

New York City Tax Appeals Tribunal

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In the Matter of	:	
	:	DECISION
ASTRO GALLERY OF GEMS INC.	:	
	:	TAT (E) 21-21 (CR)
Petitioner.	:	
	:	
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The Appeals Division of the New York City Tax Appeals Tribunal (Tribunal) received an Exception filed by Astro Gallery of Gems Inc. (Petitioner), appealing a Determination of an Administrative Law Judge (ALJ Determination) dated June 17, 2022. The ALJ Determination dismissed the Petition for lack of jurisdiction. The Exception was signed on August 23, 2022, and bore a FedEx label showing a shipping date of August 23, 2022, and a delivery date of August 25, 2022.

Section 169.a of the New York City Charter (Charter) provides that:

“Such a system also shall be designed to require the tribunal to review en banc at the request of any party the determination rendered by an administrative law judge, provided, however, that if there is no such request for a review within thirty days of the giving of notice of such determination by the administrative law judge, such determination shall finally and irrevocably decide all the issues in the proceeding before the administrative law judge and shall be considered a final decision of the tribunal upon the expiration of such thirty-day period, except that, notwithstanding any other provision of law, such determination by the administrative law judge shall not be subject to judicial review.”

The Rules of Practice and Procedure of the Tribunal (Tribunal Rules) state at 20 RCNY § 1-13(a) that:

“(i) Within 30 days of the giving of notice of the determination of an administrative law judge, or within 30

days of service of a copy of an exception taken by the other party, any party may take exception to such determination and seek review thereof by the tribunal commissioners, by filing an exception and 3 conformed copies with the president of the tribunal, either in person or by certified or registered mail addressed to the tribunal. A copy of the exception shall be served at the same time on the other party.

20 RCNY § 1-17 of the Tribunal Rules contains the rules regarding the “Filing and service of documents” 20 RCNY § 1-17(a)(1) of the Tribunal Rules states in relevant part that:

“If any document required to be filed and served under these rules within a prescribed period or on or before a prescribed date is, after such period or date, delivered by United States mail, the date of the United States postmark stamped on the envelope or other appropriate wrapper in which such document is contained will be deemed to be the date of filing or service.”

20 RCNY § 1-17(e) of the Tribunal Rules provides that:

“When the last day prescribed under these rules for filing or service falls on a Saturday, Sunday, or legal holiday in the State of New York, such filing or service shall be considered timely if it is performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday.”

The ALJ Determination and the Notice of Determination issued by the Administrative Law Judge Division of the Tribunal are each dated June 17, 2022. The U.S. Postal Service Certified Mail Receipt PS Form 3800 addressed to Petitioner contains a United States postmark with the date June 17, 2022. The completed Domestic Return Receipts PS Form 3811 for the mailing to Petitioner was returned to the Administrative Law Judge Division of the Tribunal.

Thirty days from the date of mailing of the ALJ Determination and the Notice of Determination issued by the Administrative Law Judge Division of the Tribunal to

Petitioner by certified mail, return receipt requested was Sunday, July 17, 2022. Because the last day prescribed for filing an exception to the ALJ Determination fell on a Sunday, and pursuant to the Tribunal Rules at 20 RCNY § 1-17(e), the filing of the Exception would have been considered timely if it was performed on the “next succeeding day that is not a Saturday, Sunday, or legal holiday” which was Monday, July 18, 2022. In order for the Exception to have been timely filed in this matter, it should have been filed with the Tribunal on or before Monday, July 18, 2022.

The FedEx envelope containing the Exception to the ALJ Determination was received by the Tribunal on August 25, 2022. The Tribunal Rules at 20 RCNY § 1-17(a)(1) state that if any document required to be filed “within a prescribed period or on or before a prescribed date,” is, delivered by United States mail after such period or date, the date of the United States postmark stamped on the envelope will be deemed to be the date of filing. As the Exception was not delivered by United States mail, the postmark date, as described in 20 RCNY § 1-17(a)(1), is inapplicable and the August 25, 2022, delivery date controls.¹ The FedEx envelope containing the Exception was delivered to the Tribunal on August 25, 2022, which is 38 days later than the thirty-day period from the date the ALJ Determination and Notice of Determination of the Administrative Law Judge Division of the Tribunal was mailed to Petitioner as extended by one day to reflect the fact that the thirty-day period ended on a Sunday. Therefore, the Exception was untimely filed.

In the Matter of *Liebman v Shaw*, 223 AD2d 471 (1st Dept 1996) the Court stated that:

Given the highly judicial nature of proceedings before respondent Tax Appeals Tribunal (*see*, NY City Charter § 169 [d]) we view the filing that is required for an en banc review by the Tribunal of a determination rendered by an Administrative Law Judge (NY City Charter § 169 [d]) as

¹ Although there are no statutory grounds to apply the August 23, 2022 shipping date here we note, for the record, that even if we were to apply that date, the Exception would be 36 days late.

analogous to a notice of appeal, the timely filing of which is jurisdictional and cannot be waived. [citation omitted]

On January 10, 2023, the Tribunal issued a Notice of Intent to Dismiss Exception, stating that the Tribunal intends to dismiss the Exception for lack of jurisdiction, unless a written response seeking to stay dismissal of the Exception is filed with the Tribunal by February 9, 2023, with a copy sent to the New York City Law Department. No response seeking to stay dismissal of the Exception has been received by the Tribunal.

ACCORDINGLY, IT IS ORDERED that the Exception is dismissed with prejudice for lack of jurisdiction.

Dated: February 14, 2023
New York, New York

_____/s/_____
Frances J. Henn
President and Commissioner

_____/s/_____
Robert J. Firestone
Commissioner

_____/s/_____
Neil Schaier
Commissioner