

STATE OF WISCONSIN
TAX APPEALS COMMISSION

RANA BROTHERS, LLC,

DOCKET NO. 08-T-207

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DAVID C. SWANSON, COMMISSIONER:

This case comes before the Commission on the motion of the Respondent, the Wisconsin Department of Revenue (the “Department”), to dismiss the petition for review on the basis that the Petitioner has failed to prosecute its appeal pursuant to Wis. Stat. § 805.03. The Petitioner is represented by Chaudhry Asif Rana and has not responded to the motion. Attorney John R. Evans represents the Department and has filed an affidavit and exhibit in support of the motion.

Having considered the entire record in this matter, the Commission hereby finds, rules and orders as follows:

FINDINGS OF FACT

1. The Department issued an assessment of real estate transfer fee to the Petitioner in connection with Department File No. 80315-40. (Pet. for Review.)
2. The Petitioner filed a petition for redetermination of the assessment with the Department. (Pet. for Review.)

3. On or about October 31, 2008, the Petitioner received notice of the Department's denial of the petition for redetermination. (Pet. for Review.)

4. On December 30, 2008, the Petitioner filed a petition for review with the Commission.

5. On January 28, 2009, the Department filed an answer to the petition for review.

6. The Commission held telephone status conferences in this matter with representatives of both parties present on June 10, 2009, July 14, 2009, September 10, 2009, September 21, 2009 and October 15, 2009.

7. On or about July 15, 2009, Attorney Evans forwarded to the Petitioner's then-representative a Stipulation and Order for execution by the Petitioner memorializing a settlement of this matter agreed upon by the parties' representatives (the "Stipulation"). (Evans Aff. ¶ 2, Ex. 1.)

8. On or about August 13, 2009, the parties informed the Commission that they had agreed to a settlement and expected to file an executed stipulation of settlement with the Commission by August 21, 2009.

9. For various reasons asserted by the Petitioner's then-representative, the Petitioner did not execute the Stipulation. (Evans Aff. ¶ 3.)

10. At the October 15, 2009 status conference, the Petitioner's then-representative stated that the Petitioner had dismissed that representative and intended

to seek protection in bankruptcy court.¹ (Evans Aff. ¶ 4.)

11. On October 16, 2009, the Department filed the Notice of Motion and Motion to dismiss the petition with supporting Affidavit of Attorney Evans and Exhibit 1 that is the subject of this Ruling and Order.

12. On October 22, 2009, the Commission issued a Briefing Order directing the Petitioner to respond to the Department's motion by November 23, 2009.

13. The Petitioner did not file a response to the Department's motion, did not respond to the Commission's Briefing Order and has not communicated with the Commission regarding this matter since October 15, 2009.

14. No executed stipulation of settlement was filed with the Commission in this matter.

CONCLUSIONS OF LAW

1. The Petitioner has failed to prosecute its appeal and dismissal is appropriate pursuant to Wis. Stat. § 805.03 and Wis. Admin. Code § TA 1.39.

2. The Petitioner has failed to satisfy its burden of proving the assessment at issue in this matter to be incorrect.

RULING

The Petitioner has the burden of showing that the Department's determination is incorrect. *Laabs v. Tax Comm'n*, 218 Wis. 414, 424, 261 N.W. 404 (1935); *Dep't of Taxation v. O.H. Kindt Mfg. Co.*, 13 Wis. 2d 258, 268, 108 N.W.2d 535 (1961); *Woller v. Dep't of Taxation*, 35 Wis. 2d 227, 232, 151 N.W.2d 170 (1967). The real estate

¹ The Commission has not been informed as to whether the Petitioner ever pursued any action in connection with the claimed bankruptcy.

transfer fee has generally been treated like a tax. *See, Gottfried, Inc. v. Wis. Dep't of Revenue*, 145 Wis. 2d 715, 429 N.W.2d 508 (Ct. App. 1988). Tax assessments made by the Department are presumed to be correct, and the burden is on the petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Edwin J. Puissant, Jr. v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984); Wis. Stat. § 77.59(1). In order to prove that an assessment is incorrect, a petitioner must begin by prosecuting its appeal and complying with the Commission's orders.

The Petitioner filed its petition for review with the Commission on December 30, 2008. Since that date, the Petitioner has: (1) failed to execute and file the stipulation of settlement to which its representative had agreed; (2) failed to respond to the Department's motion filed on October 16, 2009 to dismiss the petition; (3) failed to comply with the Commission's Briefing Order dated October 22, 2009, which ordered the Petitioner to respond to the Department's motion by November 23, 2009; and (4) failed to contact the Commission regarding this matter since October 15, 2009. The Petitioner's demonstrated lack of interest in pursuing its own petition for review constitutes a failure to prosecute its appeal, and its failure to comply with the Commission's Briefing Order constitutes independent grounds for dismissal. *See, Wis. Stat. § 805.03 and Wis. Admin. Code § TA 1.39.* Therefore, the Commission grants the Department's motion to dismiss.

ORDER

The Department's motion is granted and the petition for review is dismissed.

Dated at Madison, Wisconsin, this 19th day of February, 2010.

WISCONSIN TAX APPEALS COMMISSION

David C. Swanson, Chairperson

Roger W. Le Grand, Commissioner

Thomas J. McAdams, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"