

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition
of
SHAHID MAHMOOD

ORDER
DTA NO. 828168

for Revision of a Determination or for Refund of Sales
and Use Taxes under Articles 28 and 29 of the Tax
Law for the Period Ending November 30, 2015.

Petitioner, Shahid Mahmood, filed a petition for revision of a determination or for refund of sales and use taxes under articles 28 and 29 of the Tax Law for the period ending November 30, 2015. A small claims hearing was scheduled before Presiding Officer Winifred M. Maloney in New York, New York, on Friday, October 18, 2019 at 11:00 a.m. Petitioner failed to appear and a default determination was duly issued on November 21, 2019. Petitioner, appearing pro se, has made a written application, filed on February 6, 2020, that the default determination be vacated. The Division of Taxation, by Amanda Hiller, Esq. (Melanie Spaulding, Esq., of counsel), submitted its written opposition on March 3, 2020. The 90-day period for rendering this order began on March 14, 2020. Upon a review of the entire case file in this matter, Herbert M. Friedman, Jr., Supervising Administrative Law Judge, issues the following order.

FINDINGS OF FACT

1. On or about April 5, 2017, petitioner, Shahid Mahmood, filed a petition with the Division of Tax Appeals protesting a notice of determination number L-044570085 for sales and use taxes due from the Division of Taxation (Division) issued on April 1, 2016. The basis for the

subject notice was the Division's assertion that petitioner operated a food establishment without the required certificate of authority and asserted penalties in the amount of \$10,000.00 under Tax Law § 1145 (a) (3) (i).

2. Petitioner listed his address as "379 Rt 25A Rocky Point NY 11778" in his petition.

3. On September 9, 2019, the calendar clerk of the Division of Tax Appeals sent notices of hearing to petitioner at the address on his petition and the Division advising them that a small claims hearing in the above matter had been scheduled for Friday, October 18, 2019, at 11:00 a.m., at 90 Church Street, 4th Floor, New York, New York.

4. On Friday, October 18, 2019, at 11:00 a.m., Presiding Officer Winifred M. Maloney commenced a small claims hearing as scheduled in the *Matter of Shahid Mahmood*. The Division appeared by its representative. Petitioner did not appear at the hearing. No written request for an adjournment of the hearing or other communication was received from petitioner. The representative of the Division of Taxation moved that petitioner be held in default.

5. On November 21, 2019, Presiding Officer Maloney issued a default determination against petitioner, denying the petition in this matter.

6. On February 6, 2020, petitioner filed this application to vacate the default determination. In the unsworn application, petitioner alleged that he changed his address and did not receive a letter concerning the hearing. Petitioner also listed his address as "217 Locust Dr Rocky Point NY 11778" in the application to vacate. He did not identify when he changed his address. He also did not offer any evidence or argument on the substance of the case.

7. In its opposition to the instant application, the Division argues that the hearing notice was sent to the same address as on the petition and there is no evidence that it was undelivered. Moreover, the Division states that it is unaware of any notification by petitioner of a change of

address prior to the instant application. Finally, the Division maintains that petitioner has failed to show that he has a meritorious case.

CONCLUSIONS OF LAW

A. As provided in the Rules of Practice and Procedure of the Tax Appeals Tribunal, “[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 presiding officer 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 3000.13 [d] [2]). The rules further provide that, “[u]pon written application to the supervising administrative law judge, a default determination may be vacated where the party shows an excuse for the default and a meritorious case” (20 NYCRR 3000.13 [d] [3]).

B. Petitioner did not appear at the scheduled hearing or obtain an adjournment. Therefore, the presiding officer correctly rendered a default determination pursuant to 20 NYCRR 3000.13 (d) (2) (*see Matter of Hotaki*, Tax Appeals Tribunal, December 14, 2006; *Matter of Zavalla*, Tax Appeals Tribunal, August 31, 1995).

C. Once the default determination was issued, it was incumbent upon petitioner to show an acceptable excuse for not attending the hearing and to show that he had a meritorious case (20 NYCRR 3000.13 [d] [3]; *see Matter of Poindexter*, Tax Appeals Tribunal, September 7, 2006; *Matter of Zavalla*). Simply put, petitioner has not established an acceptable excuse for his failure to appear at the hearing. As the Division points out, there is no evidence that petitioner notified it of a change of address prior to the hearing. Instead, it appears that the notice of hearing was issued to the same address listed on his petition. Additionally, petitioner has offered no other excuse for his failure to appear. Accordingly, petitioner has not met the first criterion to have the default determination vacated.

D. Furthermore, petitioner has not established a meritorious case. “In order to meet the meritorious case criterion for vacatur, petitioner must make a prima facie showing of legal merit, and may not rely on conclusory statements unsupported by the facts” (*Matter of Gordon*, Tax Appeals Tribunal, January 29, 2015). Petitioner’s application lacks any argument, much less evidence in support of the substance of his case. As a result, petitioner’s application fails on this prong as well.

E. The application of petitioner, Shahid Mahmood, to vacate the default determination of November 21, 2019 is denied.

DATED: Albany, New York
June 11, 2020

/s/ Herbert M. Friedman, Jr.
SUPERVISING ADMINISTRATIVE LAW JUDGE