

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SAL-MAR INDUSTRIAL CORPORATION,

Petitioner-Appellant,

v

TOWNSHIP OF MACOMB,

Respondent-Appellee.

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UNPUBLISHED

October 5, 2010

No. 291843

Tax Tribunal

LC No. 00-334739

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SAL-MAR INDUSTRIAL CORPORATION,

Petitioner-Appellant,

v

TOWNSHIP OF MACOMB,

Respondent-Appellee.

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No. 291844

Tax Tribunal

LC No. 00-334738

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SAL-MAR MACOMB CORPORATE CENTER,

Petitioner-Appellant,

v

TOWNSHIP OF MACOMB,

Respondent-Appellee.

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No. 294151

Tax Tribunal

LC No. 00-334742

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SAL-MAR INDUSTRIAL CORPORATION,

Petitioner-Appellant,

v

TOWNSHIP OF MACOMB,

Respondent-Appellee.

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No. 294339

Tax Tribunal

LC No. 00-334743

Before: WILDER, P.J., and CAVANAGH and M. J. KELLY, JJ.

PER CURIAM.

In docket numbers 291843, 291844, and 294339, petitioner, Sal-Mar Industrial Corporation, appeals as of right from orders of dismissal or of reconsideration of dismissal. In docket number 294151, petitioner, Sal-Mar Macomb Corporate Center, appeals as of right from an order denying its motion for reconsideration of dismissal. This appeal concerns ad valorem taxation of real property. We affirm.

The taxpayers (Sal-Mar Industrial Corporation and Sal-Mar Macomb Corporate Center) first argue that the tax tribunal erred by dismissing their appeals, and by failing, instead, to grant their requests for subpoenas duces tecum to a bank officer, to produce alleged appraisals of the subject properties. We disagree.

Where the tax tribunal dismisses a tax appeal because of a failure to comply with the tax tribunal's rules and orders, such actions are subject to judicial review for an abuse of discretion. *Professional Plaza, LLC v City of Detroit*, 250 Mich App 473, 475; 647 NW2d 529 (2002). An abuse of discretion involves far more than a difference of judicial opinion. *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 761-762; 685 NW2d 391 (2004). Rather, an abuse of discretion occurs only when the trial court's decision is outside the range of reasonable and principled outcomes. *In re Kostin Estate*, 278 Mich App 47, 51; 748 NW2d 583 (2008). Interpretation of court rules (or tribunal rules) presents a question of law, *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 458; 733 NW2d 766 (2006), and questions of law are reviewed de novo on appeal, *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 216; 761 NW2d 293 (2008).

Here, the taxpayers did not file their motions for subpoenas until after the default orders were entered, *and* until after the deadline had passed for their motions to set aside the default orders. Therefore, even though TTR 280 states that the tribunal "shall" issue subpoenas "[o]n written request of a party," the tax tribunal was not required to issue them to a party that was not only in default, but had also failed to honor the deadline for getting out of default.

The dismissals were authorized by the tax tribunal's rules. TTR 247 provides, in relevant parts:

(1) If a party has failed to plead, appeal, or otherwise proceed as provided by these rules or as required by the tribunal, then the party may be held in default by the tribunal on motion of another party or on the initiative of the tribunal. A party placed in default shall cure the default as provided by the order placing the party in default and file a motion to set aside the default accompanied by the appropriate fee within 21 days of the entry of the order placing the party in default or as otherwise ordered by the tribunal. *Failure to comply with an order of default may result in the dismissal of the case* or the scheduling of a default hearing as provided in this rule.

(2) For purposes of this rule, “default hearing” means a hearing at which the defaulted party is precluded from presenting any testimony or submitting any evidence not submitted to the tribunal before the entry of the order placing the party in default and may not, unless otherwise ordered by the tribunal, examine the other party’s witnesses.

\* \* \*

(4) *Failure of a party to properly prosecute the appeal, comply with these rules, or comply with an order of the tribunal is cause for dismissal of the appeal* or the scheduling of a default hearing for respondent. . . . [TTR 247 (emphases added).]

“Or” is disjunctive. See *Random House Webster’s College Dictionary* (2001), at p 931.<sup>1</sup> So, the tax tribunal rule clearly allows the tax tribunal *either* to schedule a default hearing *or* to dismiss the case. Here, there would have been no point in conducting a default hearing, because the taxpayers had not submitted any evidence whatsoever.

Furthermore, the tax tribunal has authority to dismiss a petition for noncompliance with an order. *Perry v Vernon Twp*, 158 Mich App 388, 392; 404 NW2d 755 (1987). Indeed, the tax tribunal has “unquestionable” power to dismiss a tax appeal because of a party’s noncompliance with a rule or order. *Stevens v Bangor Twp*, 150 Mich App 756, 761; 389 NW2d 176 (1986).

Here, the taxpayers repeatedly, and for a long time, failed to file and exchange their valuation disclosures, witness lists, and exhibit lists. The township, on the other hand, complied with all deadlines, but, to its disadvantage, did not receive any evidence from the taxpayers. Accordingly, the tax tribunal did not abuse its discretion in dismissing the taxpayers’ petitions.

Next, the taxpayers argue that the tax tribunal’s dismissal of their petitions, without conducting a show-cause hearing, violated due process. We disagree.

To preserve an issue for appeal, a party must have raised the issue below, and received a ruling on it. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). Here, the

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<sup>1</sup> Dictionaries may be used to define words undefined in an agreement, statute, or court rule. See, generally, *In re Kostin Estate*, 278 Mich App 47, 54; 748 NW2d 583 (2008).

taxpayers did not argue to the tax tribunal that, without a show-cause hearing, there would be a due process violation. Therefore, this argument is unpreserved. In civil cases, this Court is not obligated to consider unpreserved issues. *Coates v Bastian Bros, Inc*, 276 Mich App 498, 510; 741 NW2d 539 (2007). But we may elect to address unpreserved issues where they present questions of law, and the facts necessary for their resolution have been presented. *Smith v Foerster-Bolser Constr, Inc*, 269 Mich App 424, 427; 711 NW2d 421 (2006). This due process issue presents an issue of law, for which the necessary facts have been presented, and we elect to address it. We review for plain error affecting substantial rights. *Veltman v Detroit Edison Co*, 261 Mich App 685, 690; 683 NW2d 707 (2004).

Procedural due process requires notice and an opportunity to be heard. See, e.g., *Mettler Walloon, LLC*, 281 Mich App at 213-214. Here, the taxpayers clearly received notice from the tax tribunal that they were required to exchange their valuation disclosures, witness lists, and exhibit lists. These notices took the form of the original scheduling orders (which were based on the parties' submitted stipulations for the scheduling order dates), and in subsequent orders notifying the taxpayers of their failures to comply. Also, TTR 247 put the taxpayers on notice that a default could be entered if they failed to comply. TTR 247(1) and (4). Thus, the taxpayers clearly received notice that their petitions could be dismissed if they did not comply, which they repeatedly, and for a long time, failed to do.

Further, the taxpayers also had opportunities to be heard. These opportunities took the form of substantial time, and repeated opportunities, to file motions and other documents with the tax tribunal. The taxpayers indeed took advantage of these opportunities, and were in fact heard, i.e., considered, by the tax tribunal. In doing so, the taxpayers indeed eventually gave reasons to the tax tribunal for their utter failure to file valuation disclosures. But it was clear, from the taxpayers' submissions to the tax tribunal, that the taxpayers had failed to obtain expert appraisers to value their properties. Where a party contributes to an alleged error by plan *or by negligence*, it cannot benefit from the error, i.e., cannot be heard on appeal to complain of the error. *Lewis v LeGrow*, 258 Mich App 175, 210; 670 NW2d 675 (2003).

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Mark J. Cavanagh  
/s/ Michael J. Kelly