

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

LUCIA ALCARAZ,)	
)	
Plaintiff,)	TC-MD 150049D
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	FINAL DECISION OF DISMISSAL

This Final Decision of Dismissal incorporates without change the court’s Decision of Dismissal, signed by Magistrate Richard Davis and entered March 7, 2016. The court did not receive a statement of costs and disbursements within 14 days after its Decision of Dismissal was entered. *See* TCR-MD 16 C(1).

This matter came before the court on its own motion to dismiss this case for lack of prosecution.

On May 15, 2015, the court issued an Order of Abeyance, holding this case in abeyance pending the resolution of Plaintiff’s federal appeal, or until further order of the court. (Or Abey at 1.) On November 20, 2015, the court sent a letter to Plaintiff requesting a written status report updating the court on the status of Plaintiff’s federal appeal. (Ltr at 1, Nov 20, 2015.) Plaintiff failed to provide a written status report. On December 17, 2015, the court issued an Order Reactivating Case stating that Plaintiff must provide three mutually convenient trial dates within 14 days, or the court would set the matter for trial at its own convenience. (Or Reac at 2.) The court again received no response from Plaintiff.

A trial was scheduled for 9:00 a.m. on February 24, 2016, to consider Plaintiff’s appeal. On January 6, 2016, the court issued an Order Setting Trial to the address Plaintiff provided to

the court. The court's Order Setting Trial was not returned as undeliverable. That same day, the court sent a notice of trial to the email provided by Plaintiff. Both the Order and the notice advised that if Plaintiff did not appear, the court might dismiss her appeal.

Plaintiff failed to appear for the scheduled trial. The court received no communication from Plaintiff prior to her trial letting the court know that she was not able to appear. Plaintiff did file a request on February 24, 2016, at 11:41 a.m. stating that Plaintiff "would like to have [her] case delay[ed]" and explaining that Plaintiff "was late due to road construction and [did not] know [her] way in town." (Ptf's Ltr at 1.) Plaintiff also explained that she had not been following her appeal "due to [the] illness and death of [a] love[d] one." (*Id.*)

Tax Court Rule-Magistrate Division (TCR-MD) 8 B(3) provides that "requests to reschedule * * * trial proceedings set by the court will not be granted except in exceptional circumstances."

Plaintiff's statement that she was late due to road construction is not exceptional circumstances that would allow the court to reschedule. Plaintiff also stated that she had failed to respond, in general, due to the illness and death of a loved one. The illness or death of a family member would qualify as exceptional circumstances, however, Plaintiff has not specified how that prevented her attending trial. Further, her statement is contradicted by her assertion that she missed trial due to road construction and not knowing her way around. Under such circumstances, the court finds the appeal must be dismissed for lack of prosecution. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is dismissed.

Dated this ____ day of March 2016.

ALLISON R. BOOMER
MAGISTRATE

If you want to appeal this Final Decision of Dismissal, file a complaint in the Regular Division of the Oregon Tax Court, by mailing to: 1163 State Street, Salem, OR 97301-2563; or by hand delivery to: Fourth Floor, 1241 State Street, Salem, OR.

Your complaint must be submitted within 60 days after the date of the Final Decision of Dismissal or this Final Decision of Dismissal cannot be changed. TCR-MD 19 B.

This document was filed and entered on March 24, 2016.