

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DRC

CHRISTOPHER J. BARD,)
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Petitioner,)
)
v.) Docket No. 4965-18S.
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COMMISSIONER OF INTERNAL REVENUE,)
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Respondent)
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ORDER

By Order Of Dismissal And Decision, entered and served February 28, 2019, the Court (1) granted respondent’s Motion To Dismiss For Failure To Properly Prosecute, filed February 12, 2019, (2) dismissed this case, and (3) entered decision in respondent’s favor consistent with respondent’s deficiency and penalty determinations in the notice of deficiency. Thereafter, on March 19, 2019, petitioner filed a Motion To Vacate Or Revise Pursuant To Rule 162.¹ In his motion petitioner represents that counsel for respondent objects to the granting of his motion.

In his motion to vacate or revise petitioner, a Chicago police officer who commenced the present judicial proceeding on March 12, 2018, as a self-represented taxpayer, states that he “was completely shocked when he recently discovered that his case had been dismissed” because, “based on a misunderstanding and miscommunication with his tax return preparer, an enrolled agent,” he “mistakenly believed that his only obligation with respect to this tax court case was to file the petition at the beginning of the case and to do nothing more.”

¹ The Rule reference is to the Tax Court Rules of Practice and Procedure. Also, petitioner’s motion was filed by counsel, who entered an appearance on March 18, 2019.

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Background

A review of the record is instructive in evaluating petitioner's motion. Accordingly:

By Notice Setting Case For Trial dated and served September 26, 2018 (hereinafter, the trial notice), the Clerk of the Court notified the parties that this case had been set for trial at the Trial Session beginning at 10:00 a.m. on Monday, February 25, 2019, at the address specified in the trial notice. The next two lines of the trial notice stated the following and included a warning:

The calendar for that Session will be called at that date and time, and the parties are expected to be present and to be prepared to try the case. Your failure to appear may result in dismissal of the case and entry of decision against you.

The penultimate paragraph of the trial notice told the parties that "Information about presenting a case in the Tax Court can be found at www.ustaxcourt.gov." The Court's website provides a wealth of information, much (if not most) of which is specifically geared towards self-represented taxpayers and includes Q&As and even a video to assist such taxpayers throughout the life cycle of a Tax Court case, including a trial.

The final paragraph of the trial notice stated as follows and included another warning:

The parties should contact each other promptly and cooperate fully so that the necessary steps can be taken to comply with these requirements. **Your failure to cooperate may also result in dismissal of the case and entry of decision against you.** [Emphasis in the original.]

On January 29, 2019, about a month before the scheduled trial session, the Clerk of the Court issued a Notice to the parties, again specifying the time, date, and place of the scheduled trial session. The opening paragraph of the Notice stated as follows and included yet another warning:

The parties are reminded that this case is calendared for trial or hearing at the Trial Session beginning **February 25, 2019**. This case will remain on the Court's trial calendar unless both parties sign an agreed decision and submit it to the Court, or unless the Court

otherwise notifies the parties that it is taking this case off the trial calendar. If the case remains on the Court's trial calendar and you fail to appear at the Trial Session, the case may be dismissed. [Emphasis in the original.]

The remaining two paragraphs of the Notice were specifically directed to self-represented taxpayers and were designed to help such taxpayers navigate the trial process, including how to seek assistance from a tax clinic.

On February 12, 2019, respondent filed with the Court and served on petitioner his Motion To Dismiss For Failure To Properly Prosecute. Respondent attached a complete copy of the notice of deficiency to the motion as an exhibit. The preamble to the motion began with respondent moving that "the Court dismiss this case for failure to properly prosecute and find in its order that there is a deficiency in tax and penalties/additions to tax, as set forth in the Notice of Deficiency dated December 26, 2017". The motion then went on to state, in part, as follows:

1. This case is assigned to the trial session of this Court commencing on February 25, 2019, at Chicago, Illinois.

* * * * *

4. Petitioner has been generally non-responsive since filing the petition. The details of communications with petitioner are as follows:

a. Respondent's appeals office sent a letter to petitioner on July 31, 2018, seeking substantiation for the disallowed Schedule A deductions, to which petitioner replied on September 5, 2018 with documents that respondent's appeals office rejected as insufficient.

b. Respondent's appeals office sent another letter to petitioner on October 3, 2018, seeking substantiation for the disallowed Schedule A deductions, to which petitioner did not reply.

* * * * *

g. Respondent's counsel left a voicemail at petitioner's telephone number of record on February 6, 2019, in an attempt to ascertain the petitioner's views on this motion and specifically warned petitioner that if he failed to participate in his case that his case may be dismissed, to which petitioner did not reply.

h. Respondent's counsel left a voicemail at petitioner's telephone number of record on February 8, 2019, in an attempt to ascertain the petitioner's views on this motion and specifically warned petitioner that if he failed to participate in his case that his case may be dismissed, to which petitioner did not reply.

Respondent's statement above about petitioner being "generally non-responsive" is consistent with a statement made by petitioner himself in his pending motion to vacate or revise, i.e., "Petitioner ignored all correspondence from the Service relating to this case" because of his mistaken belief that "his only obligation with respect to this tax court case was to file the petition at the beginning of the case and to do nothing more."

On February 13, 2019, the day after respondent filed his motion to dismiss, the Court served an Order that calendared the motion for hearing and included yet another warning. In its entirety the Order stated as follows:

After due consideration of respondent's Motion To Dismiss For Failure To Properly Prosecute, filed February 12, 2019, it is

ORDERED that respondent's aforementioned motion is calendared for hearing at the Trial Session of the Court scheduled to commence at 10:00 a.m. on Monday, February 25, 2019 in Room 3908, 39th Floor of the Kluczynski Federal Building, 230 S. Dearborn Street, Chicago, Illinois 60604. This Order constitutes official notice of its contents to the parties and further notice will not be given.

Petitioner is advised that failure to appear at the appointed place and time may result in the granting of respondent's motion to dismiss and a decision entered against petitioner for the amounts and for the year set forth in respondent's motion.

Pursuant to notice this case was called and recalled from the calendar for the Trial Session of the Court at Chicago, Illinois, on February 25, 2019. There was no appearance by or on behalf of petitioner on either occasion. In contrast counsel for respondent appeared, supported his motion, and in response to the Court's inquiry whether he had heard anything from petitioner since the filing of the motion to dismiss, answered that he had not. After further colloquy between the Court and counsel, the Court stated that respondent's motion would be granted. The written Order Of Dismissal And Decision followed thereafter.

Conclusion

As the record in this case makes abundantly clear, petitioner received *multiple* warnings *from the Court* about the need to appear in court on February 25, 2019, and about the possible consequence if he failed to do so. Petitioner was also warned *by the Court* about the need to cooperate in the preparation of this case for trial and about the possible consequence if he failed to do so.² None of these warnings were in "legalese" or used arcane language. Rather, all of the warnings were clear, concise, and written in plain English, and would be easily understood by a reasonable person. Thus, petitioner's allegation that he believed "his only obligation with respect to this tax court case was to file the petition at the beginning of the case and to do nothing more" strikes the Court as disingenuous.³ Surely a police officer would know that when a *court* says to a party in a *judicial* proceeding that the party needs to "show up", the party shows up. Petitioner failed to do so and, at the time, failed to offer *any* reason that might have excused his failure to do so. And in his motion to vacate or revise petitioner fails to offer a convincing reason to justify his failure to appear.

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² It bears noting that petitioner was *also* warned by respondent about the need to participate in the preparation of this case for trial and about the possible consequence if he failed to do so.

³ If petitioner believed that, one might wonder why petitioner furnished respondent's Appeals Office, pursuant to its request of July 31, 2018, with some documentation regarding disallowed deductions on September 5, 2018, a date well after petitioner had commenced this case.

Premises considered, it is hereby

ORDERED that petitioner's Motion To Vacate Or Revise Pursuant To Rule 162, filed March 19, 2019, is denied.

(Signed) Robert N. Armen
Special Trial Judge

Dated: Washington, D.C.
March 21, 2019