

RULES OF PRACTICE AND PROCEDURE OF THE NEW YORK CITY TAX APPEALS TRIBUNAL

§1-11 Small claims hearings. (a) *General.* A petitioner who wishes to have the proceedings in his or her case conducted in the small claims unit may so elect at the time of the filing of the petition (or, if the petition was filed before the effective date of these rules, at any time before the hearing, subject to approval of the chief administrative law judge), if the amount in controversy meets the criterion contained in subdivision (b) of this section. The small claims hearing will be an adversary proceeding conducted by an impartial presiding officer. The presiding officer shall conduct the hearing (see subdivision (f) of this section) in a fair manner that permits the parties to offer all relevant evidence to establish their positions. Where certain points or issues are unclear, the presiding officer may ask questions of the parties or of witnesses for the purpose of clarifying the record.

(b) *Criterion for small claims.* Controversies which may be heard by the small claims unit are restricted in amount to \$10,000 (not including penalty and interest).

(c) *Pleadings; applicable sections; notice.* (1) The only pleadings to be served by the parties are a petition by the petitioner (see section 1-04 of these rules) and an answer by the commissioner of finance. The tribunal may prescribe a simplified form of pleadings for small claims matters.

(2) The parties may file briefs, additional documents or other material in support of their pleadings.

(3) The provisions of subdivision (e) of section 1-04 of these rules regarding amended pleadings, and section 1-08 of these rules, regarding subpoenas, are applicable to this section. The provisions of sections 1-05 (other than paragraph (e)1), 1-06 and 1-07 of these rules are not applicable to this section. Notwithstanding the foregoing, the presiding officer may, at the request of either party, (i) consider any of the grounds for dismissal provided for under section 1-05(b) of these rules and dispose of the matter on such ground, if appropriate, and (ii) allow such limited discovery as the presiding officer shall deem appropriate under the circumstances.

(4) After the petition and answer have been served, the controversy shall be at issue, and the small claims unit shall schedule the controversy for a small claims hearing.

(5) The parties shall be given at least 30 days' notice of the first hearing date, and at least 10 days' notice of any adjourned or continued hearing date unless the parties agree otherwise with the consent of the presiding officer. A request by any party for a preference in scheduling will be honored to the extent possible.

(d) *Adjournment; default.* (1) At the written request of either party, made on notice to the other party and received at least 15 days in advance of the scheduled hearing date, an adjournment may be granted where good cause is shown. In the event of an emergency, an adjournment may be granted on less notice. Upon continued and unwarranted delay of the proceedings by either party, the presiding officer shall render a default determination against the dilatory party.

(2) In 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.

(3) Upon written application to the chief administrative law judge, a default determination may be vacated where the party shows a reasonable excuse for the default and a meritorious case.

(e) *Presiding officer.* The small claims hearing shall be conducted by a presiding officer with the same authorization provided an administrative law judge conducting a hearing by section 1-12 of these rules.

(f) *Conduct of hearing.* (1) The small claims hearing shall be conducted by a presiding officer in such a manner as to do substantial justice between the parties according to the rules of substantive and administrative law. The hearing shall be conducted as informally as possible, consistent with orderly procedure. Any evidence which the presiding officer considers necessary or desirable for a just and equitable determination will be received, except that effect shall be given to the rules of privilege recognized by law. The burden of proof shall be upon the party seeking relief as to each issue, except as otherwise provided by law.

(2) The provisions contained in paragraphs (1) through (5) of subdivision (d) of section 1-12 of these rules, regarding conduct of a hearing, are applicable to a small claims hearing; however, such applicability is not intended to alter the informal nature of the small claims hearing.

(3) The small claims hearing shall be stenographically reported or otherwise recorded, but a transcript thereof need not be made unless the presiding officer otherwise directs. Where a transcript is made, it shall be available for examination at the tribunal or may be purchased by a petitioner pursuant to section 1-16 of these rules.

(g) *Transfer to administrative law judge.* At any time before the conclusion of a small claims hearing, the petitioner may, by written notice to the president of the tribunal, discontinue such small claims proceeding and request that the hearing on the petition be transferred to and conducted by an administrative law judge. Such discontinuance shall be without prejudice to any subsequent proceeding before an administrative law judge. Following such transfer of a matter to an administrative law judge, the matter shall not be transferred back to the small claims unit.

(h) *Determination.* (1) *Issuance of determination.* After the small claims hearing, the presiding officer shall review the evidence and render a determination within three months of completion of the hearing or the submission of briefs, whichever is later. The tribunal shall serve a copy of the determination on the petitioner, if appearing pro se, or the petitioner's representative, and the attorney of record for the commissioner of finance.

(2) *Effect of determination.* The final determination of the presiding officer shall be conclusive upon all parties and shall not be subject to review by any other unit in the tribunal. However, on the motion of either party, the chief administrative law judge may order a rehearing upon proof or allegation of misconduct by the presiding officer. Determinations of presiding officers shall not be considered precedent, nor shall they be given any force or effect in other proceedings in the tribunal.

(i) *Assignment of another presiding officer.* Whenever it becomes impractical for a presiding officer to continue the hearing, another presiding officer may be assigned to continue with the case, unless it is shown that substantial prejudice to a party will result therefrom.