

STATE OF MICHIGAN
COURT OF APPEALS

AAA INVESTMENT GROUP, LLC,

Petitioner-Appellant,

v

TOWNSHIP OF WEST BLOOMFIELD,

Respondent-Appellee.

UNPUBLISHED
February 21, 2003

No. 239381
Tax Tribunal
LC No. 00-285413

Before: Kelly, P.J., and White and Hoekstra, JJ.

PER CURIAM.

Petitioner appeals as of right from a Tax Tribunal order dismissing its petition challenging its property tax assessment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Petitioner asserts that the tribunal was obliged to honor the joint stipulation in which the parties agreed that the tribunal's sua sponte entry of petitioner's default should be vacated. Under the circumstances presented, we disagree.

The rules of the Michigan Tax Tribunal require that a petitioner arrange a counsel conference with the other parties, that the conference be held within seventy-seven days after the filing of the petition, that petitioner prepare a summary of the results of the conference, and that the summary be filed with the clerk within fourteen days after the conference. 1999 AC, R 205.1250. While petitioner arranged for a counsel conference, which was held October 2, 2001, petitioner failed to file a conference summary. On November 8, after a review of the file revealed that no counsel conference summary had been filed, the tribunal entered a sua sponte order holding petitioner in default:

SUA SPONTE ORDER OF DEFAULT OF PETITIONER

The Tribunal, having reviewed the file in the above-captioned case, finds that Petitioner(s) has failed to file a counsel conference summary as required by TTR 250. The Tribunal further finds that Petitioner(s) should, as a result of said failure, be placed in default pursuant to TTR 247, therefore,

IT IS ORDERED that Petitioner(s) is placed in DEFAULT.

IT IS FURTHER ORDERED that Petitioner(s) shall file a motion to set aside default with appropriate filing fee and a counsel conference summary within 21 days of the entry of this Order. Failure to comply with this Order will result in the dismissal of this case.

Petitioner failed to file a motion to set aside the default and a counsel conference summary by November 29, as directed by the tribunal. Instead, on December 12, petitioner filed a “Joint Stipulation to Set Aside the November 8, 2001, Sua Sponte Order of Default of Petitioner.” On December 13, the tribunal entered a sua sponte order of dismissal, apparently unaware of the December 12 filing:

SUA SPONTE ORDER OF DISMISSAL

In this case, it appearing to the Tribunal that an Order of Default was entered against the Petitioner and that the Petitioner was advised as to a date by which the Default must be corrected, and

It further appearing to the Tribunal that Petitioner has failed to timely correct such default, therefore

IT IS ORDERED AND ADJUDGED that the above-captioned appeal filed with the Michigan Tax Tribunal is hereby DISMISSED.

On January 11, 2002, the tribunal responded to petitioner’s December 12 stipulation with its “Order Denying Joint Motion to Set Aside Default and Order Denying Joint Motion to Extend Time with the Michigan Tax Tribunal.” The tribunal treated the stipulation as a joint motion under its rules. In denying the motion it observed that the stipulation was signed by an attorney other than the attorney of record and no motion to substitute as counsel had been filed, that the conference summary was not filed in a timely fashion, that the tribunal’s November 8 order required that the summary and a motion to set aside default be filed within twenty-one days, that the joint motion was not filed within that period, and that the parties do not have the authority to waive a tribunal order.

Our review of a decision of the Tax Tribunal is typically limited to whether the decision was authorized by law and whether the tribunal’s findings were supported by competent, material, and substantial evidence on the whole record. Although the Tax Tribunal has the authority to dismiss a petition for failure to comply with its rules or orders, the tribunal’s actions in that regard are reviewed for an abuse of discretion. An abuse of discretion exists where the result is so palpably and grossly violative of fact and logic that it indicates a perversity of will, a defiance of judgment, or the exercise of passion or bias. [*Professional Plaza, LLC v Detroit*, 250 Mich App 473, 474-475; 647 NW2d 529 (2002) (citations omitted).]

Petitioner’s failure to file a conference summary as required subjected it to being held in default. 1999 AC, R 205.1247(1). “A party placed in default shall cure the default as provided by the order placing the party in default and file a motion to set aside the default accompanied by the appropriate fee within 21 days of the entry of the order placing the party in default or as

otherwise ordered by the tribunal. Failure to comply with an order of default may result in the dismissal of the case” *Id.*

Following issuance of the order holding it in default, petitioner submitted a stipulation to set aside the default. Petitioner contends that because “courts are ordinarily bound by litigants’ stipulations,” *In re Jarrell*, 172 Mich App 122, 123; 431 NW2d 426 (1988), the tribunal erred in rejecting the stipulation and entering a dismissal instead. We disagree.

The order of default provided that the default could be cured by filing a timely motion together with the late conference summary. Because a stipulation requesting action by the tribunal is treated as a motion, 1999 AC, R 205.1230(1), the stipulation to set aside the default apparently would have been acceptable in lieu of a motion. However, the proposed stipulation was not submitted within twenty-one days, as required, and failed to comply with the directions for curing the default: instead of providing the conference summary as directed, the proposed stipulation gave petitioner an additional twenty-eight days in which to submit the summary. Because the stipulation was not filed within the applicable time limit and petitioner did not “cure the default as provided by” the tribunal’s order, the tribunal did not abuse its discretion in rejecting the stipulation and dismissing the petition.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Helene N. White
/s/ Joel P. Hoekstra