

STATE OF MICHIGAN
COURT OF APPEALS

CASSAR GROUP,

Petitioner-Appellant,

v

CITY OF KEEGO HARBOR,

Respondent-Appellee.

UNPUBLISHED

February 3, 2009

No. 282115

Tax Tribunal

LC No. 00-317915

Before: Cavanagh, P.J., and Jansen and Meter, JJ.

PER CURIAM.

Petitioner appeals as of right from the Tax Tribunal's order dismissing its petition because of a failure to timely cure a default arising from its earlier failure to file and exchange its valuation disclosure. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Petitioner contested the assessed values for three contiguous commercial properties for the 2005 tax year. The Tax Tribunal issued a scheduling order that set forth various deadlines, including that "the parties exchange and file valuation disclosures on or before 05/26/2006. The order specified that **"[f]ailure to exchange and file valuation disclosures by the date indicated will result in default."**

On June 2, 2006, petitioner moved to adjourn the prehearing conference and extend the time for filing valuation disclosures and prehearing statements. The Tax Tribunal denied the motion in an order dated July 11, 2006. Thereafter, in an order entered on March 30, 2007, the Tax Tribunal determined that petitioner had failed to file and exchange its prehearing statement and valuation disclosure and ordered petitioner in default. The order specified that petitioner file and exchange the necessary documents and file a motion to set aside the default within 21 days.

On July 13, 2007, more than two months after the deadline for filing the motion to set aside the default expired, petitioner filed a motion to set aside the default. The motion did not offer an explanation for the delay. The motion was received by the tribunal on July 17, 2007. On that same day, the tribunal issued an order stating that the default had not been cured and dismissing the petition with prejudice for failure to timely cure the default. Later, in an order entered on October 25, 2007, the Tax Tribunal denied petitioner's motion to set aside the default.

On appeal, petitioner argues that the Tax Tribunal abused its discretion by sua sponte dismissing the petition rather than imposing less drastic sanctions, particularly where respondent was not prejudiced and petitioner eventually furnished the valuation disclosure.

This Court reviews for an abuse of discretion the Tax Tribunal's decision to dismiss a petition for failure to comply with its rules or orders. *Professional Plaza, LLC v City of Detroit*, 250 Mich App 473, 475; 647 NW2d 529 (2002). The abuse of discretion standard recognizes that there will be circumstances in which there will be more than one reasonable and principled outcome, and selection of one of these principled outcomes is not an abuse of discretion. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

Tax Tribunal Rule 247 provides:

(1) If 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. 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.

* * *

(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 for the scheduling of a default hearing for the respondent. Upon motion made within 21 days of the entry of the order as provided by R 205.1288, an order of dismissal may be set aside by the tribunal for reasons it deems sufficient. [1999 AC, R 205.1247(1).]

In light of petitioner's repeated noncompliance with the Tax Tribunal's orders, the dismissal of the petition was not an abuse of discretion. The noncompliance here differs from that in *Stevens v Bangor Twp*, 150 Mich App 756, 761; 389 NW2d 176 (1986), in which this Court held that the Tax Tribunal abused its discretion by dismissing a petition for the petitioner's failure to attend a counsel conference. This case was not a matter of missing a single deadline by a few days. Rather, more than ten months passed after the deadline for filing the valuation disclosure before the tribunal even placed petitioner in default. Petitioner was thereafter afforded an additional 21 days to move to set aside the default and failed to comply with that deadline, too. Petitioner eventually filed a motion to set aside the default, but the motion was filed more than two months late and offered no explanation for the delay.

Petitioner argues that the fact that the tribunal acted sua sponte compounds the drastic nature of the penalty, and that it "received only the notice of default issued March 30, 2007, [which] contains the standard Tax Tribunal boilerplate indication that 'Failure to comply with this Order will result in dismissal of this case **or** [emphasis added by petitioner] the scheduling of a default hearing.'" Petitioner essentially argues that although the tribunal's order warned that

noncompliance might lead to dismissal, it did not know that this was not just an empty threat. Petitioner's claimed surprise that threatened dismissal would actually result from its noncompliance does not compel the conclusion that the imposition of that penalty was an abuse of discretion.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Kathleen Jansen

/s/ Patrick M. Meter