STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Safeway Acquisition Co., LLC,
Petitioner,

v

MTT Docket No. 326425

City of Westland,
Respondent.

Tribunal Member Presiding
Jack VanCoevering

FINAL OPINION AND JUDGMENT

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

ORDER GRANTING RESPONDENT'S MOTION FOR COSTS AND ATTORNEY FEES

On June 29, 2006, Petitioner, through its representative Randall P. Whately (P32012), filed a petition with the Tribunal contesting the true cash, state equalized, and taxable values of parcel no. 56-007-01-0595-002 for the 2006 tax year. The petition affirmatively indicated that "[t]he 2006 taxable value and assessed value of Petitioner's Property were protested to the Board of Review in March, 2006."[1]

On July 24, 2006, Respondent filed an answer to the petition and a Motion to Dismiss. In its Motion to Dismiss, Respondent argues that Petitioner did not appear before the 2006 March Board of Review. In support of this contention, Respondent provided an affidavit of Respondent's assessor, James H. Elrod, which states that: "I have reviewed the minutes from the March 2006 Board of Review and neither [Petitioner] or an authorized agent or representative protested the assessment levied against [the subject property] to the March 2006 Board of Review."[2] Respondent also provided two letters addressed to Petitioner's apparent representative at the time, Myles Hoffert. The first letter, dated March 3, 2006, indicates that Respondent provided notice to Petitioner's representative that the appeal to the March 2006 Board of Review was defective.[3] The second letter, dated March 16, 2006, indicates that Petitioner failed to fax a "letter of authority" pursuant to a discussion between Petitioner and Respondent's Assessor.[4] As a result of this failure, "no action was taken on this appeal."[5] Respondent also included its March 2006 Board of Review Change Summary for 2006 Assessments which indicates that the subject parcel's assessment was not appealed before the Board.[6]

---

[1] Petition, P.1.
[2] Respondent's Exhibit A, Affidavit of City Asssessor James H. Elrod, P. 1.
[3] Respondent's Exhibit B, P. 1.
[4] Respondent's Exhibit B, P. 2.
[5] Respondent's Exhibit B, P. 2.
[6] See Respondent's Exhibit B.

In conjunction with its answer and Motion to Dismiss, Respondent filed a Motion for Costs and Attorney's Fees. In this Motion, Respondent states that it is entitled to costs pursuant to TTR 145[7], and that it is entitled to attorney's fees pursuant to MCR 2.114.[8] Respondent alleges that when Petitioner affirmatively represented that it protested the assessment to the March 2006 Board of Review in its Petition, Petitioner fraudulently misrepresented a material fact, subjecting Petitioner and its representative to sanctions for failure to conduct a reasonable inquiry. Respondent cites *Michigan ex rel Saginaw Cty Prosecuting Atty v Cergnul*, 203 Mich App 69 at 73 (1993), which states: "The imposition of sanctions under MCR 2.114 is mandatory upon finding that the document was signed in violation of the court rule. There is no discretion for the trial court to exercise in determining if a sanction should be awarded." Petitioner has not filed a response to this Motion.

The Tribunal finds that Petitioner has failed to properly perfect its appeal pursuant to MCL 205.735, which required Petitioner to appeal the assessment to Respondent's March 2006 Board of Review. As a result, Petitioner's appeal should be dismissed.

Regarding the imposition of sanctions, the Tribunal finds that Petitioner's representative violated MCR 2.114(D) by signing the petition without having conducted a reasonable inquiry into whether or not Petitioner appeared before the March 2006 Board of Review. MCR 2.114(D)(2) places an affirmative duty on any party signing a legal document to conduct a reasonable inquiry into the facts and law before signing. Petitioner's counsel failed to execute that duty by affirmatively stating that it had appeared before the March 2006 Board of Review. Any reasonable inquiry would have divulged this fact. Attorneys are held to a higher standard of inquiry as evidenced by MCR 2.114 and the supporting case law. Therefore,

IT IS ORDERED that Respondent's Motion to Dismiss **IS GRANTED** and the above-captioned appeal **IS DISMISSED.**

---

[7] TTR 145 states:

> (1) The tribunal may, upon motion or upon its own initiative, allow a prevailing party in a decision or order to request costs. . . .

[8] MCR 2.114 states:

(D) The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that:

> (1) he or she has read the document;
>
> (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; . . .

(E) Sanctions for Violation. If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.

IT IS FURTHER ORDERED that Respondent's Motion for Costs and Attorney Fees **IS PARTIALLY GRANTED** and Petitioner shall pay costs to Respondent in the amount of $50.

MICHIGAN TAX TRIBUNAL

Entered: February 23, 2007 By: Jack Van Coevering