

of the Law.² See Reproduced Record (RR) at 9a-10a. The notice alleged that The Acts, Inc. owed \$58,164.55 in contributions, interest and penalties on wages that

² Section 304 of the Law provides, in pertinent part:

Each employer shall file with the department such reports, at such times, and containing such information, as the department shall require, for the purpose of ascertaining and paying the contributions required by this act.

(a) If any employer fails within the time prescribed by the department to file any report necessary to enable the department to determine the amount of any contribution owing by such employer, the department may make an assessment of contributions against such employer of such amount of contributions for which the department believes such employer to be liable, together with interest thereon as provided in this act.

Within fifteen days after making such assessment the department shall give notice thereof by registered mail to such employer. If such employer is dissatisfied with the assessment so made he may petition the department for a re-assessment in the manner herein prescribed....

(b) Any employer against whom an assessment is made may, within fifteen days after receipt of notice thereof, petition the department for a re-assessment which petition shall be under oath and shall set forth therein specifically and in detail the grounds and reasons upon which it is claimed that the assessment is erroneous....

* * *

(d) As to any employer who fails to petition for re-assessments, ... such assessment ... of the department shall then become final, and the contributions and interest assessed ... by the department shall then become final, and the contributions and interest assessed ... by the department become forthwith due and payable, and no defense which might have been determined by the department ... shall be available to any employer in any suit or proceeding brought by the Commonwealth in the name of the fund for the recovery of such contribution based on such assessment....

43 P.S. § 784(a), (b), (d).

The Acts, Inc. had not reported to the Department. See id. The notice specifically stated “[i]f you disagree with this assessment, you may file a petition for a reassessment WITHIN FIFTEEN (15) DAYS after receipt of this Notice. THIS ASSESSMENT WILL BECOME CONCLUSIVE AND BINDING UNLESS YOU FILE A TIMELY PETITION FOR REASSESSMENT. Please see the enclosed Petition for Reassessment, Form UC-162. Mailing instructions and information about the Law and the procedure if a petition for reassessment is filed are located on the reverse of Form UC-162.” Id. at 9a (emphasis in original).

On April 29, 2009, The Acts, Inc. mailed the Form UC-162 back to the Department’s Tax Review Office which was signed by its president, Larry Clevenger. See RR at 5a-8a. However, the Form UC-162 indicated that it required notarization by a notary public, as required by Section 304(b) of the Law, and that portion of the Form UC-162 returned by The Acts, Inc. was left blank. Id. at 5a.

As a result, on April 30, 2009, the Tax Review Office sent a letter to The Acts, Inc. which stated, in pertinent part:

The Petition for Reassessment received by the U.C. Tax Review Office was not notarized. I am returning the Petition for Reassessment to you for authorized notarization. The properly executed Petition for Reassessment must be returned to this office, **at the address above**, postmarked by the U.S. Postal Service no later than **May 15, 2009**. Failure to return the properly executed Petition for Reassessment by this date will result in the Petition for Reassessment being dismissed, with the assessment becoming final.

RR at 11a (emphasis in original).

On June 25, 2009, following The Acts, Inc.’s failure to submit a properly executed Form UC-162, the Department, through the Deputy Secretary of Labor and Industry, issued a Final Order which states:

WHEREAS, the Office of Unemployment Compensation Tax Services filed a Notice of Assessment for contributions, interest and penalties against The ACTS, Inc. on April 15, 2009, and

WHEREAS, The ACTS, Inc. filed a Petition for Reassessment form that was not notarized, and

WHEREAS, the U.C. Tax Review Office granted The ACTS, Inc. fifteen (15) calendar days to notarize their Petition for Reassessment form, and

WHEREAS, the ACTS, Inc. failed to submit a Petition for Reassessment within the time allowed, and

NOW, THEREFORE, the Petition for Reassessment is **DISMISSED**.

RR at 2a (emphasis in original). On July 27, 2009, The Acts, Inc. filed the instant petition for review from the Department's Final Order.³

In this appeal, The Acts, Inc. claims that the Department violated its due process rights under the Administrative Agency Law⁴ by dismissing its Petition for Reassessment without giving it the opportunity to have a hearing, submit a brief, or to participate in oral argument regarding its failure to submit a properly executed Form UC-162. We do not agree.

As noted above, Section 304(b) of the Law provides, in pertinent part, that “[a]ny employer against whom an assessment is made may, within fifteen days after receipt of notice thereof, petition the department for a re-assessment *which*

³ This Court's scope of review is limited to determining whether necessary findings of fact are supported by substantial evidence, whether the Department committed an error of law, or whether the petitioner's constitutional rights were violated. Victor v. Department of Labor and Industry, 647 A.2d 289 (Pa. Cmwlth. 1994).

⁴ 2 Pa.C.S. §§ 501-508, 701-704.

petition shall be under oath....” 43 P.S. § 784(b) (emphasis added). In construing the foregoing provisions, Section 1504 of the Statutory Construction Act of 1972, provides that “[i]n all cases where a remedy is provided ... by any statute, the directions of the statute shall be strictly pursued....” 1 Pa.C.S. § 1504. Under a predecessor to Section 1504, the Supreme Court recognized long ago that “[i]t is well settled ... where statutory remedies are provided, the procedure prescribed by the statute must be strictly pursued to the exclusion of other methods of redress...[, and t]his is particularly true of special statutory appeals of administrative bodies....” Colteryahn v. Sanitary Dairy v. Milk Control Commission of Pennsylvania, 332 Pa. 15, 23-24, 1 A.2d 775, 780 (1938).

Thus, in order to obtain review of its Petition for Reassessment by the Department, The Acts, Inc. was required to submit a petition under oath pursuant to the requirements of Section 304(b) of the Law. As a result, it is clear that the Department did not err in dismissing the defective Petition for Reassessment submitted by The Acts, Inc. as it patently did not comply with the statutory requirements under the Law.

In addition, it is equally clear that the Department’s dismissal of the defective Petition for Reassessment did not implicate The Acts, Inc.’s due process rights under the Administrative Agency Law. Due process requires that a person be provided notice and an opportunity to be heard prior to an adjudication affecting that person’s rights. Burch v. Department of Public Welfare, 815 A.2d 1143 (Pa. Cmwlth. 2002); Manor v. Department of Public Welfare, 796 A.2d 1020 (Pa. Cmwlth. 2002). However, it does not confer an absolute right to be heard. Burch; Goetz v. Department of Environmental Resources, 613 A.2d 65 (Pa. Cmwlth. 1992), petition for allowance of appeal denied, 533 Pa. 663, 625 A.2d 1196 (1993). Moreover, the putative due process rights guaranteed under Section 504 of the

Administrative Agency Law may be waived. Pennsylvania Bankers Association v. Pennsylvania Department of Banking, 599 Pa. 496, 962 A.2d 609 (2008).

The undisputed facts of this case demonstrate that The Acts, Inc. was given ample opportunity to be heard prior to the dismissal of its appeal. Had The Acts, Inc. properly prosecuted its appeal by complying with the simple procedural requirements of Section 304(b) of the Law, as requested by the Department, it would have had the opportunity to present evidence at a hearing.⁵

However, the dismissal of The Acts, Inc.'s defective Petition for Reassessment, based upon its failure to properly prosecute the appeal by submitting a notarized Petition for Reassessment, does not violate due process. Indeed, this Court has consistently held that the dismissal of an administrative appeal due to a party's failure to properly prosecute that appeal does not violate due process. See, e.g., Burch (failure to prosecute an administrative appeal of an agency action and to respond to the agency's notices and orders justifies dismissal of the appeal); Greensburg Nursing and Convalescent Center v. Department of Public Welfare, 633 A.2d 249 (Pa. Cmwlth. 1993) (repeated failures to file a pre-hearing memorandum justifies the dismissal of a petitioner's administrative appeal); Goetz (failure to prosecute or failure to comply with orders issued by an agency warrants the dismissal of an administrative appeal and does not impinge

⁵ See Section 304(e) of the Law, 43 P.S. § 784 (e) ("In any hearings held by the department in pursuance of the provisions of this section the department is hereby authorized and empowered to examine any person or persons under oath concerning any matters pertaining to the determination of the liability of the employer for contributions under the provisions of this act and to this end may compel the production of books, papers and records and compel the attendance of all persons, whether as parties or witnesses, whom and which the department believes to have or contain knowledge or information material to such determination....").

due process rights).⁶ In short, The Acts, Inc.'s allegations of error in the instant appeal are patently without merit.

Accordingly, the Department's Final Order is affirmed.

JAMES R. KELLEY, Senior Judge

⁶ See also Commonwealth v. Lentz, 353 Pa. 98, 103, 44 A.2d 291, 293 (1945) (“Due process of law is not denied when prescribed administrative procedure is faithfully pursued upon due notice and with an opportunity to the party to be charged to be heard before the matter becomes final and a right to court review. These conditions were fully met in the instant case. The defendant was given due notice of each step undertaken by the department, looking to the making of an assessment against him, and was given timely notice of the resultant action taken by the department. On the other hand, the defendant deliberately refrained from contesting the assessment in the department, made no attempt to petition for a reassessment and necessarily, therefore, did not seek to appeal the matter to the Court of Common Pleas ... as he otherwise would have had a right to do. Thus, the assessment became final and the contributions, embraced thereby, became due and payable.”).

