

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
NAJI ALMONTASER, OFFICER OF MOROCCAN STAR RESTAURANT, INC.	:	DECISION DTA No. 815448
for Redetermination of a Deficiency/Revision of a Determination or for Refund of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Period June 1, 1987 through February 28, 1990.	:	

Petitioner Naji Almontaser, Officer of Moroccan Star Restaurant, Inc., P.O. Box 768, New York, New York 10268-0768, filed an exception to the order of an Administrative Law Judge issued on March 31, 1997. Petitioner appeared by Leonard L. Cohen, P.A. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Christina L. Seifert, Esq., of counsel).

Neither party filed a brief on exception. Petitioner's request for oral argument was denied.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether the Administrative Law Judge properly dismissed petitioner's petition since a small claims hearing on the same matter was previously held and a small claims determination was issued.

FINDINGS OF FACT

We find the following facts.

Petitioner Naji Almontaser, Officer of Moroccan Star Restaurant, Inc. filed a petition on December 31, 1990 with the Division of Tax Appeals. The petition sought revision of a determination of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1987 through February 28, 1990. Petitioner opted to proceed through the small claims

unit. By a small claims determination (DTA No. 809059), issued on November 10, 1994, the Presiding Officer denied petitioner's petition and sustained the Notice of Determination issued on October 1, 1990 for taxes due in the amount of \$24,083.55, plus penalty and interest of \$11,305.80, for a total amount due of \$35,389.35 and also sustained a second Notice of Determination issued on October 1, 1990 for penalty due in the amount of \$2,408.35.

On October 22, 1996, petitioner filed a second petition with the Division of Tax Appeals seeking revision of the determination of sales and use tax under Articles 28 and 29 of the Tax Law for the period June 1, 1987 through February 28, 1990 that was contested previously by petitioner and determined by the Presiding Officer at the small claims proceeding.

On February 5, 1997, Frank A. Landers of the Division of Tax Appeals' Petition Intake, Review and Exception Unit issued a Notice of Intent to Dismiss Petition to petitioner's representative Leonard L. Cohen, P.A. The Notice of Intent to Dismiss Petition stated that this matter had already been the subject of a small claims hearing before a Presiding Officer, a small claims determination was issued in this matter on November 10, 1994 and that the final determination of a Presiding Officer is conclusive and not subject to review by any other unit in the Division of Tax Appeals or the Tax Appeals Tribunal. Following the issuance of the Notice of Intent to Dismiss Petition, the parties were given 30 days to respond.

No response was received from petitioner.

A copy of the Notice of Intent to Dismiss Petition was also sent to the Division of Taxation (hereinafter the "Division"). In response, the Division submitted a letter stating that it was in agreement with the Notice of Intent to Dismiss Petition.

On March 31, 1997, the Administrative Law Judge, *sua sponte*, ordered that the petition be dismissed with prejudice because a small claims determination was issued in this matter on November 10, 1994 and, pursuant to section 3000.13(h)(2) of the Rules of Practice and Procedure of the Tax Appeals Tribunal, the final determination of a Presiding Officer is not subject to review by any other unit in the Division of Tax Appeals or the Tax Appeals Tribunal.

Petitioner filed an exception with the Tax Appeals Tribunal to the order of the Administrative Law Judge dismissing his petition.

OPINION

Tax Law § 2012 provides, in pertinent part, that:

"[t]he final determination of the presiding officer in the small claims unit shall be conclusive upon all parties and shall not be subject to review by any other unit in the division of tax appeals, by the tax appeals tribunal or by any court of the state."

20 NYCRR 3000.13(h)(2) provides, in pertinent part, as follows:

"Effect of determination. The final determination of the presiding officer shall be conclusive upon all parties and shall not be subject to review by any other unit in the Division of Tax Appeals or by the tribunal."

As provided above, exceptions may not be filed with regard to small claims determinations of presiding officers. While petitioner herein filed an exception to the order of the Administrative Law Judge dismissing his petition rather than to a final determination of a presiding officer, the exception is still precluded by Tax Law § 2012 and 20 NYCRR 3000.13(h)(2). As previously noted, petitioner already had a hearing on this matter and a final determination of a presiding officer was issued on November 10, 1994. Therefore, petitioner is not entitled to another hearing and we affirm the order of the Administrative Law Judge dismissing petitioner's petition.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Naji Almontaser, Officer of Moroccan Star Restaurant, Inc. is denied;
2. The order of the Administrative Law Judge is affirmed; and

3. The petition of Naji Almontaser, Officer of Moroccan Star
Restaurant, Inc. is dismissed with prejudice.

DATED: Troy, New York
November 13, 1997

Donald C. DeWitt
President

Carroll R. Jenkins
Commissioner

Joseph W. Pinto, Jr.
Commissioner