

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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**JOHN P. (DEC'D) AND INGRID SCHINDLER**  
1106 Czech Lane  
Friendship, WI 53934,

**DOCKET NO. 03-I-241**

Petitioners,

vs.

**RULING AND ORDER**

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

Respondent.

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This matter comes before the Commission on an oral motion by respondent, Wisconsin Department of Revenue ("Department"), to dismiss the petition for review for failure to prosecute and for violation of Commission orders. Petitioner Ingrid Schindler appears *pro se*. The Department appears by Attorney John R. Evans.

Based upon the record in this matter, the Commission hereby finds, rules, and orders as follows:

On August 25, 2003, petitioners filed a petition for review with the Commission.

By notice dated October 27, 2003, the Commission issued a Notice of Telephone Scheduling Conference setting a telephone conference in this matter for December 17, 2003. The December 17, 2003 telephone conference was held, at which petitioners failed to appear and Attorney John R. Evans appeared for the Department.

On December 18, 2003, the Commission issued a Status Conference Memorandum and Order that set the next telephone status conference for January 13, 2004. The Memorandum also ordered:

That one or both petitioners, or a representative, shall participate in the next telephone status conference. If not, this appeal may be dismissed, and petitioners will be required to pay the disputed taxes and interest to the Department.

On January 12, 2004, Mrs. Schindler telephoned the Commission and stated that petitioner John P. Schindler had passed away on December 26, 2003.

By notice dated January 14, 2004, the Commission postponed the telephone conference from January 13, 2004 to March 3, 2004. The March 3, 2004 telephone conference was held, at which Mrs. Schindler did not appear and Attorney Evans appeared for the Department.

On March 4, 2004, the Commission issued a Status Conference Memorandum and Order that set the next telephone status conference for April 20, 2004. The Memorandum also stated:

Other matters discussed:

Petitioner Ingrid Schindler was not at her telephone when the time came for this status conference. There will be one more conference, and if she does not participate, this appeal may be dismissed based on failure to prosecute, failure to comply with an order of the Commission, or some other basis.

IT IS ORDERED

That Mrs. Schindler shall participate in the next scheduled telephone conference. If the date or time pose a problem, she shall contact the Commission to reschedule.

The April 20, 2004 telephone conference was held, at which Mrs. Schindler and Attorney Evans appeared.

On April 21, 2004, a Status Conference Memorandum and Order was issued that set the next telephone conference for July 8, 2004. The Memorandum also stated:

Other matters discussed:

Mrs. Schindler explained that she is in very difficult economic circumstances. She stated that her monthly expenses (before food) exceed her income.

Attorney Evans shall communicate this to others in his department and try to bring her meaningful relief. We will discuss this matter's progress during the next telephone status conference. If this matter is resolved prior to then, Attorney Evans shall notify the Commission.

By notice dated July 2, 2004, the Commission postponed the July 8, 2004 telephone status conference to July 22, 2004. The Notice further stated:

That if a party has a conflict with the above schedule, that party should contact the Commission to set a new date and time for the conference.

The July 22, 2004 telephone conference was held, at which Mrs. Schindler did not appear and Attorney Evans appeared for the Department.

On July 23, 2004, the Commission issued a Scheduling Order Memorandum that set a telephone status conference for September 27, 2004. The Memorandum further stated:

Other matters resolved:

Attorney Evans reported that Collections has attempted to contact petitioner since the last status conference but has not been able to reach her. Collections will continue efforts to contact petitioner and, if possible, reach a settlement of the case.

IT IS ORDERED

That Mrs. Schindler shall participate in the next scheduled telephone conference. If the date or time pose a problem, she shall contact the Commission to reschedule.

The September 27, 2004 telephone status conference was held, at which Mrs. Schindler did not appear and Attorney Evans appeared for the Department.

On September 28, 2004, a Status Conference Memorandum and Order was issued that set a telephone status conference for November 3, 2004. The Memorandum also stated:

Ms. Schindler did not appear at the September 27, 2004 telephone status conference, but instead left a message on her answering machine addressed to Attorney Evans and the Commission, the crux of which was that her health has deteriorated and that she contests the assessment against her. Commissioner Nashold and Attorney Evans discussed how this case should be handled in view of Ms. Schindler's failure to appear at the telephone conferences or respond to Attorney Evans' requests. Attorney Evans wishes to resolve this matter but cannot do so without receiving further information from Ms. Schindler. He represented that he sent Ms. Schindler an Offer to Compromise on May 26, 2004, to which she has not responded. Attorney Evans states that if Ms. Schindler provides the information he requested, a further status conference will not be needed.

IT IS ORDERED THAT

(1) Ms. Schindler shall provide to Attorney Evans the information he requested in his May 26, 2004 letter by October 20, 2004.

\* \* \*

(3) If Ms. Schindler fails to provide the requested information and fails to appear at the November 3, 2004 conference or otherwise contact the Commission prior to that date, her petition will be dismissed.

The November 3, 2004 telephone status conference was held, at which Mrs. Schindler did not appear and Attorney Evans appeared for the Department.

On November 4, 2004, a Status Conference Memorandum and Order was issued that set a telephone status conference for November 30, 2004. The Memorandum further stated:

Other matters discussed:

The Commission attempted to reach Ms. Schindler at the telephone number previously used, but that number was disconnected. Attorney Evans represented that he would send Ms. Schindler another letter prior to the next scheduled conference and that if she failed to respond or appear at the conference, he would move to dismiss the petition.

IT IS ORDERED

The parties or their representatives shall participate in the next scheduled status conference. Failure to comply with the terms of this order may result in any sanction authorized by law, including dismissal of the petition for review.

On November 29, 2004, the Commission received a November 24, 2004 letter from Mrs. Schindler in which she refers to a recording on her answering machine of the November 3, 2004 telephone conference. The letter neither indicates her intention to participate in the November 30, 2004 telephone conference nor provides a telephone number where she could be reached for the conference.

The Commission held the November 30, 2004 telephone status conference, at which Attorney Evans appeared. Mrs. Schindler again did not appear, and the telephone number previously used to contact her was still disconnected.

At the November 30, 2004 telephone conference, Attorney Evans moved to dismiss the petition in this matter based upon a failure to prosecute and failure to comply with Commission orders.

The Commission and the Department have made numerous attempts to contact Mrs. Schindler regarding the appeal filed in this case in August of 2003, to no avail. Her failure to provide a current telephone number for scheduled telephone conferences and to participate in those telephone conferences constitutes both a violation of Commission orders and a failure to prosecute this appeal. Therefore, the Commission will dismiss the petition for review pursuant to §§ 802.10(7) and 805.03 of the Wisconsin Statutes.

#### **ORDER**

The petition for review is dismissed.<sup>1</sup>

Dated at Madison, Wisconsin, this 2nd day of December, 2004.

**WISCONSIN TAX APPEALS COMMISSION**

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Jennifer E. Nashold, Commissioner

**ATTACHMENT: "NOTICE OF APPEAL INFORMATION"**

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<sup>1</sup> This Ruling and Order is issued by a single Commissioner under the authority provided by Wis. Stat. § 73.01(4)(em)2, as created by 2003 Wisconsin Act 33, § 1614d.