

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
SERFRAZ AHMED : DECISION
for Revision of a Determination or for Refund of : DTA NO. 830324
Sales and Use Taxes under Articles 28 and 29 of the :
Tax Law for the Period March 1, 2018 through August :
31, 2019. :
:

Petitioner, Serfraz Ahmed, filed an exception to the order of the Supervising Administrative Law Judge issued on February 22, 2024. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Eric R. Gee, Esq., of counsel).

Petitioner did not file a brief in support of the exception. The Division of Taxation filed a brief in opposition. Petitioner filed a letter brief in reply. Oral argument was not requested. The six-month period for issuance of this decision began on May 28, 2024, the date that petitioner's letter brief in reply was received.

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

ISSUE

Whether the default determination issued in this matter should be vacated.

FINDINGS OF FACT

We find the facts as determined by the Supervising Administrative Law Judge except for findings of fact numbered 1, 3, and 7, which we have modified. We have not restated the Administrative Law Judge's finding of fact 10 as that finding summarizes the Division's legal

arguments below. As so modified, these facts are set forth below.

1. On February 23, 2021, petitioner, Serfraz Ahmed, filed a petition with the Division of Tax Appeals in protest of two conciliation orders issued to him by the Division of Taxation's (Division) Bureau of Conciliation and Mediation Services (BCMS). By conciliation order, dated January 8, 2021 (CMS. No. 00318498), BCMS sustained five notices of determination issued to petitioner for the period of March 1, 2018 through May 31, 2019. Also, by conciliation order dated January 8, 2021 (CMS. No. 00320848), BCMS sustained a notice of determination issued to petitioner for the period June 1, 2019 through August 31, 2019. Petitioner listed his address as "3 Waverly Place, Coram, NY 11727" on the petition.

2. On or about April 24, 2023, Administrative Law Judge Alexander Chu-Fong sent a letter to the parties informing them that he was assigned to the matter. In this letter, he stated that the hearing would be scheduled for both Wednesday, August 16, 2023 and Thursday, August 17, 2023, in Brooklyn, New York. Additionally, Administrative Law Judge Chu-Fong informed the parties that the Hearing Support Unit would contact them in order to schedule a prehearing conference call to discuss the upcoming hearing.

3. On April 24, 2023, the Hearing Support Unit scheduled a prehearing conference call for May 30, 2023. On May 30, 2023, Administrative Law Judge Chu-Fong held the prehearing conference call at 10:00 a.m. The Division appeared, but petitioner did not. On May 30, 2023, another prehearing call was scheduled for August 1, 2023, at 10:00 a.m.

4. On July 11, 2023, a notice of hearing was issued to petitioner at the address listed on the petition, setting forth the scheduled date and time for the formal hearing in the above-mentioned matter as August 16, 2023, at 10:30 a.m. and continuing to August 17, 2023, at 10:00 a.m., at the Shirley A. Chisholm State Office Building, 55 Hanson Place, 6th Floor, Room 658,

Hearing Room 1, Brooklyn, New York 11217. A copy of the notice of hearing was simultaneously sent to the Division.

5. Petitioner did not respond to the notice of hearing.

6. On August 1, 2023, at 10:00 a.m., Administrative Law Judge Chu-Fong held a prehearing conference call as scheduled. The Division appeared, but petitioner did not.

7. On Wednesday, August 16, 2023, at 10:30 a.m., Administrative Law Judge Chu-Fong commenced a formal hearing as scheduled on this matter at the Shirley A. Chisholm State Office Building, 55 Hanson Place, 6th Floor, Room 658, Hearing Room 1, in Brooklyn, New York. The Division appeared by its representative. Petitioner did not appear at the hearing. Additionally, petitioner did not submit a written request for an adjournment of the hearing. Consequently, the representative of the Division moved that petitioner be held in default.

8. On October 12, 2023, Administrative Law Judge Chu-Fong issued a default determination against petitioner, denying the petition in this matter.

9. On October 27, 2023, petitioner filed an application to vacate the default determination. In his application, petitioner stated that he experienced unexpected health issues. Petitioner explained that his disability, specifically, severe back pain, affects his mobility. He claimed that he was physically incapable of travelling to the hearing location. However, he failed to elaborate on the issue or provide any medical documentation. Additionally, petitioner failed to submit any documentation that addressed the merits of his case.

THE ORDER OF THE SUPERVISING ADMINISTRATIVE LAW JUDGE

The Supervising Administrative Law Judge cited the Tax Appeal's Tribunal Rules of Practice and Procedure (Rules) and noted that petitioner had offered no valid explanation for his failure to appear at the scheduled hearing with the Administrative Law Judge, failed to explain

his medical limitations and failed to request an adjournment. Noting petitioner's failure to contact the Division of Tax Appeals to request an adjournment of the hearing, the Supervising Administrative Law Judge found that petitioner did not provide a reasonable excuse for his default. In addition, the Supervising Administrative Law Judge found that petitioner had not established a meritorious case, having submitted no evidence in support thereof. Accordingly, the Supervising Administrative Law Judge denied petitioner's application to vacate the default determination.

ARGUMENTS ON EXCEPTION

In connection with his exception, petitioner argues that the Division's assertion of petitioner being unengaged in the prehearing conference call(s) is unfounded and, therefore, should not serve as basis for upholding the default determination. Petitioner continues to assert that his medical condition, specifically his disability, prevented petitioner from attending the hearing scheduled for August 16, 2023, and August 17, 2023. Petitioner contends that his hospitalization constitutes a valid excuse for his inability to attend the scheduled hearing. Additionally, petitioner asks that we consider newly submitted documentation related to his disability that are not a part of the record.

The Division argues that it was proper for the Supervising Administrative Law Judge to find that petitioner presented neither a valid excuse for his failure to appear nor a basis to show that he should prevail on the merits. Accordingly, the Division contends that the default determination was proper and should be upheld. The Division argues that although petitioner contends that he was physically incapable of travelling to the hearing and that his medical condition prevented him from participating, he provided no medical proof and did not elaborate how his condition prevented him from contacting the Division of Tax Appeals. The Division's

position is that such arguments were properly dismissed below and should be similarly dismissed on exception.

OPINION

The Rules provide that “[i]n the event a party or the party’s representative does not appear at a scheduled hearing and an adjournment has not been granted, the administrative law judge shall, on his or her own motion or on the motion of the other party, render a default determination against the party failing to appear” (20 NYCRR 3000.15 [b] [2]). As petitioner neither appeared at the scheduled hearing nor obtained an adjournment, the Administrative Law Judge properly rendered a default determination (*see Matter of Tasty Sub, LLC*, Tax Appeals Tribunal, September 15, 2022).

The Rules further provide: “Upon written application to the supervising administrative law judge, a default determination may be vacated where the [defaulting] party shows an excuse for the default and a meritorious case” (20 NYCRR 3000.15 [b] [3]). It has been long established that cases before this Tribunal should be resolved based on the merits wherever possible (*see Matter of Morano’s Jewelers of Fifth Ave., Inc.*, Tax Appeals Tribunal, May 4, 1989, citing *Stolpiec v Weiner*, 100 AD2d 931 [2d Dept 1984]; *see also Stark v Marine Power & Light Co.*, 99 AD2d 753 [2d Dept 1984]).

We agree with the Supervising Administrative Law Judge that petitioner did not show a reasonable excuse for his default. Petitioner asserts that his documentation describing his medical condition qualifies as a reasonable excuse, we disagree (*see Matter of Scarlatos*, Tax Appeals Tribunal, January 21, 2011 [where the Tribunal found that petitioner’s failure to attend the hearing due to his child being sick does not constitute a reasonable excuse to vacate a default determination]). Petitioner thus failed to meet the first requirement for vacating a default

determination.

Although petitioner's failure to provide a reasonable excuse for his default is enough to warrant the denial of his exception, we also consider the second requirement for vacating a default determination, i.e., whether petitioner has established a meritorious case (*see Matter of Tasty Sub, LLC*). The standard for a meritorious case in this context is prima facie showing of legal merit (*see Matter of Morano's Jewelers of Fifth Ave.*). Conclusory statements unsupported by facts are insufficient for vacating a default determination (*id.*; *see also Matter of Gordon*, Tax Appeals Tribunal, January 29, 2015). Petitioner did not offer evidence that his case had merit; rather, he only submitted documents purportedly related to his medical condition. In this case, the Supervising Administrative Law Judge correctly concluded that petitioner presented neither an excuse for defaulting in appearance nor a meritorious case.

Therefore, we affirm the order of the Supervising Administrative Law Judge denying petitioner's motion to vacate the default determination issued to him.

Further, petitioner offered documents with his exception that were not part of the record before the Supervising Administrative Law Judge. As noted, one of the documents so offered purports to be from petitioner's medical records. This Tribunal has consistently held that "a fair and efficient hearing process must be defined and final, and that the acceptance of evidence after the record is closed is not conducive to that end . . ." (*Matter of Ippolito*, Tax Appeals Tribunal, August 23, 2012, *confirmed* 116 AD3d 1176 [3d Dept 2014]). In accordance with this principle, we have consistently maintained a policy against considering evidence that was not made part of the record below (*see e.g. Matter of Boniface*, Tax Appeals Tribunal, June 30, 2022; *Matter of Shi Ying Tan*, Tax Appeals Tribunal, October 16, 2014; *Matter of Schoonover*,

Tax Appeals Tribunal, August 15, 1991). Accordingly, we did not consider the documents newly offered by petitioner with his exception.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Serfraz Ahmed is denied; and
2. The order of the Supervising Administrative Law Judge, dated February 22, 2024, denying petitioner's application to vacate the default determination is affirmed.

DATED: Albany, New York
August 15, 2024

/s/ Jonathan S. Kaiman
Jonathan S. Kaiman
President

/s/ Cynthia M. Monaco
Cynthia M. Monaco
Commissioner

/s/ Kevin A. Cahill
Kevin A. Cahill
Commissioner