

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

MARK J. VON FLATERN)	
and SHELLEY R. VON FLATERN,)	
)	
Plaintiffs,)	TC-MD 150405N
)	
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, entered April 20, 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.

A case management conference was held in this matter on December 17, 2015. During that conference, the parties discussed trial dates and agreed that April 18 or April 19, 2016, would likely work for trial. Plaintiffs’ authorized representative requested additional time to confirm that Plaintiffs were available for trial on either of those dates. The court allowed Plaintiffs until December 24, 2015, to respond to the court regarding their availability for trial. The court sent a Journal Entry to the parties on December 18, 2015, reminding them of Plaintiffs’ deadline to respond to the court. The Journal Entry warned that Plaintiffs’ failure to respond to the court would result in the court setting the matter for trial at its convenience.

///

As of January 8, 2016, the court had not received any further communication from Plaintiffs regarding the trial date, therefore, the court issued an Order Setting Trial in this matter for 9:00 a.m. on April 18, 2016. The court mailed a copy of the Order Setting Trial to Plaintiffs' authorized representative and emailed a trial notice to Plaintiffs' authorized representative. Neither the Order Setting Trial nor the trial notice was returned as undeliverable. The trial notice warned Plaintiffs that the court might dismiss the appeal if Plaintiffs failed to appear for trial.

On April 5, 2016, a court staff member returned a telephone call from Plaintiffs' authorized representative stating that he wished to cancel the trial on April 18, 2016. The court staff member left a voice mail informing Plaintiffs' authorized representative that trial remained on the court's calendar and that a request to cancel the trial must be made in writing to the court. On April 11, 2016, the court received a copy of a letter from Plaintiffs' authorized representative to Defendant's authorized representative stating that

“[Plaintiff] Mark J. VonFlatern works out of town on [an] ongoing basis and is unable to make this appointment. We will need to reschedule the appointment for a later date. Please call and I will try to coordinate a date and time that will work with Mark's employment.”

(Ptfs' Ltr at 1, Apr 11, 2016.) The court received no further communication from Plaintiffs.

Tax Court Rule-Magistrate Division (TCR-MD) 8 B(3) states that “[r]equests to reschedule * * * trial proceedings set by the court will not be granted except in exceptional circumstances.” Even if the court were to construe the letter from Plaintiffs' authorized representative to Defendant's authorized representative as a request to reschedule trial in this matter, the request would not meet the requirements of TCR-MD 8 B(3). There is no evidence that Plaintiff Mark J. Von Flatern's work schedule is an “exceptional circumstance.” Plaintiffs' authorized representative proposed April 18, 2016, as an agreeable trial date and was given an opportunity to confirm Plaintiffs' availability on that date. He failed to respond to the court in a

timely manner and waited until one week before trial to inform the court of a potential conflict on the trial date. There is no allegation or evidence that Plaintiff Mark J. Von Flatern's work schedule changed suddenly or unexpectedly. To the contrary, Plaintiffs' letter stated he works out of town on an "ongoing basis." Under such circumstances, the court finds the appeal must be dismissed for lack of prosecution. Now, therefore,

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

Dated this ____ day of May 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 May 9, 2016.