

STATE OF MICHIGAN
COURT OF APPEALS

PAUL FORMAN,

Petitioner-Appellant,

v

TOWNSHIP OF WEST BLOOMFIELD,

Respondent-Appellee.

UNPUBLISHED

July 20, 2006

No. 259628

Tax Tribunal

LC No. 00-301482

Before: Jansen, P.J., and Murphy and Fort Hood, JJ.

PER CURIAM.

Petitioner appeals as of right a Tax Tribunal judgment upholding respondent's 2003 and 2004 assessed valuations of petitioner's residential property. We affirm.

In the absence of fraud, review of a Tax Tribunal decision is limited to whether the tribunal erred in applying the law or adopted a wrong legal principle. *Georgetown Place Coop v City of Taylor*, 226 Mich App 33, 43; 572 NW2d 232 (1997). The Tax Tribunal's factual findings will be upheld unless they are not supported by competent, material, and substantial evidence on the whole record. *Id.*

Petitioner contends that the hearing referee erroneously excluded evidence concerning his appraisal and the appraisals and sales of comparable properties. Petitioner thus contends that his due process rights were violated. This Court may review the tribunal's evidentiary rulings to ensure that they do not involve an error of law. *Id.* at 50.

Due process generally requires notice and an opportunity to be heard. *Klco v Dynamic Training Corp*, 192 Mich App 39, 42; 480 NW2d 596 (1991). To make certain that a petitioner is afforded due process, hearings in the Tax Tribunal are conducted in accordance with Chapter 4 of the Administrative Procedures Act, MCL 24.271 *et seq.* *Georgetown Place Coop, supra* at 51-52. MCL 24.272(3) provides:

The parties shall be given an opportunity to present oral and written arguments on issues of law and policy and an opportunity to present evidence and argument on issues of fact.

Further, MCL 24.275 provides in pertinent part:

In a contested case the rules of evidence as applied in a nonjury civil case in circuit court shall be followed as far as practicable, but an agency may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

The Tax Tribunal's judgment¹ indicates that the hearing referee excluded evidence of petitioner's appraisal and the sales of comparable properties because it was not timely filed or served on respondent in advance of the hearing as required by rule 342. Rule 342 provides in pertinent part:

(2) A copy of a valuation disclosure or other written evidence to be offered in support of a party's contentions as to the subject property's value shall be filed with the tribunal and served upon the opposing party not less than 14 days before the date of the scheduled hearing. *Failure to comply with this subrule may result in the exclusion of the evidence at the time of the hearing because the opposing party may have been denied the opportunity to adequately consider and evaluate the evidence before the date of the scheduled hearing.* [1999 AC, R 205.1342(2) (emphasis added).]

This rule gives the hearing referee discretion to exclude evidence that is not timely filed or properly served where the opposing party may be denied the opportunity to adequately consider and evaluate the evidence before the hearing. *Kok v Cascade Twp*, 255 Mich App 535, 544; 660 NW2d 389 (2003).

In this case, a June 16, 2004 notice of hearing was sent to petitioner, advising him that he could submit documentary evidence for consideration. The notice also stated that if the documentary evidence was not submitted at least 14 days before the August 26, 2004 hearing, it could be excluded. Accordingly, because petitioner was afforded notice and an opportunity to present evidence, his due process rights were not violated.

Petitioner does not dispute that he failed to comply with rule 342. Petitioner did not file his appraisal with the tribunal until August 18, 2004, eight days before the hearing, and he also failed to serve a copy on respondent's attorney, serving it on respondent's appraiser instead. Under these circumstances, the hearing referee properly concluded that respondent may not have had an adequate opportunity to consider and evaluate the untimely evidence before the hearing. The decision to exclude the written evidence on this basis did not constitute an error of law. *Id.* Nor did the hearing referee err in excluding the testimony of petitioner's attorney, who apparently attempted to offer oral evidence of the data contained in the excluded written documents. Because petitioner's attorney did not have personal knowledge of this data, he was properly denied the opportunity to offer testimony regarding petitioner's appraisal and the sale of comparable properties. See MRE 602.

¹ Because this was a proceeding before the tribunal's small claims division, it was not transcribed. See 1999 AC, R 205.1305(1) ("[a] formal transcript shall not be taken for any proceeding commenced in the small claims division").

Petitioner further argues that due to the exclusion of this evidence, the hearing referee's decision was not based on competent, material, and substantial evidence. However, the record discloses that the hearing referee based her decision, at least in part, on respondent's valuation disclosure, consisting of a property record card, photos of the property, and an appraisal. The referee also heard and considered the testimony of property appraiser Daniel Sears, who testified regarding the purchase price of petitioner's property, the construction of an addition, and his personal inspections. Consequently, there is no basis to conclude that the hearing referee's decision was not based on competent, material, and substantial evidence on the whole record.

Affirmed.

/s/ Kathleen Jansen
/s/ William B. Murphy
/s/ Karen M. Fort Hood