# STATE OF MICHIGAN

# COURT OF APPEALS

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RICHARD SHILLINGLAW and DOROTHY SHILLINGLAW,

Plaintiff-Appellants,

v

TOWNSHIP OF MERIDIAN,

Defendant-Appellee.

UNPUBLISHED
February 14, 1997

No. 189106
MTT
LC No. 193604

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Before: McDonald, P.J., and Murphy and J. D. Payant*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a small claims tax tribunal hearing officer's judgment affirming their property tax assessment of $132,800 for 1993 and $ 133,500 for 1994. We vacate the judgment and remand for further proceedings consistent with this opinion.

The property at issue is a one story, 1,634 square foot home with two attached garages and approximately 95.8 feet of front footage on Lake Lansing, parcel number 3302-02-376-001. Plaintiffs challenged the property assessment for 1993 and 1994, claiming that the true cash value determinations, $265,000 for 1993 and $267,000 for 1994, upon which the assessments were based, were too high. Plaintiffs claimed that the property's true cash value was $180,000 for each year and presented an appraisal as evidence that their true cash value was more accurate. Ten days prior to the scheduled hearing, defendant mailed its appraisal to plaintiffs and the tax tribunal. No copy was mailed to plaintiffs' counsel of record and the copy that was mailed to plaintiffs was incorrectly addressed. Plaintiffs did not receive a copy of defendant's appraisal until six days before the hearing. At the hearing, plaintiffs objected to the admission of and consideration of defendant's appraisal by the tax tribunal, claiming that it was untimely served. The hearing officer admitted the appraisal and held that plaintiffs did not meet their burden of proving that the true cash value was $180,000. Further, the officer adopted the defendant's methods of valuation and ordered that the assessments not be revised.

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

We review decisions of the tax tribunal only to determine if it erred in applying the law or adopted wrong legal principles. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352; 482 NW2d 416 (1992). This Court will accept the tribunal's factual findings as final, provided they are supported by competent, material, and substantial evidence. *Id.*. We also review the tribunal's enforcement of its own rules for an abuse of discretion. *Perry v Vernon Twp*, 158 Mich App 388; 404 NW2d 755 (1987).

Plaintiff first argues that it was error to admit defendant's appraisal. 1981 AACS R 205.1642(2) requires parties in a proceeding before the Small Claims Division of the tax tribunal to "submit" their appraisals to the opposing party and the tribunal ten days prior to the hearing. Plaintiff contends that mailing an appraisal ten days prior to the hearing does not suffice under this rule. We disagree. Although we can find is no interpretation of this small claims rule by the tribunal or this Court, we have interpreted the companion rule, 1981 AACS 205.1252, which applies in cases before the entire tribunal as opposed to those in small claims. *Kern v Pontiac*, 93 Mich App 612, 622-624; 287 NW2d 603 (1979). We determined that although the appraisal was improperly admitted since it was not timely filed, the purpose of the rule is to allow the opposing party the chance to prepare for and engage in a meaningful attack on the opposing appraisal and to allow the opposing party to prepare its case. Since the plaintiff was not surprised by the defendant's appraisal, we found that this purpose was not undermined and that admission of the document therefore did not require reversal. Keeping in mind that administrative rules must be liberally construed in light of their purpose, *Tulsa Oil Corp v Dep't of Treasury*, 159 Mich App 819, 824-825; 407 NW2d 85 (1987), we rule that pursuant to 1981 AACS R 205.1642(2), an appraisal is properly "submitted" if it is mailed ten days prior to the hearing because this allows the opposing party to prepare for the hearing. We further note that plaintiffs do not claim any prejudice from having received the appraisal only six days prior to the hearing.

Plaintiff also argues that the appraisal should have been submitted directly to its counsel. MCR 2.107(B)((1) requires that service must be made on an attorney for a party if the attorney has entered an appearance. Service under this rule specifically includes a provision for mailing. Even though defendant should have mailed the appraisal to plaintiffs' attorney of record, it does not automatically follow that the officer should have employed the drastic remedy of excluding the evidence for failure to comply. The remedy of excluding evidence because it was not timely presented is not automatic. *People v Paris*, 166 Mich App 276, 281; 420 NW2d 184 (1981). It is up to the court to determine the sanctions to impose where a party fails to obey an order to provide discovery. *Barlow v John Crane-Houdaille*, 191 Mich App 244, 251; 477 NW2d 133 91991). The admission of evidence in an administrative proceeding is discretionary. *Tomczik v State Tenure Comm*, 175 Mich App 495, 502; 438 NW2d 642 (1989). Here, where plaintiff claims no prejudice and where the evidence was of a type commonly relied upon in tax tribunal cases, 1981 AACS R 205.1642(1), we find no abuse of discretion.

Plaintiff also argues that the hearing officer erred in adopting defendant's method of calculation and affirming the assessments. We agree. The hearing officer stated that it did not find defendant's calculations reliable. Yet, it adopted defendant's methods of valuation and affirmed defendant's conclusions. This is illogical. The hearing referee was not bound to adopt either parties' proposed

valuation, *Jones & Laughlin, supra,* at 356. However, he was not entitled to affirm the assessments without also making an independent calculation of true cash value. *Oldenburg v Dryden Twp*, 198 Mich App 696, 699 (1993). The record below does not demonstrate that the officer did so.

The hearing officer set out his basic findings of fact and also articulated the evidence and arguments he was discounting. He did not, however, set forth the basis on which he determined that the true cash value of the property was $265,500 for 1993 and $267,000 for 1994. This fact precludes our review as to whether there was an error of law in the valuation of the property. In addition, we note that no settled statement of facts was filed by the officer in accordance with MCR 7.210(B)(2), which requires that the tribunal certify a statement of facts where no transcript was made available. Because we find the record lacking, we reverse and remand this case. See *Oldenburg, supra,* at 699-701. If the tribunal can reissue its opinion and judgment setting forth its reasoning, without conducting a new hearing, it may do so. *Kern supra,* 93 Mich App 625. If it cannot, it should conduct a new hearing.

Reversed and remanded. We do not retain jurisdiction. Costs to neither party.

/s/ Gary R. McDonald
/s/ William B. Murphy
/s/ John D. Payant