

STATE OF WISCONSIN
TAX APPEALS COMMISSION

GARY C. LIZALEK¹
P.O. Box 63
Butler, WI 53007,

DOCKET NO. 04-T-110

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE
P.O. Box 8907
Madison, WI 53708-8907,

Respondent.

JENNIFER E. NASHOLD, CHAIRPERSON:

This matter comes before the Commission on a motion to dismiss for failure to state a claim upon which relief can be granted or, in the alternative, for judgment on the pleadings filed by respondent, Wisconsin Department of Revenue (Department).

Petitioner, Gary C. Lizalek, appears *pro se* and has submitted a response to the Department's motion, an affidavit, and various other documents, described in more detail below. The Department is represented by Attorney John R. Evans, who has

¹ Petitioner asserts that he is a trust and should be referred to as such. While at various points, the Department, through its filings, has appeared to indulge this assertion to some extent, the claim is completely unsupported by any documentation or coherent argument. The Commission notes that both the Commission and the Department have rejected petitioner's claim to be a trust in a prior case involving petitioner. See *Gary C. Lizalek v. Dep't of Revenue*, WTAC Docket No. 03-I-219-SC (Nov. 7, 2003) ("In his petition for review and in subsequent filings, petitioner refers to himself as 'Gary C Lizalek (Trust).' Petitioner's claim that he is a trust is frivolous and properly disregarded by respondent.") The Commission again rejects petitioner's unsubstantiated assertion in this case.

submitted an affidavit and brief in support of his motion.

Having considered the entire record herein, the Commission finds, rules, and orders as follows:

MATERIAL FACTS²

1. Petitioner and his wife, Karen N. Lizalek, conveyed real estate in Wisconsin by warranty deed to Kelazil Religious Society.³

2. Petitioner recorded a warranty deed in the Milwaukee County Registrar's Office on or about January 15, 2003, evidencing the conveyance of the parcel.

3. No real estate transfer fee was paid at the time of recording of the warranty deed.

4. On February 6, 2004, the Department issued an assessment of real estate transfer fee, interest, and penalty to petitioner relating to the conveyance of the parcel in the amount of \$524.10 in fee, \$77.02 in interest, and \$131.03 in penalty, for a total amount of \$732.15.

5. Petitioner filed a letter dated February 28, 2004 with the Department, which the Department treated as a timely petition for redetermination.

² Neither party in this case has submitted exhibits which were accompanied by an affidavit swearing to their accuracy or authenticity. Prior to the Department submitting its dismissal motion, both the Department and petitioner submitted proposed exhibits to the Commission in preparation for trial; however, the Commission may not consider them because they were never introduced at a hearing nor referred to in the Department's affidavit submitted with its motion. Therefore, with the exception of Finding of Fact No. 7, the facts in this case are based on the undisputed assertions made by the Department's attorney in his sworn affidavit.

³ The Real Estate Warranty Deed, submitted to the Commission as a proposed exhibit by both petitioner and the Department, but not formally an exhibit in this case (see Footnote 2), states that the contract is "between Gary C. Lizalek and Karen N. Lizalek, husband and wife, and GARY C LIZALEK (a trust) and KAREN N LIZALEK (a trust) parties of the first part, and Kelazil Religious Society, party of the second part" The Commission also notes that "Kelazil" is petitioner's last name, Lizalek, spelled backward.

6. The Department issued its Notice of Action on April 6,⁴ 2004, denying petitioner's petition for redetermination.

⁴ This is the date stated in the sworn affidavit of the Department's attorney. The Notice of Action submitted as a proposed exhibit is dated April 5, 2004.

7. On April 28, 2004, petitioner filed a document with the Commission, which the Commission construed as a timely petition for review.

RULING

The Department has filed a motion to dismiss this case for petitioner's failure to state a claim upon which relief can be granted or, in the alternative, for judgment on the pleadings. Because both parties have submitted affidavits and the Department has filed a brief, the Commission treats the Department's motion as a motion for summary judgment. *See* Wis. Stat. §§ 802.06(3) and 802.06(2)(b). *See also Mrotek, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-315 (WTAC 1997) (where the Department submitted matters outside of the pleadings, motion for judgment on the pleadings treated as motion for summary judgment); *City of Milwaukee v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-405 (WTAC 1999) (where parties submitted affidavits and briefs, motion to dismiss for failure to state a claim treated as motion for summary judgment).

Summary judgment is warranted where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Wis. Stat. § 802.08(2). Assessments made by the Department are presumed to be correct, and the burden is upon the petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Puissant v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶202-401 (WTAC 1984). Wis. Stat. § 77.59(1). Petitioner has failed to meet his burden, there is no genuine

issue of material fact in this case, and the Department is entitled to judgment as a matter of law.

While petitioner may have raised other issues during the proceedings before the Department and Commission, the Commission must rely on petitioner's response to the Department's motion, and the accompanying affidavit, as representing those issues petitioner wishes to pursue.⁵ These arguments, to the extent they are intelligible, are unsupported by law or fact.

Petitioner appears to challenge the Department's assessment on the following grounds. First, he asserts that only gold and silver are lawful currency, and that the Department refuses to accept gold and silver and will only accept Federal Reserve notes. Petitioner also contends that Federal Reserve notes are not lawful money but, instead, are notes governed by the Uniform Commercial Code, set forth in Chapters 401 through 411 of the Wisconsin Statutes. Petitioner further states that the Department made a "Presentment in accord with Wis. Stat[us]. § 403.501(1)," that petitioner "initiated a formal Administrative Review to oversee Petitioner's Refusal for Cause without Dishonor in accord with Wis. Stat[us]. 403.501(2)3.(c)," and that the Department chose not to respond to petitioner's administrative review. (Petitioner's Response, pp. 3-4.)

The Department disputes petitioner's assertion that it will not accept gold

⁵ Following the filing of the Department's Reply Brief, petitioner submitted two additional filings, a "Response to Respondent's Reply Brief" and a "Motion for Clarification," the latter of which posed a series of questions to the Department regarding "what Respondent understands the face value to be in terms of Federal Reserve Notes (hereinafter FRNs)." These documents are outside the parameters of the Commission's November 10, 2004 Briefing Order and will not be considered.

or silver in payments. The Department states that it "will accept gold or silver coins at their face value (not numismatic value) for the payment of the assessment." (Reply Brief

at 1). As petitioner has failed to submit any evidence that the Department does not accept payments in gold or silver or that he attempted to make payments in gold or silver, his assertion is unsubstantiated, irrelevant, and rejected.

Similarly meritless is petitioner's contention that Federal Reserve notes are not lawful currency. See e.g., *Kauffman v. Citizens State Bank of Loyal*, 102 Wis. 2d 528, 307 N.W.2d 325 (Ct. App. 1981), and authorities cited therein; *Krenzelok v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶202-325 (WTAC 1984); *Betow v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶202-032 (WTAC 1982).

Petitioner's other assertions regarding the Uniform Commercial Code and the Department's alleged failure to submit to petitioner's administrative review rest on his primary assumptions that Federal Reserve notes are not lawful currency and that the Department will only accept Federal Reserve notes and not gold or silver. Because there is no basis for petitioner's assumptions, the arguments stemming from them are also without merit, as well as being groundless in their own right. Thus, the conclusion of the Commission over twenty years ago in *Betow* is equally applicable to petitioner's case today:

. . . [P]etitioner's arguments are stale ones, long settled against their proponents. As such, they are meritless and frivolous. Even bending over backwards, in indulgence of petitioner's pro se status, . . . this Commission should not encourage this petitioner and future similar petitioners to continue advancing these hollow and long-defunct arguments. . . .
. . . Such cases tend to disrupt the orderly conduct of serious litigation in this Commission, and the issues raised therein are of the type that have been consistently decided against such petitioners and their contentions often characterized as frivolous. The time has arrived when the Commission should deal summarily

and decisively with such cases without engaging in scholarly discussion of the issue or attempting to sooth the feelings of the petitioners by referring to the supposed "sincerity" of their wildly espoused positions. This is all the more impelling today in view of the . . . increasing complexity of the issues presented to this Commission.

Betow, at p. 11,608. While petitioner is free to indulge himself with his make-believe world where only gold and silver are lawful currency and where the Department must comply with inapplicable "administrative review" procedures of petitioner's own creation, he can neither demand nor expect this Commission, or any rational being, to play along, disregarding the laws and institutions of this state.

In light of the well-established authority cited above, and petitioner's failure to support his claims by proof, precedent or logic, petitioner's claims are groundless, frivolous, and a waste of state resources. Petitioner is therefore subject to an additional assessment pursuant to Wis. Stat. § 73.01(4)(am).

ORDER

1. The Department's motion for summary judgment is granted, and its action on petitioner's petition for redetermination is affirmed.

2. An additional assessment of \$300 is imposed on petitioner pursuant to Wis. Stat. § 73.01(4)(am).

Dated at Madison, Wisconsin, this 19th day of May, 2005.

WISCONSIN TAX APPEALS COMMISSION

Jennifer E. Nashold, Chairperson

Diane E. Norman, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"