STATE OF MICHIGAN

COURT OF APPEALS

BEACHCOMBER MOTEL,

Petitioner-Appellant,

v

MACKINAW TOWNSHIP,

Respondent-Appellee.

UNPUBLISHED
January 14, 1997

No. 183672

Michigan Tax Tribunal
LC No. 173606

Before: Saad, P.J., and Holbrook, Jr., and G.S. Buth,* JJ.

PER CURIAM.

Petitioner Beachcomber Motel appeals as of right from the opinion and judgment of the Michigan Tax Tribunal, Small Claims Division, which upheld respondent Mackinaw Township's determination that the true cash value of petitioner's commercial real property was $466,600 for tax year 1992 and $478,800 for years 1993 and 1994. Petitioner's request for rehearing was denied by the tribunal. We affirm in part and remand for further proceedings.

This Court's review of property tax assessment appeals is tempered by a constitutionally mandated standard of review:

> In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation. [Const 1963, art 6, § 28.]

It is the province of the Tax Tribunal to apply its expertise to the facts of each case to determine the appropriate method of arriving at the cash value, or fair market value, of the subject property. The factual findings of the tribunal are final, provided they are supported by competent, material, and substantial evidence on the whole record. *Edward Rose Bldg Co v Independence Twp*, 436 Mich

* Circuit judge, sitting on the Court of Appeals by assignment.

620, 632; 462 NW2d 325 (1990); *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984).

In this appeal, petitioner first argues that the hearing referee erred in relying on documentary evidence that was submitted by respondent less than ten days before the hearing date in violation of 1981 AACS R 205.1642. On these facts, we find no error.

Tax Tribunal Rule 642(2) provides, in pertinent part: "A copy of an appraisal report or other written evidence shall be submitted to the opposing party and the tribunal not less than 10 days before the date of the hearing." The obvious purpose of this small claims division rule is to prevent unfair surprise, ensure that the parties have adequate time to investigate data and accumulate rebuttal evidence, and expedite hearings. To establish error on the basis of a violation of a procedural rule, such as TTR 642(2), the party alleging the error must show that it suffered prejudice as a result of the violation. See *Community Associates v Meridian Charter Twp*, 110 Mich App 807, 812; 314 NW2d 490 (1981); *Kern v Pontiac Twp*, 93 Mich App 612, 622-624; 287 NW2d 603 (1979). Here, it is apparent from the tribunal's opinion and judgment that the hearing referee relied on the documents, which were submitted by respondent seven days before the hearing date.[1] At the hearing, petitioner apparently objected to respondent's untimely submission of its documentary evidence, but failed to cite any instance of prejudice in its petition for rehearing. In its brief on appeal, petitioner argues that violation of TTR 642(2) required exclusion of the evidence as a matter of law, and merely states in conclusion that it had "inadequate time to examine and prepare to rebut" respondent's evidence. We find no error requiring reversal of the hearing referee's decision.

First, we find petitioner's conclusory and general allegation of surprise to be unconvincing. Petitioner was aware of respondent's valuation arguments in advance of the hearing and as far as we can tell was able to address them adequately. Second, contrary to petitioner's claim, violation of TTR 642(2) does not entail the exclusion per se of untimely documentary evidence. Because TTR 642(2) lacks any specific penalty provision for its violation, the tribunal is accorded discretion to impose an appropriate sanction, if any, considering the nature of the violation and the attendant circumstances. Accord *In re Jackson*, 199 Mich App 22, 28-29; 501 NW2d 182 (1993 (declining to impose a sanction for violation of time requirements in court rule that the legislature and the Supreme Court had declined to impose). Third, in the absence of any specific sanction attaching to a violation of TTR 642(2), TTR 111(3) provides for application of the Michigan Court Rules and the contested case procedures of the Administrative Procedures Act. See MCL 24.271-287; MSA 3.560(171)-(187). Here, although there is no dispute that respondent violated the time requirements of TTR 642(2), we would find any such violation to be harmless pursuant to MCR 2.613(A). See *Kern, supra* at 623. For the reasons outlined above, we conclude that petitioner was not denied procedural due process of law.

Petitioner next asserts that the referee's findings regarding the cost of improvements was not supported by competent, material, and substantial evidence, and that the valuation method used was erroneous. In his written opinion, the referee made the following findings regarding the value of petitioner's property:

> Though Petitioner, through his agent, submitted an appraisal, this Hearing Referee elects to give most weight to the actual purchase price paid for the subject plus approximate costs of improvements and additions since the purchase in 1989. The total purchase price of $457,000, less personal property of $17,000 (per the personal property statements filed by Petitioner) plus the additional four units, say $60,000, plus the estimated costs to enlarge the residence and add a new office, say $30,000, for a total investment of about $530,000 for the real property.

This matter was heard without a formal record being made, MCL 205.762(3); MSA 7.650(62)(3), and our review of the documentary evidence submitted by the parties does not necessarily support the referee's figures regarding improvement costs or value of personal property and it does not fully explain its reasons for using a purchase price plus cost of improvements method to arrive at true cash value. Accordingly, we remand this matter to the tribunal to make supplemental findings of fact and conclusions of law so that this Court is able to review petitioner's claim adequately. The tribunal is further directed to identify the evidence that was considered and to explain its reasons for any factual findings underlying its determination of value.

Petitioner next argues that respondent failed to present evidence of uniform assessment as required by MCL 205.737(3); MSA 7.650(37)(3). There are two bases on which to appeal an assessment: (1) lack of uniformity in the taxing district for the subject property's class, and (2) the assessment exceeds fifty percent of true cash value. Const 1963, art 9, § 3; *Brittany Park Apts v Harrison Twp*, 104 Mich App 81, 87-88; 304 NW2d 488 (1981). Petitioner did not raise the issue of uniformity below and, indeed, its petition for rehearing stated only that the "[p]roperty as assessed exceeds 50% of true cash value." Accordingly, we decline to review this issue on appeal.

Finally, petitioner contends that error occurred when its request for rehearing was decided by a hearing referee rather than a tribunal member as required by MCL 205.762(3); MSA 7.650(62)(3). Although this issue is moot in light of our decision to remand this matter to the tribunal for further findings, we note that, in *Shapiro Bag Co v City of Grand Rapids*, 217 Mich App 560; ___ NW2d ___ (1996), a panel of this Court held that a request for rehearing must be decided by a tribunal member, not a hearing officer or referee.

Affirmed in part and remanded to the tax tribunal for further proceedings consistent with this opinion. We retain jurisdiction.

/s/ Henry W. Saad
/s/ Donald E. Holbrook, Jr.
/s/ George S. Buth

[1] Respondent has not filed a brief in this appeal. According to petitioner, the late submitted documents included "a 1993 equalization study with attachments, a real property statement, the 1991 commercial

land value report, two maps, calculator cost computation sheets, the land contract by which the property was purchased in 1989, and page 2 of an economic condition factor report."