

**NEW YORK CITY TAX APPEALS TRIBUNAL
ADMINISTRATIVE LAW JUDGE DIVISION**

In the Matter of the Petition : **DETERMINATION**
: **TAT (H) 14-23 (RP)**
of :
: **Indira Patel & Bhargavi Patel** :
:

Murphy, C.A.L.J.:

Petitioners Indira Patel and Bhargavi Patel¹ filed a Petition with the New York City (City) Tax Appeals Tribunal (Tribunal) protesting City Real Property Transfer Tax (RPTT) asserted by the City Department of Finance (Department) with respect to the February 2, 2012 transfer of property, Borough of Queens, Block 2182, Lot 108, from Bhargavi S. Patel as Grantor to Indira Patel as Grantee (Transfer). The deed for the Transfer was recorded in the Office of the City Register on April 5, 2012. The Petition, which was not dated, was received by the Tribunal on October 2, 2014.

The Petition refers to a Notice of Determination which Petitioners identified as dated October 28, 2013.

The Notice of Determination issued by the Department with respect to the Transfer is dated July 24, 2013. On October 25, 2013, the Department placed the following stamp on the Notice of

¹ The Notice to Correct Petition, dated October 8, 2014, and the Notice of Intent to Dismiss, dated November 7, 2014, issued by the Tribunal, incorrectly refer to Petitioner Bhargavi Patel as Bhargavis Patel.

Determination: "THIS DETERMINATION HAS BECOME FINAL BY VIRTUE OF THE FACT THAT A HEARING HAS NOT BEEN REQUESTED WITHIN THE NINETY (90) DAYS AS PROVIDED BY LAW." On October 28, 2013, after issuing the Notice of Determination, the Department's Collection Division issued a Warrant to Petitioner Bhargavis Patel with respect to the Transfer, and a judgment of \$22,204.54 was entered in the office of the County Clerk, Queens County. A Warrant is a collection notice.

Section 168 of the City Charter provides that the Tribunal has jurisdiction to hear and determine cases initiated by the filing of petitions protesting notices . . . issued by the Commissioner of Finance, *which give a person the right to a hearing*" New York City Charter § 168-a. Under the Charter provision, the jurisdiction of the Tribunal is specifically limited to review of petitions filed by taxpayers which protest notices for which the Code explicitly provides a right to a hearing.

Administrative Code Section 11-2107 provides that the Department may issue a Notice of Determination of City RPTT. The tax asserted by a Notice of Determination of City RPTT becomes "finally and irrevocably fixed" unless the taxpayer against whom it is asserted protests the Notice within the statutory time limits. (Administrative Code § 11-2107).

A taxpayer may request a Conciliation Conference with the Department's Conciliation Bureau to review a Notice of Determination issued by the Department. (Administrative Code § 11-124). RPTT Rules of the City of New York (19 RCNY) § 38-05[c] [2] provides that following a Conciliation Conference the Department will issue either a conciliation decision with respect to issues

resolved at the conference or a conciliation decision discontinuing conciliation. (19 RCNY § 38-05 [c] [2]).

Administrative Code § 11-2107 provides that a taxpayer may protest a Department determination of RPTT. (Administrative Code § 11-2107). A protest may be made **either** by petitioning the notice **"within ninety days after the giving of notice"** or (2) filing a protest of a Conciliation Decision in the matter **"within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance."** (Administrative Code § 11-2107). [Emphasis supplied]. The protest must be filed with the Tribunal and a copy must be served on the City Corporation Counsel. (Administrative Code § 11-2107).

Petitioners did not file a Petition with the Tax Appeals Tribunal protesting the July 24, 2013 Notice of Determination of RPTT.

Neither Petitioners nor Respondent provided the Tribunal with a copy of any Request for a Conciliation Conference. Further, there is no evidence in the record to establish that if there was a Request it was filed within the required time period. However, the Department's Conciliation Bureau issued a Conciliation Determination to Petitioners on June 5, 2014, a copy of which was included with the Petition. The Conciliation Determination discontinued a conciliation proceeding as a result of Petitioners' authorized representative's failure to appear for a Conciliation Conference which was scheduled for May 27, 2014. Based upon the Conciliation Determination, it is found that Petitioners filed a Request for Conciliation Conference.

The Petition was filed October 2, 2014, which is a date in excess of ninety days from the date of the issuing of the Conciliation Determination.

RPTT due on a transfer of real property becomes final and fixed where a Notice of Determination is not protested within the period of time proscribed by the Administrative Code. Code § 11-2107. When a Notice of Determination is not protested within the time period proscribed by the Code, the Department is authorized to initiate proceedings to recover the tax due. A warrant issued by the Department is a remedy for the recovery of tax where a "grantor or grantee ... fail[s] to pay any tax ... imposed by [Chapter 21 or the Administrative Code]." (Administrative Code § 11-2111). A warrant does not create a right to a hearing within the meaning and intent of Administrative Code § 11-529.

As noted, the Petition as filed referred, on its face, to a "Notice of Determination" dated "10/28/2013." Reviewing the stated reference, it is clear that the document which was issued on October 28, 2013 was a warrant, and was neither a Notice of Determination nor a Conciliation Determination.

The Tribunal does not have jurisdiction to review a Notice of Determination or a Conciliation Determination which was not protested within ninety days from the date of such notice or conciliation determination, the period of time provided by the Code. (Administrative Code § 11-2107). The Notice of Determination was issued on July 24, 2013, and the Petition was filed on October 2, 2014, a date in excess of ninety days from the issuing of that Notice. The warrant was issued after the tax asserted in

the Notice of Determination became finally and irrevocably fixed.
The Tribunal does not have jurisdiction to review the Petition.

ACCORDINGLY, IT IS ORDERED THAT a Determination be entered
dismissing this matter for lack of Jurisdiction.

DATED: May 8, 2015
New York, New York

Anne W. Murphy
Chief Administrative Law Judge