

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 78031
Petitioners: AMHERST CAPITAL PARTNERS COLORADO LLC; DDIT TEXAS LLC, v. Respondent: JEFFERSON COUNTY BOARD OF EQUALIZATION.	
ORDER OF DISMISSAL	

THIS MATTER comes before the Board of Assessment Appeals (“Board”) on Respondent’s Motion to Dismiss and for Sanctions for Failure to Comply with Order to Compel (“Motion”). On January 28, 2021 the Board, Diane DeVries and Louesa Maricle presiding, held a hearing on the Motion. Tax agent Beth Diehl of Paradigm Tax Group appeared on behalf of Petitioners. Respondent appeared through Assistant County Attorney Jason Soronson of the Jefferson County Attorney’s Office.

Background

1. This appeal was initiated via a petition filed November 25, 2019. Attached thereto was a Letter of Authorization authorizing Paradigm Tax Group to act as agent and representative for Petitioners. The Petition was attested to by tax agent Beth Diehl. The appeal was originally set for hearing on October 15, 2020. The Board sua sponte reset the hearing to January 28, 2021, via a Notice of Hearing sent August 26, 2020. The parties’ Rule 11 exchange of documents deadline was December 31, 2020.

2. On or around November 17, 2020, the County mailed a Request for Production of Documents and Entry Upon Land (“Discovery Requests”) to Petitioners. Under Board Rule 9.b.2, Petitioners were obligated to respond on or before December 8, 2020.

3. Petitioners failed to respond to the Discovery Requests or respond to an attempt from Respondent to confer about them. As a result, Respondent filed a Motion to Compel on December 22, 2020.

4. On December 30, 2020, the Board issued an Order Granting Motion to Compel, ordering Petitioners to respond to the Discovery Requests no later than January 8, 2021. The Order Granting Motion to Compel informed Petitioners that if Petitioners failed to comply with the Order, the Board would immediately entertain a motion for sanctions consistent with C.R.C.P. 37(c).

5. On January 8, 2021, Ms. Diehl filed "Petitioner's Response to Respondent's Request for Production of Documents and Entry Upon Land" ("Response"). The Response stated that the property owner was out of the country, and did not have access to his paper files. It also stated that Ms. Diehl had not received a copy of the Discovery Requests and was not aware of them until she received Respondent's Motion to Compel. It further stated that "SB 119" had already been provided.

6. Petitioners did not exchange Rule 11 documents with Respondent or file them with the Board. Board staff made multiple attempts to reach Petitioners' agent to discuss whether the agent intended to take the case to hearing, but received no response.

7. On January 12, 2021, the Respondent filed its Forthwith Motion to Dismiss and for Sanctions for Failure to Comply with Order to Compel.

8. On January 14, 2021, the Board issued an Order converting the January 28, 2021 hearing on the merits of the appeal to a hearing on Respondent's Motion to Dismiss.

Findings and Orders

9. The Board heard the statements of counsel for Respondent, and the sworn testimony of Ms. Diehl.

10. As noted above, Petitioners are represented in this action by an agent, Paradigm Tax Group. In its role as a tax agent, Paradigm represents numerous commercial clients, including Petitioners, before the Board. In this role, Paradigm is expected to be familiar with the Board's Rules and to possess an understanding and sophisticated knowledge of the procedures involved with a property tax appeal before the Board. Despite this, in representing Petitioners in this matter, Paradigm has failed to comply with basic obligations under the Board's Rules or to comply with the Board's Order.

11. Under Board Rule 6, Petitioners were required to appear before the Board with the representation of an attorney licensed to practice in Colorado. Petitioners are advised of this requirement both on the Petition form and in the Board Rules. An agent's appearance at a Board hearing is not only noncompliant with the Board Rules, but may be considered the unauthorized practice of law.

12. Likewise, Ms. Diehl's filing of the Response to Respondent's Discovery Requests may be considered the unauthorized practice of law. The Board finds that Petitioners' Response was inadequate and largely non-responsive. It was also one month late, under Board Rules. Ms. Diehl asserted she did not receive the emailed Discovery Requests when they were sent. However, the Board notes that the certificate of service on the Discovery Requests creates a rebuttable presumption that they were served on her. *See* Board Rule 5.c. In addition, Ms. Diehl stated she did receive notice of the Discovery Requests when she received Respondent's Motion to Compel. The Motion to Compel was filed on December 22, 2020, yet Petitioners' Response to the Discovery Requests was not filed until over two weeks after that.

13. The Board finds Petitioners' failure to respond to limited, relevant discovery Requests unfairly prejudiced Respondent in its ability to prepare for hearing on this appeal. At hearing, Ms. Diehl asserted multiple times to the Board, as she did in her Response, that Paradigm "supplies all SB-119 data on initial [CBOE] appeal." However, it appears in so arguing that Ms. Diehl may be conflating discovery obligations with the separate requirement imposed by § 39-8-107(5)(a)(I), C.R.S. that a petitioner automatically make certain disclosures within 90 days of filing an appeal petition for a rent-producing commercial property. Petitioners' provision of "SB-119" material does not excuse Petitioners from also complying with discovery obligations.

14. In addition, the Board finds that Petitioners' failure to file Rule 11 documents by the deadline, or respond to Board inquiries about the status of the appeal, evidenced a failure to participate in this appeal, which is of particular concern given that the burden of proof is on Petitioners. Respondent's counsel stated that on January 5, 2021 Petitioners reached out to Respondent to request a continuance. This request came after the Rule 11 exchange deadline, and Respondent had already prepared its USPAP-compliant appraisal and provided that documentation to Petitioners and to the Board. Petitioners did not request a continuance from the Board. It should be noted, Respondent was under no obligation to agree to a continuance, and continuances are granted solely at the Board's discretion.

15. Ms. Diehl's responses to the Board's direct inquiry at hearing as to why this case should not be dismissed was that there is "an IT issue that's beyond our control," "the client is out of the country and I cannot get ahold of anyone," and "they furloughed the property manager that I did know." She also stated that, "because we were talking to the County about [the property owner] being gone we did not think it was going to be an issue at all." Ms. Diehl also testified that her office had been experiencing technical issues resulting in her non-receipt of Board emails and voicemails, that her office was moving physical locations, and that she has not yet been able to secure legal counsel on behalf of her client, and normally does not deal with the County Attorney's Office herself.

16. The Board finds that these explanations do not excuse Petitioners' failure to respond meaningfully to Respondent's Discovery Requests and to participate in this appeal, including responding to Board staff inquiries. It is Petitioners' responsibility to manage its communications with its client and with the Board, and to comply with Board Rules, including securing legal counsel when necessary. Despite the many opportunities afforded Petitioners to

engage in this appeal meaningfully and fairly, they have failed, through their representation by Ms. Diehl, to do so. Instead, for several months Petitioners have shown a disregard for the appeal process, for procedural efficiency, and for the aims of the discovery process.

17. Respondent's Forthwith Motion to Dismiss and for Sanctions for Failure to Comply with Order to Compel requests the sanctions of dismissal of this appeal and the imposition of the costs of preparation of the County's Rule 11 Report, the County's Motion to Compel, and the motion here under consideration, including attorney fees. The Board declines to award costs and attorney fees, but finds the sanction of dismissal is appropriate and within its authority. *See* § 24-4-105(4)(a), C.R.S.; C.R.C.P. Rule 37.

The Board hereby **DENIES** the request for the imposition of costs and attorney fees, but for the reasons stated above, **GRANTS** the request for dismissal of this appeal.

IT IS HEREBY ORDERED that the case is **DISMISSED** with prejudice.

DATED and MAILED this 17th day of February, 2021.

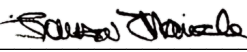
BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Diane DeVries

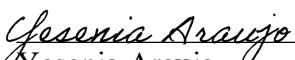
Concurring Board Member:



Louesa Maricle
*Concurring without modification
pursuant to § 39-2-127(2), C.R.S.*



I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.



Yesenia Araujo