

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

ANTHONY IRWIN,)	
)	
Plaintiff,)	TC-MD 050592D
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION OF DISMISSAL

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

A telephone trial was scheduled at 9:30 a.m. on Wednesday, August 17, 2005, to consider Plaintiff's appeal. The parties agreed to the trial date and time at the case management conference held on July 12, 2005. On July 15, 2005, the court sent notice of the scheduled trial to Plaintiff at 919 NE Holland, Portland, Oregon 97211, which is the address Plaintiff provided to the court. The notice was not returned as undeliverable. The court's notice stated that "[f]ailure to be available at this trial may result in a decision against you in this case."

A case may be dismissed when the participant seeking relief fails to appear. For purposes of a telephone proceeding, a participant "appears" by being available at the telephone number provided to the court by the participant on the date and time prescribed. In a letter to the court, received August 23, 2005, Plaintiff wrote that he set the "teleconference" for August 17, 2005, at "1 PM at my home in NE Portland and I was unable to make it home from Wilsonville where I work." The event scheduled for August 17, 2005, was a telephone trial beginning at 9:30 a.m. as agreed to by Plaintiff at the July 12, 2005, case management conference. As previously stated,

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a notice stating the date and time was sent to Plaintiff and Defendant. Even though Defendant and the court were available on the date and at the time prescribed, Plaintiff was not.

At the July 12, 2005, telephone conference, the parties agreed to exchange and submit their evidence to the court no later than August 10, 2005. The rules for exchange of evidence were discussed at the case management conference. On July 15, 2005, Plaintiff was sent a Notice of Scheduled Court Proceeding and a copy of the court's rules. In the court's notice, Plaintiff was advised that he was to provide the court and the other party, Defendant, with "copies of all exhibits to be introduced into evidence in support of" his case. Plaintiff submitted his evidence to the court, but failed to provide the court with a certificate of service stating that he exchanged his evidence with Defendant. After the court received Plaintiff's evidence, court staff called him on August 5, 2005, requesting proof of service. To date, Plaintiff has not provided proof of service. The court has no record of whether Defendant received a copy of Plaintiff's evidence. Defendant exchanged and submitted its evidence as required by the court's rules. If Plaintiff had appeared for trial, but failed to follow the court's rules for the exchange of evidence, the court would have been unable to consider his evidence. TC-MD 10 (Tax Court Rules-Magistrate Division.)

Unfortunately, because Plaintiff failed to appear for the scheduled proceeding and to follow the court's rules for the exchange of evidence, the court finds the case should be dismissed. Now, therefore,

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IT IS THE DECISION OF THIS COURT that the Complaint is dismissed.

Dated this _____ day of September 2005.

JILL A. TANNER
PRESIDING MAGISTRATE

If you want to appeal this Decision, 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 Decision or this Decision becomes final and cannot be changed.

This document was signed by Presiding Magistrate Jill A. Tanner on September 28, 2005 . The Court filed this document on September 28, 2005.