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

Gretchen L. Mikelonis,
Petitioner,

v

MTT Docket No. 382898

Township of Alabaster,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

ORDER DENYING PETITIONER'S MOTION FOR ENTRY OF DEFAULT JUDGMENT

ORDER GRANTING SUMMARY DISPOSITION IN FAVOR OF RESPONDENT PURSUANT TO MCR 2.116(I)(2)

On June 16, 2010, Petitioner filed a Motion requesting that the Tribunal enter a default judgment against Respondent for failure to comply with the Order entered on April 19, 2010, transferring the above-captioned case from the Tribunal's Small Claims Division to the Entire Tribunal and requiring Respondent to file an answer to the Entire Tribunal petition and other written information and documentation within 21 days of the entry of that Order. In the Motion, Petitioner states:

a. "Despite more than one opportunity to file an answer to the Petition in this docket, Respondent had failed to do so by April 19, 2010."

b. "All filings required by the April 19th Order were to be made within 21 days of the entry of the April 19th Order."

c. "Petitioner fully and completely responded to the April 19th Order on a timely basis in early May, 2010. As of the June 2010 date of this motion, no answer has been filed by Respondent and none of the other written information and documentation requested of Respondent by the April 19th Order has been provided by the Respondent…Respondent has ignored the Tribunal's April 19th Order in which it was to inform the Tribunal and Petitioner within 21 days as to the basis of Respondent's denial of the relief requested by Petitioner for the qualified error to which she was subjected."

d. "Although the appeal…is about the 2008 tax year, it is not about the 18 mills of school tax levied on the taxable value of the subject property. Petitioner has already paid that amount after realizing that Alabaster Township had made a billing mistake. Her appeal is about the interest and penalties related thereto which she has paid under protest and seeks rebated to her. That is the amount of $2,102.99. Petitioner also seeks issuance of a proper, corrected 2008 winter tax bill and correction to all related township records and files."

On July 16, 2010, Petitioner filed a supplement to her Motion for Entry of Default Judgment. In the supplement, Petitioner states:

a. "In a letter to Judge Halm dated June 23, 2010, Respondent did submit some 11 pages of written documentation to the Tribunal in response to the April 19th Order 'Respondent's June 23rd Submittal.'"

b. "…it is clear that Respondent's June 23rd Submittal is not in compliance with the terms of the April 19th Order and provides no basis for avoiding or delaying entry of Petitioner's requested order of default judgment…."

c. "Respondent still has not filed an answer to Petitioner's appeal in this docket that comes remotely close to complying with TTR 245 which sets forth the Tribunal's rule on the form of answers that must be filed to petitions."

d. "The one page e-mail from April 10, 2009, in Respondent's June 23rd Submittal is not a proper answer in compliance with TTR 245. It does not respond to the petition pending before the Tribunal that relates to the inaction by the Board of Review at its July 21, 2009 meeting. While that e-mail from April 2009 may represent the then-assessor's view in response to an earlier letter from Petitioner's counsel, it cannot satisfy the Board of Review's statutory responsibility at its July 21, 2009 meeting where Petitioner sought relief pursuant to MCL 211.53b."

e. "The Township…not the former assessor, was ordered by Judge Halm on April 19th to inform the Tribunal and Petitioner in writing 'as to the basis of their denial of the correction of Petitioner's purported qualified error.' That still has not happened, notwithstanding Respondent's June 23rd Submittal."

f. "…two pages of Respondent's June 23rd Submittal are particularly relevant to the 2008 tax year, and the improper tax bills issued in 2008 to Petitioner, and the issues faced at the July 21…[2009] session of the Board of Review. Those two pages labeled as 'printed on 02/23/2008' and appear to represent the electronic version of the property tax card in Respondent's records. That card contains the following notation…'P.R.E. 100% 04/28/1994'…This card and its notations are from Respondent's records, in Petitioner's view, reveal that the township's records were in fact erroneous. The former assessor refused to present this information to the Board of Review and kept it from them. These faulty records served as the basis for the improper summer and winter tax bills issued to Petitioner for the 2008 tax year, and earlier years. This card shows that Respondent was carrying forward on its records a 1994 principal residence exemption granted to the prior owner of the property. This card confirms that Petitioner never applied for a principal residence exemption for the 2008 tax year or any prior tax year, as she has contended in this docket."

On August 6, 2010, Respondent filed responses to Petitioner's Motion for Entry of Default Judgment and Petitioner's Supplement to her Motion for Entry of Default Judgment. In its responses, Respondent states:

a. "Respondent denies that prior to April 19, 2010, it was given more than one opportunity to file an answer to Petitioner's Petition. The MTT Docket Detail for this case indicates that there was never a small claims answer form sent to Respondent in order for Respondent to properly answer Petitioner's Small Claims Petition."

b. "The Online Docket Detail indicates that Petitioner was sent a Small Claims Petition form on February 1, 2010, which was due back to the Tribunal on March 1, 2010. On February 23, 2010, there is a docket entry indicating that the Petition was received by the Tribunal. However, there is no subsequent docket entry indicating that a copy of the Petition and an Answer Form were sent to Respondent. Such a docket entry is typical in appeals commenced in the Small Claims Division of the Tax Tribunal."

c. "…upon the Tribunal's issuance of the April 19, 2010 Order directing Respondent to answer the Petition, there was still no copy of Petitioner's February 23, 2010 Petition nor an answer form provided to Respondent. Respondent's counsel was able to obtain a copy of Petitioner's February 23, 2010 Petition from Petitioner's counsel and has concurrently filed Respondent's Answer to the Petition along with its answer to Petitioner's Motion for Entry Default Judgment."

d. "Respondent denies that it received a copy of Judge Halm's April 19th Order."

e. "Respondent has no record of Petitioner's compliance with the April 19, 2010 Order requiring Petitioner to 'submit to the Tribunal and Respondent within 21 days of entry of this Order a copy of 'Treasury's audit,' the property's assessment change notice and ad valorem tax bills for the tax years at issue.'"

f. "Respondent denies that the April 19th Order required Petitioner to submit a legal memorandum which set forth the legal and factual basis for Petitioner's position that the Assessor made a qualified error."

g. "The Tribunal does not have jurisdiction over the issuance and computation of tax bills.'

h. "The Department of Treasury Bulletin, *Principal Residence Exemption Public Act 17 of 2010 Amendments Waiver of Interest and Timber-Cutover Classified Property*, released on March 26, 2010 states that 'the Board of Review, local unit officials, county officials, Michigan Tax Tribunal, and any other person or entity do not have the statutory authority to waive interest in a corrected or supplemental tax bill resulting…[from] a PRE denial…Moreover, the proper avenue of an appeal of this nature based on the revocation of a PRE…is through the Department of Treasury first, and not the Tax Tribunal. Such processes have been invoked by the Petitioner and Petitioner's requested relief of a refund of the statutory interest added to the corrected tax bills for the 2008 tax year has already been granted in the April 27, 2010 Decision and Order of Determination by the Department of Treasury. Petitioner has attempted to circumvent the interest provision in MCL 211.7cc by trying to create the appearance of an 'error' that would qualify for correction by the July Board of Review under MCL 211.53b and the requirements for any overpayment or underpayment due to a qualified error under MCL 211.53b shall be

without interest. Given the Department of Treasury's final determination, this appeal is moot."

i. "Respondent asserts that Petitioner's Motion for Default…is now moot because Respondent has provided all of the documentation required by the April 19, 2010 Order to the Tribunal and Petitioner. As such, Respondent is now in full compliance with the Tribunal's Orders. Conversely, Respondent is not in receipt of the documentation required to be submitted by Petitioner pursuant to the same April 19th Order."

The Tribunal, having given due consideration to the Motion, the response and the case file, finds:

1. Contrary to Petitioner's contentions, the underlying issue in this case relates to the denial of a principal residence exemption under MCL 211.7cc for the 2008 tax year and not the correction of a qualified error under MCL 211.53b. Given this, the Tribunal erred in its April 19, 2010 Order as cases challenging the denial of a principal residence exemption are required to be filed in the Small Claims Division only.

2. MCL 211.7cc authorized Respondent to issue the denial notice and revised tax bills at issue, including interest and penalties, based on the erroneous continuation of the principal residence exemption at issue. Further, Petitioner had notice that her property was improperly receiving a benefit by virtue of the property's assessment change notices and ad valorem tax bills and took no action to correct the situation by rescinding the principal residence exemption.

3. Notwithstanding the above, Petitioner's Motion for Entry of Default Judgment is premature, as Respondent has not yet been held in default. TTR 247 contemplates holding a party in default for failing to comply with a Tribunal order or rule prior to dismissing the case or holding a default hearing due to that party's failure to timely cure the default. The entry of a default judgment would also be inappropriate as Petitioner has the burden of proof and Petitioner has not established that she is entitled to the requested relief. Nevertheless, Respondent filed the required answer and written information and documentation, albeit untimely. Further, Petitioner has not been unduly prejudiced by the untimely filing given the circumstances of this case.

4. Contrary to Respondent's contentions, the Tribunal is not, in fact, precluded from "[waiving] interest in a corrected or supplemental tax bill resulting…[from] a PRE denial." MCL 211.7cc(8) provides for the denial of a principal residence exemption by Treasury, a request for informal conference with Treasury relative to that denial and the permissive waiver of interest by Treasury for such denials. Treasury's determinations are, however, appealable to the Tribunal under MCL 211.7cc(13), including the denial of the permissive waiver, and the Tribunal can determine whether the waiver was appropriately denied or granted. See also MCL 205.753 (i.e., "[f]or purposes of the constitutional provision, the tribunal is the final agency for the administration of property tax laws").

5. Given the circumstances of this case, including the erroneous transfer of this case from the Small Claims Division to the Entire Tribunal and the fact that no Small Claims answer form was sent to Respondent, Petitioner's Supplemental Motion for Entry of Default Judgment and Respondent's untimely response to Petitioner's original Motion for Entry of Default Judgment is deemed to be properly pending in this case.

6. Petitioner has admitted that her property was not entitled to a principal residence exemption for the 2008 tax year. As such, Petitioner is responsible for the additional tax and interest as Petitioner benefitted from not paying the tax that was otherwise due and owing (i.e., "time value money"). The penalty that was levied should, however, be waived as the continuation of the principal residence exemption was the result of Respondent's negligence and not Petitioner's request. Given that there are no genuine issues of material fact, the Tribunal finds that Respondent should be granted summary disposition pursuant to MCR 2.116(I)(2).

Therefore,

IT IS ORDERED that Petitioner's Motion for Entry of Default Judgment is DENIED.

IT IS FURTHER ORDERED that Summary Disposition is GRANTED in favor of Respondent pursuant to MCR 2.116(I)(2).

IT IS FURTHER ORDERED that Petitioner is LIABLE for the revised tax and interest originally levied as the result of the denial of the principal residence exemption at issue. The associated penalty is, however, WAIVED.

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 this Order granting summary disposition in favor of Respondent within 28 days of the entry of the Order. 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. See also MCL 211.7cc(13).

MICHIGAN TAX TRIBUNAL

Entered: March 21, 2011 By: Patricia L. Halm