

STATE OF MICHIGAN
COURT OF APPEALS

VIKING-AUBURN DEVELOPMENT
COMPANY, L.L.C.,

UNPUBLISHED
May 8, 2008

Petitioner-Appellant,

v

CITY OF AUBURN HILLS,

No. 277040
Michigan Tax Tribunal
LC No. 00-324038

Respondent-Appellee.

Before: Kelly, P.J., and Owens and Schuette, JJ.

PER CURIAM.

Petitioner appeals as of right from a Tax Tribunal order dismissing its petition for lack of jurisdiction. We affirm. We decide this appeal without oral argument under MCR 7.214(E).

I. FACTS

Petitioner owns property in Auburn Hills. The 2006 taxable value of the property was approximately \$4.3 million. Petitioner contended that this figure was grossly inflated and that its taxable value was no more than \$2.8 million. Petitioner filed its petition for review on June 14, 2006.

Respondent filed a motion to dismiss, asserting that the tribunal lacked jurisdiction because petitioner had failed to protest the assessment before the local board of review as required by MCL 205.735. Petitioner claimed that it had brought the matter to the attention of the board of review and that on March 8, 2006, petitioner's counsel had prepared a petition to the board of review regarding the property and a cover letter explaining that petitioner was protesting the assessment. On March 10, 2006, petitioner provided an authorization letter attesting to counsel's right to represent it in the tax matter. (That letter bears a fax transmission time stamp of 4:19 p.m. on March 10, 2006.) That same day, counsel mailed the documents to the board.

However, the assessment notice stated that a protest to the board "is necessary to protect your right to further appeals to the Michigan Tax Tribunal for valuation . . . appeals" It advised that the board would be in session on Tuesday, March 7, Monday, March 13, and Tuesday, March 14, 2006. A taxpayer could protest in person by calling to request an appointment. A taxpayer could also protest in writing. "Written letters of appeal, addressed to

the Board of Review . . . will be accepted until **3:00 P.M., March 13, 2006. Faxed and/or emailed letters of appeal will not be accepted for the March Board of Review.**” Although petitioner purportedly mailed its letter on March 10, the board did not receive it until the morning of March 14, and thus it was not considered by the board of review. The March 8 cover letter from petitioner’s counsel bears the time stamp “2006 Mar 14 AM 10:44.”

The tribunal granted respondent’s second motion to dismiss, finding that petitioner did not submit any documentation in support of the timely receipt of its protest letter; that the timeliness of a letter to the board is based upon the date the letter is physically stamped as received, and not its postmarked date; that the board received the letter after the specified deadline; and as such, petitioner failed to timely protest the 2006 assessment. Therefore, the tribunal lacked jurisdiction to hear the appeal.

II. STANDARD OF REVIEW

“Absent fraud, this Court’s review of a Tax Tribunal decision is limited to determining whether the tribunal made an error of law or adopted a wrong legal principle.” *Meijer, Inc v Midland*, 240 Mich App 1, 5; 610 NW2d 242 (2000). The tribunal’s factual findings will be upheld if they are supported by competent, material, and substantial evidence on the whole record. *Id.* Substantial evidence is that which a reasonable mind would accept as sufficient to support the decision; it must be more than a scintilla of the evidence, but may be substantially less than a preponderance of the evidence. *Great Lakes Div of Nat’l Steel Corp v City of Ecorse*, 227 Mich App 379, 388-389; 576 NW2d 667 (1998).

III. ANALYSIS

MCL 205.735 governs proceedings before the tribunal “commenced before January 1, 2007.” MCL 205.735(1). In cases regarding “an assessment dispute as to the valuation of property . . . , the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute[.]” MCL 205.735(2). The protest to the board of review is a condition precedent that must be met in order for the tribunal to acquire jurisdiction over an assessment dispute. *Covert Twp v Consumers Power Co*, 217 Mich App 352, 355-356; 551 NW2d 464 (1996).

The board of review meets in March. MCL 211.30(1), (2). A resident taxpayer can appear in person before the board to protest an assessment. MCL 211.30(4). If allowed by the township or city involved, a resident taxpayer can also protest an assessment “by letter without a personal appearance” MCL 211.30(7).

Petitioner sought to appeal its 2006 property tax assessment. It was notified that a protest to the board “is necessary to protect your right to further appeals to the Michigan Tax Tribunal for valuation . . . appeals” It was advised that the board would be in session on Tuesday, March 7, Monday, March 13, and Tuesday, March 14, 2006. A taxpayer could protest in person by calling to request an appointment. A taxpayer could also protest in writing, but written letters would only be accepted until 3:00 p.m. on March 13, 2006.

Petitioner presented evidence that its attorney prepared its letter of protest and petition to the board of review on March 8, 2006. Petitioner provided an authorization letter acknowledging

counsel's authority to act on its behalf on March 10, 2006. The letter bears a facsimile transmission time stamp of 4:19 p.m. on March 10. Petitioner contended that the documents were mailed on March 10, 2006, but presented no evidence to that effect. While items sent by regular first-class mail are generally delivered within one or two business days, such delivery is not guaranteed; and due to the large volume of mail handled by the postal service, it is not unusual for delivery to be delayed for a few days, especially where, as here, the papers could not have been mailed until late on Friday afternoon. Respondent presented evidence that the March 8 letter was not received until the morning of March 14, beyond the deadline. The tribunal's finding that petitioner did not timely protest the assessment to the board of review is supported by competent evidence. Therefore, the tribunal did not err in finding that it lacked jurisdiction.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Donald S. Owens
/s/ Bill Schuette