

UNITED STATES TAX COURT
WASHINGTON, DC 20217

GOOD EATS CORPORATION,)	
)	
Petitioner,)	
)	
v.)	Docket No. 26638-15.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

Now pending is petitioner’s motion, filed January 24, 2017, for reconsideration and to vacate our decision entered December 21, 2016. We will deny the motion.

Background

Petitioner filed its petition on October 21, 2015. On October 26, 2015, we ordered petitioner to file the disclosure statement required by Rule 20(c) of the Tax Court Rules of Practice and Procedure. Petitioner did not do so.

By notice issued July 5, 2016, we set this case for trial at the Court’s session in Los Angeles beginning December 5, 2016. The notice warned, “Your failure to appear may result in dismissal of the case and entry of decision against you.” By notice issued October 21, 2016, we reminded petitioner of the upcoming trial date and again warned that if “you fail to appear at the Trial Session, the case may be dismissed.”

Because petitioner had still failed to file the disclosure statement, we issued an Order to Show Cause dated November 8, 2016, to which petitioner failed to respond. On November 30, 2016, we held a telephone conference with the parties.

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Petitioner's officer George Kim spoke for petitioner orally requested a continuance. We did not grant or deny his request but instructed him to respond to the order to show cause by filing a disclosure statement pursuant to Rule 20(c). Petitioner did not comply.

This case was called from the calendar of the Trial Session of the Court at Los Angeles, California on December 5, 2016, but there was no appearance on behalf of petitioner.

On December 21, 2016, we entered an "Order of Dismissal and Decision", making absolute our order to show cause, dismissing the case for petitioner's failure to properly prosecute, and entering decision in the amounts in the notice of deficiency attached to the petition.

On December 30, 2016, petitioner mailed to the Court a disclosure statement form, but the form was not filled out to give the required information, so petitioner has still never filed a proper disclosure statement.

On January 13, 2017, petitioner timely mailed to the Court a document that we treated as a motion for reconsideration and motion to vacate; and on March 6, 2017, we ordered respondent to file a response to petitioner's motion. On March 9, 2017, respondent filed a response, which stated in part:

Petitioner's representative, George Kim, stated [on November 30, 2016] that he would provide respondent's counsel with documentation as promptly as possible. As of the date of this response [i.e., March 9, 2017], petitioner has not provided respondent's counsel with any of the requested documentation.

On July 25, 2017, we initiated a conference call with the parties. Mr. Kim acknowledged that he had not provided any additional information to respondent's counsel. Respondent's counsel updated his response to petitioner's motion by stating that in March 2017 he received from an accountant for petitioner some information, which he described, and stated that that information does not change respondent's position.

Mr. Kim then alleged that he had additional information that he intended to provide to respondent. He had no explanation for why he had not already provided it. When the Court pressed Mr. Kim to confirm that he actually has the additional information at hand, he stated that he can have it within 24 hours. The Court orally instructed him to transmit that information to respondent's counsel via

telefacsimile no later than close of business on the next day, July 26, 2017, and advised Mr. Kim that the Court would issue an order reducing that instruction to writing, and ordering respondent to file a status report the following day, reporting whether Mr. Kim had complied with the Court's instruction. We issued that order on July 25, 2017.

On July 26, 2017, respondent filed a status report that credibly reports as follows:

Later that day, on July 25, 2017, respondent received another letter from petitioner's representative, via telefacsimile, with enclosures. The July 25, 2017, letter slightly modified, but generally restated the argument set forth in the March 15, 2017, letter. The July 25, 2017, enclosures bore new hand-written annotations, but were generally identical to portions of the documents that were enclosed with petitioner's representative's March 15, 2017, letter. Therefore, petitioner's July 25, 2017, letter and enclosures have not prompted any change in respondent's position from the notice of deficiency.

Discussion

Petitioner has failed to file the disclosure statement despite the requirement of Rule 20(c) and our orders of October 26, 2015, November 8, 2016, and December 21, 2016.

Petitioner failed to appear at the hearing of December 5, 2016, despite the warnings in our notices of July 5 and October 21, 2016.

Petitioner, despite its oral request in November 2016 for a continuance in order to be allowed to obtain information to support its case, largely failed since that time to obtain such information. It has not shown that, if we vacated our decision and petitioner were allowed to proceed to trial, it would have substantial evidence to support its contentions.

It is therefore

ORDERED that petitioner's motion for reconsideration and to vacate filed January 24, 2017, is denied, for the reasons stated in our Order of Dismissal and Decision entered December 21, 2016, in respondent's filings of March 9 and July 26, 2017, and in this order. Our Order of Dismissal and Decision shall stand.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
July 28, 2017