STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL
SMALL CLAIMS DIVISION

George Chedraue,
Petitioner,

v

MTT Docket No. 312371

Wayne County Treasurer,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

FINAL ORDER AND JUDGMENT ON REMAND

On October 13, 2005, the Tribunal entered a Final Opinion and Judgment, adopting the September 6, 2005 Proposed Opinion and Judgment as the Tribunal's final decision in this case. The Final Opinion and Judgment denied Petitioner a principal residence exemption for the subject property for the 2001, 2002, 2003 and 2004 tax years. On November 4, 2005, Petitioner filed a claim of appeal with the Michigan Court of Appeals.

On February 15, 2006, the Michigan Court of Appeals entered an Order granting Petitioner's Motion to Add to the Record. Pursuant to the Order, the following evidence was added: (1) copies of Petitioner's 2001 to 2004 Federal and State income tax filings; (2) a copy of Petitioner's driver's license; (3) a copy of Petitioner's voter's registration, issued July 2, 2002; and (4) copies of Petitioner's 2001 to 2004 Social Security Statement.

On February 22, 2007, the Michigan Court of Appeals entered an Order remanding the case back to ". . . the Tax Tribunal for reconsideration of petitioner's claim to a principal-residence exemption in light of the new evidence submitted pursuant to this Court's order."

The Tribunal originally denied Petitioner's principal residence exemption for the 2001, 2002, 2003 and 2004 tax years because, based on the evidence in the file, Petitioner "provided no

clear indication that there is one place that he has treated as his true, fixed, and permanent home, to which, when absent he intends to return or if there is such a place, where it is." Pursuant to TTR 342, the Tribunal did not permit Petitioner to submit additional evidence after the hearing was concluded. This procedure conforms to the Court's ruling in *Dora v Lesinksi,* 351 Mich 579; 88 NW2d 592 (1958). Also, see *Kok v Cascade Charter Twp*, 255 Mich App 535; 660 NW2d 389 (2003), wherein the Court of Appeals held:

> Petitioner argues that the tribunal erred in denying her request to supplement the record after the hearing with evidence of a comparable sale. We disagree.
>
> 1999 AC, R 205.1342 provides, in pertinent part:
>
> > 2) A copy of the valuation disclosure or other written evidence to be offered in support of a party's contentions as to the subject property's value shall be filed with the tribunal and served upon the opposing party not less than 14 days before the date of the scheduled hearing. Failure to comply with this subrule may result in the exclusion of the evidence at the time of the hearing because the opposing party may have been denied the opportunity to adequately consider and evaluate the evidence before the date of the scheduled hearing.
>
> This rule gives the tribunal discretion to exclude evidence that is untimely where "the opposing party may have been denied the opportunity to adequately consider and evaluate the evidence before the date of the scheduled hearing." The tribunal refused to accept the evidence pursuant to Rule 205.1342(2) on the ground that the evidence was not submitted to the tribunal and the opposing party at least fourteen days before the hearing date and admission of the evidence would be prejudicial. Because respondent did not have an opportunity to evaluate the evidence before the hearing, we find no error in the tribunal's decision to deny the admission of the evidence. *Id*., p544.

For this reason, the Tribunal finds the Court of Appeals' action in allowing Petitioner to submit additional evidence highly unusual.

In this case, it appears that the Court of Appeals was persuaded by Petitioner's brief on appeal. Specifically, Petitioner stated that "[i]n talking to the clerk at the Tax tribunal petitioner

asked what material was to be provided. Petitioner responded to this by providing the information requested." *Id*., p1. Petitioner also stated that "[h]e talked to a clerk [at the Tribunal] who informed him that he did not need to file tax returns . . . ." *Id*., p8.

However, pursuant to MCL 205.725(3), "[a] clerk or employee of the tribunal shall not provide legal, accounting, or technical assistance relevant to a federal, state or local tax matter, or to any other matter of which the tribunal may acquire jurisdiction." Typically, Tribunal clerks inform parties that they should submit the evidence they think is necessary to prove their case. When parties ask for specific examples, a clerk may list examples of evidence typically considered but in no way is this list either an exhaustive list or legal advice. Further, Petitioner is an attorney and, as such, is charged with knowing what evidence is proper and effective in proving his case, rather than "relying" upon purported information from Tribunal clerks. Contrary to Petitioner's contention, the Tribunal did not inform him of what material is required to support his contention that he owned the property as his principal residence.

Also, Petitioner's belief of the relevance of evidence is irrelevant. It is incumbent on a petitioner to establish its entitlement to exemption by a preponderance of the evidence. *ProMed Healthcare v Kalamazoo*, 249 Mich App 490, 495; 644 NW2d 47 (2002). Petitioner, in his brief on appeal, states:

> Upon the Administrative Law Judge's decision being issued Petitioner contacted the Tax Tribunal requesting a Rehearing. He was informed that he would be notified of when and where he was to submit the additional information requested by the clerk and mentioned by the Administrative Law Judge. This was done but because an Administrative Law Judge can only rely on the record presented he did not know he could not submit further documents or evidence. *Id*., p8.

The Tribunal finds this argument unpersuasive. A rehearing is conducted on the existing evidence and testimony submitted at the previous hearing. New evidence is not considered per TTR 342 and the Notice of Hearing sent to the parties.

Having said this, the Tribunal recognizes that if the Court of Appeals grants a motion to enlarge the record, the enlarged record must be considered in rendering a decision on remand. To that end, Petitioner acknowledges in his brief he did not reside at the subject property in 2001. Instead, Petitioner admits he moved to the subject property in March of 2002. The Tribunal finds that, based upon this statement, Petitioner is not entitled to a principal residence exemption for the 2001 tax year.

Further, upon examination of Petitioner's supplemental evidence, the Tribunal finds that Petitioner's federal and state tax filings and social security statements are at odds. The Tribunal agrees with the Court of Appeals that Petitioner's additional evidence is conflicting. Some of Petitioner's filings and statements list the subject property as his residence; others list Petitioner's former address at 21707 Audette St. or a post office box. This conflicting evidence does not establish the subject property as Petitioner's principal residence for the tax years at question.

Additionally, Petitioner admits that he obtained his driver's license and voter's registration cards in July of 2002. The determination of principal residency is as of May 1 of the year the exemption is claimed. As an attorney, Petitioner would know that upon changing residences he must change the address on his driver's license. The Tribunal will not assume that Petitioner did not obey the law. Rather, the Tribunal will assume that Petitioner did not occupy the subject property as his principal residence until July 2002. Given this, the Tribunal finds that Petitioner has not proven by a preponderance of the evidence that he is entitled to a principal residency exemption for the subject property for the 2002 tax year.

As stated above, Petitioner submitted his driver's license and voter's registration card to the Court of Appeals. However, these documents are merely indicia of residency considered in

determining whether Petitioner is entitled to a principal residence exemption for the subject property; these documents are not the sole criteria.

Having reviewed Petitioner's additional evidence, the Tribunal finds that most of it is conflicting. However, the Tribunal finds that Petitioner has shown by a preponderance of the evidence that the subject property, namely 240 Huron River E, Belleville, Michigan, was Petitioner's principal residence for tax years 2003 and 2004.

The Tribunal, after considering the new evidence filed with the Court of Appeals, finds that Petitioner is denied a principal residence exemption for Parcel No. 31087030010000 for the 2001 and 2002 tax years. The Tribunal further finds that Petitioner is entitled to a 100% principal residence exemption for Parcel No. 31087030010000 for the 2003 and 2004 tax years.

Therefore,

IT IS ORDERED that the subject property's principal residence exemption for the tax years at issue shall be as set forth in this Final Order and Judgment on Remand.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's principal residence exemption status as finally shown in this Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ii) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (iii) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (iv) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (v) after December 31, 2006, at the rate of 5.42% for calendar year 2007, and (vi) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and (vii) after December 31, 2008, at the rate of 3.31% for calendar year 2009.

This Final Order and Judgment on Remand resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: January 22, 2009
sms

By: Patricia L. Halm