

STATE OF MICHIGAN
COURT OF APPEALS

LIBERTY PROPERTY LIMITED,
Petitioner-Appellant,

UNPUBLISHED
June 18, 2002

v

CITY OF SOUTHFIELD,
Respondent-Appellee.

No. 231323
Tax Tribunal
LC No. 00-266182

Before: Smolenski, P.J., and Neff and White, JJ.

PER CURIAM.

Petitioner appeals as of right from a sua sponte order dismissing the case by the Michigan Tax Tribunal. We affirm.

Petitioner owns a commercial office building known as First Center Office Building located at 26911-26957 Northwestern Highway in Southfield, Michigan (“the property”). Respondent assesses and collects property taxes on the property from petitioner. Petitioner purchased the property on June 23, 1997, from Star Venture Limited Partnership for \$77,500,000. After the sale, respondent increased both the taxable value and the assessed value of the property. Petitioner did not protest its 1998 taxable value, but did protest its 1999 taxable value and assessed value of the property to the Board of Review in March 1999. Following that, petitioner filed an appeal on April 29, 1999, with the tribunal challenging its 1999 assessed value, state equalized value, and taxable value of the property that were imposed by respondent. Proceedings continued before the tribunal until the tribunal issued a sua sponte order of dismissal. The tribunal found that, because petitioner had not filed an effective valuation disclosure, and petitioner was precluded from presenting any valuation testimony, petitioner would not be able to establish the property’s true cash value as required by MCL 205.737. This appeal followed.

On appeal, petitioner argues that the tribunal erred when it dismissed its petition due to petitioner’s failure to file a valuation disclosure. In the absence of fraud, this Court reviews the Tax Tribunal’s decision to determine whether the tribunal committed an error of law or adopted a wrong legal principle. *Michigan Milk Producers, Ass’n v Dep’t of Treasury*, 242 Mich App 486, 490; 618 NW2d 917 (2000). Appellate review of the tribunal’s factual findings is limited to whether the findings are supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28; *Professional Plaza, LLC, v City of Detroit*, ___ Mich App ___; ___ NW2d ___ (Docket No. 224094, March 19, 2002), slip op p 1. Substantial

evidence is that which a reasonable mind would accept as sufficient to support a conclusion. *In re Payne*, 444 Mich 679, 692 (Boyle, J.), 698 (Riley, J.); 514 NW2d 121 (1994). Substantial evidence is more than a scintilla but may be substantially less than a preponderance of the evidence. *Id.* When there is sufficient evidence, a reviewing court must not substitute its discretion for that of the administrative tribunal even if the court might have reached a different result. *Black v Dep't of Social Services*, 195 Mich App 27, 30; 489 NW2d 493 (1992). It does not matter that alternative findings also could have been supported by substantial evidence on the record. *In re Payne, supra* at 698.

Additionally, we review the tribunal's decisions to dismiss petitions for failure to comply with the tribunal's rules or orders for an abuse of discretion. *Professional Plaza, supra*, slip op p 1. "An abuse of discretion exists where the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias." *Id.* at 1-2.

Tax Tribunal Rule 205.1252(1) states, in relevant part, "[a] party's valuation disclosure in a property tax appeal shall be filed with the tribunal and exchanged with the opposing party as provided by order of the tribunal." 1999 AC, Rule 205.1252(1). Further, Tax Tribunal Rule 247 provides that, "[i]f a party has failed to plead, appear, 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." 1999 AC, R 205.1247(1). The party "shall cure the default as provided by the order placing the party in default," and file a motion to have the default set aside. 1999 AC, R 205.1247(1). "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 by [Rule 247]." 1999 AC, R 205.1247(1). Likewise, a party's failure to "comply with these rules, or comply with an order of the tribunal is cause for dismissal of the appeal or for the scheduling of a default hearing for the respondent." 1999 AC, R 205.1247(4). Additionally, "an order of dismissal may be set aside by the tribunal for reasons it deems sufficient." 1999 AC, R 205.1247(4).

Here, the tribunal ordered the parties to file and exchange valuation disclosures on four separate occasions. First, on September 20, 1999, when it issued its Notice of January 2000, Prehearing General Call and Order of Procedure with a deadline of December 22, 1999. Again, on February 22, 2000, when the tribunal issued a Summary of Prehearing Conference and Scheduling Order with a deadline set at March 10, 2000. Next, on September 7, 2000, the tribunal issued a sua sponte order of default that set a deadline of September 28, 2000, for the filing of the valuation disclosures. The tribunal also reiterated the September 28, 2000, deadline in its order denying respondent's motion for summary disposition, dated September 21, 2000. In its orders, the tribunal also made the parties aware that non-compliance with the order may result in default or dismissal. Each time petitioner did not file a valuation disclosure, and twice responded with letters to the tribunal dated, December 21, 1999, and September 8, 2000, stating that the case did not require a valuation disclosure.

It is well-settled that "[a] party must obey an order entered by a court with proper jurisdiction, even if the order is clearly incorrect, or the party must face the risk of being held in contempt and possibly being ordered to comply with the order at a later date." *Kirby v Michigan High School Athletic Ass'n*, 459 Mich 23, 40; 585 NW2d 290 (1998); see also *Schoensee v Bennett*, 228 Mich App 305, 317; 577 NW2d 915 (1998). Unless a court lacks jurisdiction, its

orders must be obeyed, and a party's reasons for defying an order are "irrelevant" to the issue of whether sanctions for disobedience are properly imposed. *In re Hague*, 412 Mich 532, 544-545; 315 NW2d 524 (1982). Moreover, in *Schoensee, supra* at 317-318, this Court held that a party must not disregard a court order even after filing a claim of appeal. Even if this Court has "held the ordinance upon which [an] injunction was based to be void, nevertheless, an order entered by a court of proper jurisdiction must be obeyed even if it is clearly incorrect." *Ann Arbor v Danish News Co*, 139 Mich App 218, 229; 361 NW2d 772 (1984). Specifically pertaining to the Tax Tribunal, this Court has held that "[t]he power of the Tax Tribunal to dismiss a petition because of a petitioner's noncompliance with a rule or order of the tribunal is unquestionable." *Stevens v Bangor Twp*, 150 Mich App 756, 761; 389 NW2d 176 (1986).

In light of the above, we find that the fact that petitioner disagreed with the tribunal's reasoning for requiring it to file a valuation disclosure irrelevant. *In re Hague, supra* at 544-545. Moreover, petitioner's strong beliefs that the Tax Tribunal's orders were "incorrect" because the valuation issue involved "chasing the sale," and as such, a valuation disclosure is not required, do not excuse petitioner's wilful noncompliance with the tribunal's repeated orders. This is because even if the order was actually "clearly incorrect," a party must still obey the order. *Kirby, supra* at 40; *Schoensee, supra* at 317. In this case, the first time the Tax Tribunal ordered the parties to submit valuation disclosures was September 20, 1999. Over the course of the next year, the tribunal ordered the parties to submit valuation disclosures three more times. The tribunal even specifically addressed, and then rejected, petitioner's allegations that a valuation disclosure was not required in its order denying respondent's motion for summary disposition. Our review of the record reveals that the tribunal granted petitioner more than a year to file the valuation disclosure, and petitioner repeatedly failed to comply with the rules and orders of the Tax Tribunal. Also, despite the fact that the tribunal held petitioner in default and in effect sternly warned petitioner that it must file a valuation disclosure, petitioner refused to cure the deficiency. Therefore, we find that the tribunal did not abuse its discretion in dismissing petitioner's petition.

Furthermore, we find it important to note that despite the fact that petitioner's reasons for defying the court's order were irrelevant, the tribunal responded as follows in its sua sponte order of dismissal to petitioner's argument that the issue is not the true cash value of the property, but the "methodology" used to determine the value of the property:

With respect to Petitioner's contention that the property's true cash value is not at issue, Petitioner, in its petition at paragraph 12, alleges:

The 1999 assessment, state equalized value and taxable value imposed on [p]etitioner's property, and the taxes to be levied and collected thereon, are invalid and unlawful and operate as a fraud...[sic]

In the petition's prayer for relief, [p]etitioner further requests that the property's assessed and taxable values be revised for the 1999 tax year. As such, the value of the subject property is, in fact, at issue. Further, the "method" of arriving at the property's proper assessed and taxable values is a secondary issue that cannot be addressed without the valuation disclosure.

In the absence of fraud, this Court reviews the tribunal's decisions to determine whether the tribunal committed an error of law or adopted a wrong legal principle. *Michigan Milk, supra* at 490. After reviewing the record in this case, we find that the outcome of the substantive issue in this case would have been the determination of the true cash value of the property. In order to determine the true cash value of the property, the tribunal would have had to study the methods used during the assessment process. Logically, it seems that this means the "methodology" used to determine the true cash value is certainly at issue, but only secondarily to the final determination of the true cash value of the property. As such, the tribunal's finding that "the 'method' of arriving at the property's proper assessed and taxable values is a secondary issue that cannot be addressed without the valuation disclosure" was not an error in application of the law or an adoption of a wrong legal principle. *Id.*

Petitioner also argues, in the alternative to its first issue, that a letter it sent to the tribunal dated September 29, 2000, should have been considered its valuation disclosure. Further, petitioner argues that it can prevail in the case without calling any witnesses to testify regarding the value of the property, except for respondent's assessors. Tax Tribunal Rule 101 provides, in pertinent part:

"Valuation disclosure" means documentary or other tangible evidence in a property tax appeal which a party relies upon in support of the party's contention as to the true cash value of the subject property or any portion thereof and which contains the party's value conclusions and data, valuation methodology, analysis, or reasoning in support of the contention. [1999 AC, Rule 205.1101(1)(m).]

The taxpayer, i.e., petitioner, bears the burden of proving the true cash value of property. MCL 205.737(3); *Georgetown Place Cooperative v City of Taylor*, 226 Mich App 33, 43; 572 NW2d 232, (1997), citing *Samonek v Norvell Twp*, 208 Mich App 80, 84, 527 NW2d 24 (1994). True cash value is the same as fair market value and is regularly determined using three different approaches: cost less depreciation, sales comparison, and capitalization of income. *Georgetown, supra* at 44; *Samonek, supra* at 84. Taxpayers may use variations of the three approaches, or new methods if they are accurate and reasonably represent the property's fair market value. *Georgetown, supra* at 44. In any event, the value determined must correspond to the usual selling price of the property. *Id.*; *Samonek, supra* at 84. Additionally, this Court has recently stated that past case precedent implies that "the Tax Tribunal should be permissive in the admission of relevant evidence of the fair market value of property subject to an appeal, even if that evidence is not determinative." *Professional Plaza, supra*, slip op p 2.

In *Professional Plaza, id.* at 1, the petitioner filed a document titled "Valuation Disclosure" that was an affidavit from an expert witness. The document identified the witness and contained the witness' conclusions of the property's value. *Id.* 1-2. The Tax Tribunal issued an order stating that the valuation disclosure was deficient, but did not explain in what way it was deficient. *Id.* at 1. This Court held that the Tribunal's dismissal based on the "unexplained, perfunctory rejection" of the petitioner's valuation disclosure was an abuse of discretion. *Id.* at 2. The Court stated that it believed that the petitioner's valuation disclosure satisfied the requirements of Rule 205.1101(1)(m) because the disclosure included the evidence it was relying upon to support its position, and identified the basis for its conclusion regarding the value of the property. *Id.* Moreover, the disclosure notified the respondent of the petitioner's evidence

supporting the value of the property. *Id.* Accordingly, the tribunal abused its discretion when it dismissed the petition for failure to file a conforming valuation disclosure. *Id.*

We find the present case distinguishable from *Professional Plaza*, because, although the tribunal found that the letter petitioner sent to the tribunal dated September 29, 2000, was defective, the tribunal specifically stated the reasons supporting that conclusion. The tribunal stated that petitioner did not provide the source of the information relied upon, and provided no data or analysis in support of its conclusions. Unlike in *Professional Plaza*, our review of the record reveals that petitioner's valuation disclosure was simply a two-page letter signed by petitioner's counsel and did not satisfy Rule 205.1101(1)(m), as indicated by the tribunal. There was no notice to respondent, or the tribunal, of the "documentary or other tangible evidence" on which petitioner relied for its contention of the true cash value, nor did the letter contain petitioner's "value conclusions and data, valuation methodology, analysis or reasoning in support of the contention." Therefore, the tribunal did not abuse its discretion when it dismissed the petition for failure to file a conforming valuation disclosure.

Tax Tribunal Rule 283 provides in pertinent part:

Without leave of the tribunal, a witness may not testify as to the value of property without submission of a valuation disclosure containing that person's value conclusions and the basis for the conclusions. [1999 AC, Rule 205.1283(3).]

Since petitioner's valuation disclosure did not contain any "person's value conclusions and the basis for the conclusions," under Rule 283, petitioner could not call witnesses to testify regarding the value of the property without leave of the tribunal. In its dismissal of the petition, the tribunal stated that, for this reason, it would not allow any witnesses. As such, in accordance with Rule 283, petitioner would be precluded from presenting any witness testimony, and therefore, would not be able to sustain its burden of proving the true cash value of the property in this property tax appeal. MCL 205.737(3); *Georgetown, supra* at 43. Therefore, the Tax Tribunal did not abuse its discretion in dismissing petitioner's action.

Lastly, petitioner argues that the language in the tribunal's order of dismissal could be interpreted to mean that the tribunal dismissed the case because it viewed petitioner's response as a motion, for which petitioner did not pay a motion fee. Petitioner argues that if so, petitioner will gladly pay the fee in order to reinstitute its claim. Petitioner is referring to the tribunal's sua sponte order of dismissal, dated November 14, 2000. The text to which petitioner refers, placed in context, is as follows:

"Without leave of the tribunal, a witness may not testify as to the value of property without submission of a valuation disclosure containing that person's value conclusions and the basis for the conclusions...." [Rule 283]

As a result, it appears that Petitioner cannot establish the property's true cash value, as required by MCL 205.737. More importantly, Petitioner has failed to comply with the Tribunal's Order of September 7, 2000, and this case should be dismissed, as provided by TTR 247.

Tax Tribunal Rule 247 provides, in relevant part, that, “[i]f a party has failed to plead, appear, 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.” 1999 AC, R 205.1247(1). The tribunal’s sua sponte order of default dated September 7, 2000, states that because neither party had complied with the tribunal’s prior orders to file and exchange valuation disclosures, both parties were placed in default. The tribunal also ordered the parties to file valuation disclosures within twenty-one days, along with a motion to set aside default pursuant to TTR 247. The tribunal stated in the order that failure to comply with the order “may” result in dismissal or the scheduling of a default hearing. Given the express language of the orders, we find petitioner’s argument that the dismissal may have been based on petitioner’s failure to remit the motion fee without merit.

Affirmed.

/s/ Michael R. Smolenski

/s/ Janet T. Neff