

STATE OF MICHIGAN
COURT OF APPEALS

LANSING TOWERS,

Petitioner-Appellant,

v

CITY OF LANSING,

Respondent-Appellee.

UNPUBLISHED

November 16, 2006

No. 262273

Tax Tribunal

LC No. 00-299577

Before: Murphy, P.J., and Meter and Davis, JJ.

PER CURIAM.

Petitioner appeals as of right from the decision of the Michigan Tax Tribunal denying petitioner's motion to set aside a default and hold the case in abeyance. The tribunal also granted respondent's motion to set aside a default and ordered that the case be dismissed. The Tax Tribunal had earlier dismissed the case due to the parties' joint failure to timely file their valuation disclosures and exchange them with each other. We affirm.

This case involves an apartment building located in downtown Lansing. On June 7, 2004, petitioner filed a motion to extend time for the parties to exchange valuation disclosures and to adjourn the prehearing date. Petitioner stated that it needed more time to arrange an appraisal of the apartment and also that the parties were still in discussion about the possibility of settlement without a hearing before the tribunal. The Tax Tribunal denied the motion and placed both parties in default on August 4, 2004, stating that although petitioner had claimed in its motion that the tribunal had not issued prior extensions of the appraisal exchange date, respondent had previously filed a motion to extend time, which was granted. The Tax Tribunal gave both parties twenty-one days to cure the defaults by filing their valuation disclosures, prehearing statements, and individual motions to set aside the defaults, pursuant to TTR 205.1247.¹

¹ TTR 205.1247 provides, in relevant part, as follows:

[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

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Respondent cured its default by filing a motion requesting the Tax Tribunal to set aside the August 4, 2004, order placing it in default and by contemporaneously filing and providing petitioner with prehearing statements and valuation disclosures. Petitioner, however, failed to cure in time, filing its motions to set aside the default and to hold the case in abeyance on August 31, 2004 – twenty-seven days after the tribunal issued its order requiring the parties to cure the defaults within twenty-one days. Petitioner filed its valuation disclosure on September 28, 2004. The Tax Tribunal dismissed the case and denied petitioner’s late motion, stating that petitioner failed to file its valuation disclosure as ordered and that petitioner’s prehearing statement and motion to set aside the default were untimely filed.

Petitioner claims on appeal that the Tax Tribunal abused its discretion in dismissing the case. Petitioner argues that it relied on Tribunal Notice 2004-8, issued by the tribunal in July 2004, which stated that effective January 1, 2005, the tribunal would no longer “routinely grant requests for extension of time or adjournments.” Petitioner asserts that Tribunal Notice 2004-8 definitively recognized that it was tribunal practice, policy, and procedure to grant each party to a litigation one automatic time extension when requested. Accordingly, petitioner argues, the tribunal’s refusal to grant petitioner a time extension was a violation of tribunal policy and thus an abuse of discretion. We disagree.

Petitioner failed to comply with the orders issued to it by the Tax Tribunal, specifically by failing to cure its default when given an opportunity to do so. Moreover, TTR 205.1252 expressly provides that valuation disclosures shall be filed and exchanged with the opposing party by order of the Tribunal. Failure of a party to comply with an order of the Tribunal is cause for dismissal of the appeal before it. TTR 205.1247(4); *Stevens v Bangor Twp*, 150 Mich App 756, 761; 389 NW2d 176 (1986) (“[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”). Petitioner’s reliance on the notice issued by the Tribunal was in direct contradiction to the rules as stated.

Furthermore, petitioner’s argument is based on an interpretation of the notice in issue that differs from the Tax Tribunal’s interpretation. In response to petitioner’s argument that for over thirteen years, it was the practice of the tribunal to give *each party* one extension of the valuation disclosure deadline, the tribunal stated in its order denying petitioner’s motion for reconsideration that it had never been its practice to grant one automatic extension to each party; rather, the practice had been to allow for one good-cause extension *per appeal*. Again, the tribunal had granted respondent’s motion to extend before petitioner filed its motion to extend.

We also reject petitioner’s assertion that the tribunal erred because petitioner was put in the position of having to secure an appraisal within twenty-one days during a time of the year when demand for appraisal services was very high. The record clearly establishes that petitioner was on notice that a valuation disclosure was initially due by March 26, 2004, five months before

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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 . . . within 21 days of the entry of the order[.]

the date established by the August 4, 2004, order. In other words, petitioner's argument that it was almost impossible to find an appraiser in August 2004 ignores the fact that it had notice months earlier that it needed to secure the services of an appraiser.

Because the practice and procedure of the Tax Tribunal was disclosed in its rules, and because petitioner had an opportunity to cure its default but did not do so, we conclude that the tribunal did not abuse its discretion in dismissing petitioner's claim.

Affirmed.

/s/ William B. Murphy

/s/ Patrick M. Meter

/s/ Alton T. Davis