of such trials is to dispense expeditious justice between the parties. There shall be no jury nor shall a verbatim record of such proceedings be made.[16]

The small claims division of the tribunal functions as any other small claims division in Michigan. The small claims division does not improperly function under "unwritten rules" of procedure that deprive its participants of their due process rights. Furthermore, petitioner could have elected to transfer this matter to the entire tribunal before its initial hearing and presented a more complete case. Petitioner chose to proceed in the small claims division and may not now claim this choice as reversible error.[17]

III. Rescheduling of Rehearing

Petitioner argues that the Tax Tribunal abused its discretion in denying petitioner's motion for adjournment and "adjourning" the rescheduled rehearing for a date four days earlier. We review a lower court's determination regarding a motion to adjourn for an abuse of discretion.[18] "An adjournment may be granted on the ground of unavailability of a witness or evidence only if the court finds that the evidence is material and that diligent efforts have been made to produce the witness or evidence."[19]

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[15] MCL 600.6301 *et seq.*

[16] MCL 600.8411(2).

[17] *Lewis v LeGrow*, 258 Mich App 175, 210; 670 NW2d 675 (2003) (finding that reversible error must be predicated on trial court error, not upon an error contributed to by the aggrieved party's plan or negligence).

[18] *City of Lansing v Hartsuff*, 213 Mich App 338, 350; 539 NW2d 781 (1995).

[19] MCR 2.503(C)(2).

On May 24, 2002, the parties received notice that the rehearing was scheduled for August 27. However, on July 24, after the parties already had two months to prepare for the upcoming rehearing, the tribunal notified the parties that the rehearing was rescheduled for August 23, four days earlier than the originally scheduled date. On August 6, petitioner filed a motion to adjourn the rehearing and for immediate consideration as its valuation expert was unable to attend. Petitioner learned of the expert's unavailability through a memorandum dated August 2, 2002. On August 13, ten days before the rescheduled rehearing, the tribunal denied petitioner's motion for adjournment. Petitioner was informed that it could provide written evidence regarding the value of the equipment, including a statement from the valuation expert pursuant to R 205.1342(2).[20]

Petitioner contends that it was effectively denied the opportunity to prepare for the rehearing and provide the requested written statement from its valuation expert as the tribunal denied its motion for adjournment and rescheduled the rehearing for an earlier date. First, we reject petitioner's contention that it was prejudiced in any way by the tribunal moving up the rehearing by four days.[21] The parties had three months' notice of the original rehearing date and a full month's notice of the change. The loss of four days could not have prevented petitioner from fully preparing for the rehearing.

We also reject petitioner's contention that the tribunal abused its discretion in denying its motion for adjournment which prevented petitioner from presenting the testimony of its valuation expert. Rule 205.1342 clearly states that a party may provide written evidence in support of its valuation of the subject property. Petitioner is charged with knowledge of this law.[22] Accordingly, petitioner could have secured and filed a written statement of valuation from its expert on August 2, when it received notice that he would be unavailable on the rehearing date, or as late as August 9, fourteen days before the rehearing. Although the testimony of the

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[20] "A copy of a valuation disclosure or other written evidence to be offered in support of a party's contentions as to the subject property's value shall be filed with the tribunal and served upon the opposing party not less than 14 days before the date of the scheduled hearing." 1999 AC R 205.1342(2).

[21] The tribunal's notification regarding the change of date was imperfect, but understandable. The notice of rehearing for August 23, 2002, did not indicate on it face that it was an amended notice or otherwise highlight the change in date. Along with the notice, the tribunal included an "Order Granting Adjournment-[Hearing]." Neither party had requested an adjournment at that time and so the "Order" was sua sponte. The order indicated: "The above-indicated proceeding in this matter, previously scheduled to commence on 08/27/2002 will be rescheduled at a later date." Rather than reschedule at a later date, the notice of the rescheduled hearing was included. As we find that the "Order" was included to notify the parties of the changed date on the notice of rehearing, we reject petitioner's contention that the scheduling change amounted to an improper "adjournment."

[22] *Adams Outdoor Advertising v East Lansing (After Remand)*, 463 Mich 17, 27 n 7; 614 NW2d 634 (2000), citing *Mudge v Macomb Co*, 458 Mich 87, 109 n 22; 580 NW2d 845 (1998).

expert was material, there was another method to present the expert's evidence. Accordingly, the tribunal did not abuse its discretion by denying petitioner's motion.

IV. Competent, Material and Substantial Evidence

Petitioner challenges the final determination of the tribunal classifying petitioner's scoring equipment as "machinery" rather than a "computer." "In the absence of fraud, review of a Tax Tribunal decision is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle."[23] This Court reviews an agency's decision to determine if it was supported by competent, material, and substantial evidence; was arbitrary and capricious or an abuse of discretion; was contrary to law; or was otherwise affected by a substantial and material error of law.[24] Evidence is competent, material, and substantial if a reasonable person would accept the evidence as adequate to support the agency's findings.[25] There must be more than a scintilla of evidence, but less than a preponderance is required.[26] We must defer to the judgment of the tribunal if its decision is supported by substantial evidence.[27]

As petitioner failed to present evidence regarding the valuation of the equipment, the only issue at the rehearing was the proper classification of the scoring equipment. Petitioner presented the testimony of three witnesses indicating that the equipment was electronic rather than mechanical, had a life span of five to seven years, and consisted mostly of computers. Respondent presented evidence that State Tax Commission Guidelines clearly indicated that computer-controlled, automatic scoring equipment used in bowling alleys was to be included as machinery and equipment in Schedule B.

The Tax Tribunal properly determined from the evidence that the scoring equipment was "machinery and equipment" to be included in Schedule B. The State Tax Commission issued Bulletin No. 12 on November 17, 1999, which included new property multiplier tables to assist assessors and taxpayers in determining how to value personal property for property tax purposes.[28] The use of the tables was made mandatory to promote uniform taxation.[29] The State Tax Commission specifically indicated that "Bowling Automatic Scoring Eqp. (computer controlled)" was to be included in Schedule B.[30] As the mandatory guidelines promulgated by

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[23] *Catalina Marketing Sales Corp v Dep't of Treasury*, 470 Mich 13, 18-19; 678 NW2d 619 (2004).

[24] MCL 24.306; *Romulus v Dep't of Environmental Quality*, 260 Mich App 54, 62-63; 678 NW2d 444 (2003), citing *Dignan v Michigan Pub Sch Employees Retirement Bd*, 253 Mich App 571, 576; 659 NW2d 629 (2002).

[25] *Romulus*, *supra* at 63.

[26] *Great Lakes Sales, Inc v State Tax Comm*, 194 Mich App 271, 280; 486 NW2d 367 (1992).

[27] *Glennon v State Employees Retirement Bd*, 259 Mich App 476, 478; 674 NW2d 728 (2003).

[28] State Tax Commission Bulletin No. 12 of 1999.

[29] *Id.*

[30] *Id.*

the State Tax Commission actually did classify the scoring equipment consistent with the evidence presented by respondent, the Tax Tribunal properly ruled in respondent's favor.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jessica R. Cooper
/s/ Kirsten Frank Kelly