NEW YORK CITY TAX APPEALS TRIBUNAL

In the Matter of TAMAR TRANSPORTATION CORP. Petitioner.	:	ORDER TAT (E) 25-15 (UT)

The Appeals Division of the New York City Tax Appeals Tribunal (Appeals Division) received an Exception, with a supporting brief, filed by Tamar Transportation Corp. (Petitioner) in the above-referenced matter. The Commissioner of Finance of the City of New York (Respondent) notified the Appeals Division that Respondent "does not intend to oppose the exception" and submitted no brief.[1] The Exception seeks to vacate a Determination of the Chief Administrative Law Judge (CALJ) dated February 5, 2026, which dismissed this matter at the Administrative Law Judge Division of the New York City Tax Appeals Tribunal (ALJ Division) for lack of jurisdiction.

Petitioner contends that the CALJ erroneously concluded the Petition was untimely filed with the ALJ Division and dismissed the Petition for lack of jurisdiction, notwithstanding "unrebutted evidence" to the contrary. Petitioner raises due process concerns and asserts that the CALJ abused his discretion in dismissing the Petition for lack of jurisdiction. We understand that Respondent concurs with Petitioner that the Petition should not have been dismissed by the CALJ for lack of jurisdiction.

[1] There was no oral argument on the Exception.

Petitioner is represented by Erik Ikhilov, Esq. of Ikhilov & Associates and Respondent is represented by Adam C. Dembrow, Esq., Senior Counsel, New York City Law Department.

On September 30, 2025, in his first communication to Petitioner (which appears to be an ambulette and transportation services provider) and in response to the Petition[2] which the ALJ Division received on August 19, 2025, the CALJ mailed Petitioner at Petitioner's business address[3] two separate communications: (1) Notice to Correct Petition and (2) Notice of Intent to Dismiss.

The CALJ apparently mailed the notices to the Petitioner but gave no indication to the attorney listed on the Petition that the CALJ had done so because, although the Petition stated that Petitioner was represented, the Petition failed to include as an attachment a Power of Attorney authorizing that individual's appearance in this matter as required.[4]

The Notice to Correct Petition stated, "The Petition cannot be acknowledged because it was not in proper form. Therefore, Petitioner, [typographical error listing a different taxpayer], is directed to provide…within thirty (30) days…a corrected petition…which includes [a properly executed Power of Attorney]…." The Notice to Correct Petition further stated, "If Petitioner fails to [within 30 days] comply with this Notice, the Tribunal will take such action as it deems warranted including, but not limited

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[2] The Petition was signed by an attorney who indicated on the Petition itself that he represents Petitioner.
[3] The address shown on the Petition.
[4] See 20 RCNY §1-04(a)(1)(xii), Rules of Practice and Procedure of the NYC Tax Appeals Tribunal.

to, issuing a notice of intent to dismiss the Petition or scheduling a conference before an Administrative Law Judge". While the Notice to Correct Petition mentioned a different taxpayer, an apparent typographical error, this document was addressed to Petitioner.

Also on September 30, 2025, the ALJ Division emailed a blank Power of Attorney form directly to the attorney-representative listed on the Petition (the Attorney-Representative), using the Attorney-Representative's email address as listed on the Petition, and requested that the Attorney-Representative "[k]indly acknowledge[s] receipt of this email and the attached correspondence [i.e., the attached Power of Attorney form] at your earliest convenience". A review of the record suggests that the ALJ Division neither received the requested acknowledgment of receipt nor followed up with either the attorney or Petitioner about the missing Power of Attorney.[5]

The Notice of Intent to Dismiss, which as stated above was also sent out on September 30, 2025, stated,

> "The Department of Finance (DOF) issued a Notice of Determination dated April 28, 2025. The Petition appears to have been mailed to the Tax Appeals Tribunal by certified mail on August 14, 2025, which was more than 90 days after the date of DOF's Notice of Determination asserting the tax deficiency. Accordingly, inasmuch as the Petition appears to be untimely in that it was not filed within ninety (90) days of the date of the Notice of Determination…the Petition will be dismissed unless a written objection is received within thirty (30) days of the date of this notice."

[5] It's unclear why the CALJ decided that scheduling a conference to discuss the missing Power of Attorney was not warranted, particularly after the CALJ had informed Petitioner that a conference may be scheduled if Petitioner fails to comply with the Notice to Correct Petition. Even though it was the Attorney-Representative and not Petitioner's principal who signed the Petition in the first place, the CALJ gave no indication to the Attorney-Representative that the CALJ had also issued a Notice of Intent to Dismiss, triggering a critical deadline, until it was already too late for Petitioner to comply. Oddly, the ALJ Division still had not received the properly executed Power of Attorney when, in early February 2026, the CALJ finally informed the Attorney-Representative that a Notice to Correct Petition was issued to Petitioner. It remains unclear why the CALJ waited to inform the Attorney-Representative until it was too late.

Notice of Intent to Dismiss.

On the basis that there was no Power of Attorney on file at the time,[6] the ALJ Division mailed neither the Notice of Intent to Dismiss nor Notice to Correct Petition to the Attorney-Representative listed on the Petition. In emailing the Attorney-Representative listed on the Petition, however, there was no mention of either mailed notice and the ALJ Division gave no indication in the email that failure to respond to the email or provide a duly executed Power of Attorney by a given date would result in adverse consequences for Petitioner (i.e., the Attorney-Representative had no way of knowing from the email itself about the 30-day response deadlines imposed on Petitioner in the notices that were concurrently mailed to Petitioner). Particularly puzzling is the fact that the CALJ nevertheless discussed the Notice to Correct Petition in an email to Petitioner on February 5, 2026, prior to receiving a properly executed Power of Attorney.

On January 28, 2026,[7] having had no additional contact with the parties or the named Attorney-Representative on the Petition since September 30, 2025, and rather than assigning the matter to an Administrative Law Judge (ALJ) who would, given the aforementioned facts, hold a hearing, the CALJ *sua sponte* effectively issued a Summary Determination to Petitioner, without the opportunity for a hearing, dismissing the matter

[6] On February 10, 2026, the ALJ Division received the mailed Power of Attorney for the Attorney-Representative listed on the Petition.

[7] On February 5, 2026, the CALJ mailed a letter to Petitioner at Petitioner's business address stating that because the Notice of Determination and Determination dated January 28, 2026, "were not in proper form and the Notice left out information with respect to the parties' right to file an exception" a new Notice of Determination and a new Determination have been issued and the version dated January 28, 2026, should be "disregarded". Accordingly, a Notice of Determination and a Dismissal Determination dated February 5, 2026, substantially similar in substance to the prior version, were issued.

for lack of jurisdiction on the basis that "the Petition *did not appear* to have been timely filed" (emphasis added) and no objection to the Notice of Intent to Dismiss was received.[8]

In response to the Determination dated January 28, 2026, on February 3, 2026, the Attorney-Representative sent the ALJ Division, among other things, the following:

> "My client received this letter today dismissing this action due to petition being filed more than 90 days after the determination was issued. While the dates may be correct, NYC never served the determination, even though the letter was dated April 28, it was served by email upon me on August 14, 2025. Please see attached email. I filed the petition timely after it was served upon representing attorney. See attached email."

Email dated February 3, 2026, from Attorney-Representative to the ALJ Division.

Based on a review of the record,[9] certain correspondence mailed to Petitioner's business address by the Department of Finance during the underlying audit in this matter, in or around August 2024, was returned to the auditor with a statement, "Return to Sender Unclaimed Unable to Forward". At the same time, as the Attorney-Representative confirmed in an email to the ALJ Division on February 3, 2026, at least as of February 3, 2026, Petitioner was able to receive mail at Petitioner's business address (i.e., the Petitioner's address as shown on the Petition).

Petitioner contends that the Department of Finance's Notice of Determination (DOF Notice) was sent to Petitioner's "problematic" business address, the address shown

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[8] While the Determinations dated January 28, 2026, and February 5, 2026, both stated that in the Notice of Intent to Dismiss the CALJ "indicated that TAT lacked jurisdiction over this matter" we note that the term "jurisdiction" did not appear in the Notice of Intent to Dismiss.
[9] The email dated February 3, 2026, from Attorney-Representative to the ALJ Division, which was accompanied by an extensive email chain and supplemented the record, was received by the ALJ Division prior to the issuance of the Dismissal Determination dated February 5, 2026.

on the Petition, but was never sent to Petitioner's counsel. Petitioner, however, has, at least at times, been confirmed to have received mail at Petitioner's business address. Apparently, moreover, the Department of Finance had previously confirmed that a copy of the DOF Notice was concurrently sent to both Petitioner and Petitioner's counsel.

Despite Petitioner's assertions of "unrebutted evidence" and what amounted to the CALJ's *sua sponte* Summary Dismissal Determination dismissing the matter for lack of jurisdiction, there remain a number of disputed material issues of fact, particularly with respect to the threshold issue of whether and when the DOF Notice was properly mailed/served, and consequently, whether the Petition was timely filed with the Tribunal (i.e., whether the Tribunal has jurisdiction to hear this matter). In fact, the Determination itself does not affirmatively state whether the Petition was in fact untimely filed, rather, it merely states that the Petition "did not appear" to have been timely filed.

In this case, the CALJ's Dismissal Determination (which effectively amounted to a *sua sponte* dismissal or summary determination directed against Petitioner without the opportunity to be heard) is unsupportable by law, contravenes due process and generally conflicts with the responsibilities and duties of the CALJ.

"The power of a nisi prius court to dismiss an action sua sponte should be used sparingly and only in extraordinary circumstances." Grant v. Rattoballi, 869 N.Y.S.2d 53 [1st Dept. 2008]; see also U.S. Bank N.A. v. Turner, 188 N.Y.S.3d 536 [2nd Dept. 2023]. The term "extraordinary circumstances" is defined as a highly unusual set of facts that are not commonly associated with a particular thing or event. IndyMac Fed. Bank, FSB v. Meisels, 961 N.Y.S.2d 358 [Sup. Ct. Kings Cty. 2012] (where a deceased plaintiff commenced and continued to prosecute an action, a *sua sponte* dismissal was warranted); see also Black's Law Dictionary [12th ed 2024]. Thus, for example, a petition erroneously filed with the Tax Appeals Tribunal that was intended to protest an action taken by another NYC agency, such as the Department of Sanitation, would warrant *sua sponte* dismissal. When exercising its power to dismiss a pleading *sua sponte*, a court should identify the particular extraordinary circumstances that warranted its decision. See Ivashchenko v. Borukhov, 211 N.Y.S. 3d 427 [2nd Dept. 2024].

Here, the CALJ did not identify the particular extraordinary circumstances that warranted the Dismissal Determination. In fact, the circumstances at hand (e.g., the existence of material issues of fact relating to the threshold jurisdiction question and the fact that the CALJ was aware of the retained attorney) called for the CALJ to take particular care to ensure that Petitioner has both notice and a full and fair opportunity to be heard prior to dismissing the matter on jurisdictional grounds.

The New York Court of Appeals "has long recognized that the exact meaning and scope of the phrase 'due process of law' cannot be defined with precision [but at the very least requires] an orderly proceeding adapted to the nature of the case in which the citizen has an opportunity to be heard, and to defend, enforce, and protect his rights". Matter of Coates, 9 N.Y.2d 242, 249 [1961]. The nature of cases heard at the Tax Appeals Tribunal is best understood as follows: "[T]he Tax Appeals Tribunal has set forth rules of practice and procedure to afford the public both due process of law and the legal tools necessary to facilitate the rapid resolution of controversies *while at the same time avoiding undue formality and complexity*". 20 RCNY §1-01(b), Rules of Practice and

Procedure of the NYC Tax Appeals Tribunal (emphasis added) (TAT Rules). Moreover, the U.S. Supreme Court has stated that, to satisfy the requirements of due process, a taxpayer must be provided with, among other things, "…a *fair opportunity* to challenge the accuracy and legal validity of their tax obligation…." McKesson Corp. v. Div. of Alcoholic Beverages and Tobacco, Dept. of Bus. Regulation of Florida, 496 U.S. 18, 38–39 [1990] (emphasis added). Without rehashing the oddities in this case, including the lack of reasonable notice as well as the lack of a reasonable opportunity to be heard, suffice it to say that the CALJ's handling of the Petition and Power of Attorney clearly violates the intent and spirit of the Tribunal's rules. Petitioner was denied full accessibility to due process and to a proceeding without undue formalities, raising serious issues of due process which very well may constitute an abuse of discretion as Petitioner alleges. cf Matter of Figueroa v. New York State Off. of Alcoholism & Substance Abuse Servs., 52 N.Y.S.3d 718 [3d Dept. 2017]; cf Matter of Coates, 9 N.Y.2d 242, 249 [1961].

Procedures relating to the filing, acknowledgment and review of petitions by the CALJ in the first instance, as well as the responsibilities and duties of ALJs (including the CALJ) in handling matters before the Tax Appeals Tribunal, are clearly delineated in the NYC Charter and TAT Rules. In this case, particularly troubling is the fact that the CALJ's *sua sponte* Dismissal Determination was premature and demonstrates that at the point when the CALJ received the Petition he went beyond those ministerial tasks that are permitted under the NYC Charter and TAT Rules.

The TAT Rules explicitly provide that when a petition is received by the ALJ Division, the CALJ is responsible for the following ministerial tasks. "Where the chief administrative law judge determines that the petition is in proper form,[10] he or she shall send to the petitioner a written, dated acknowledgment of receipt of the petition and immediately forward the petition and a copy of the acknowledgment to the commissioner of finance for preparation of the answer". §1-04(a)(2), TAT Rules. "Where the petition filed by a petitioner is not in the [proper form], the chief administrative judge shall promptly return it to the petitioner together with a [Notice to Correct Petition, potentially followed by a determination dismissing the petition for failure to correct the petition]…." §1-04(a)(3), TAT Rules.

Once the CALJ's ministerial tasks are completed, the TAT Rules provide that the CALJ assigns the petition to an ALJ, who may be the CALJ him or herself, to hear the case. See §1-12(a)(1), TAT Rules. The NYC Charter confirms that the TAT Rules were intended to provide "[a] procedural system guaranteeing a hearing…" that is "designed to assign each petition filed with the tribunal to an administrative law judge who shall hear and determine all matters pertaining to questions of law or fact". NYC Charter Ch. 7, Section 169(d). "Upon assignment of a petition filed with the tribunal to an administrative law judge, such administrative law judge shall hear and determine any issues of fact or law". NYC Charter Ch. 7, Section 170(d).

[10] See §1-04(a)(1), TAT Rules. The CALJ's review of a petition for compliance with required form should proceed in a checklist fashion for the purpose of ensuring that the petition contains or identifies 12 enumerated items such as the relief sought by the petitioner, a copy of the statutory notice being protested and a power of attorney, if any. Id.

To be clear, the ministerial review of an incoming petition for proper form is a separate and distinct type of review compared to a substantive review of a petition on its merits. Nothing in the NYC Charter or TAT Rules suggests that the CALJ should, upon receipt of the petition, review the petition for jurisdictional issues or issue a notice of intent to dismiss for lack of jurisdiction. In fact, the petition itself does not have a designated space or section to present any jurisdiction-related arguments which the CALJ may be able to immediately review upon receipt of the petition.

Once the CALJ's ministerial tasks are completed and the CALJ has assigned the case to an ALJ, the TAT Rules then call for a pre-hearing conference to be scheduled "before an administrative law judge" to, among other things, "attempt to narrow disagreements as to facts or issues" and "indicate any other matter(s) relevant to the hearing". §1-04(d), TAT Rules. Petitioners would thus reasonably expect a pre-hearing conference before an administrative law judge on jurisdictional questions.

Once the case is assigned to an ALJ, the parties may also engage in motion practice. See §1-05, TAT Rules. At that point, the commissioner of finance may move to dismiss the petition on the ground that the tribunal lacks jurisdiction. §1-05(b)(ii), (ix), TAT Rules. Alternatively, once the case has been assigned to an ALJ, that ALJ may (as long as doing so is consistent with the law previously discussed) on his or her own motion, and on notice to the parties issue a determination or decision dismissing a petition on the ground that the tribunal lacks jurisdiction or that the petition has not been timely filed or served. See §1-05(c), TAT Rules.

Here, by reviewing the petition for jurisdiction upon receipt of the petition, prior to a hearing and otherwise without proper justification, the CALJ went beyond the general scope of the CALJ's ministerial responsibilities and duties under the TAT Rules.

The problems in this case highlight the importance of the CALJ limiting his or her initial review of the petition to those ministerial tasks specifically delegated to the CALJ in the TAT Rules.[11] Once those ministerial tasks are complete, the CALJ should then, as the TAT Rules direct, assign the case to an ALJ who would proceed by, *inter alia*, holding a pre-hearing conference, as appropriate, and overseeing motion practice consistent with the TAT rules and due process.

For the foregoing reasons we find that the CALJ's Dismissal Determination is unsupportable by law, contravenes the Tribunal's rules, raises due process issues as Petitioner alleges, and generally conflicts with the responsibilities and duties of the CALJ. Also, we find that there may be merit to Petitioner's argument that the CALJ abused his discretion.

We also find it telling that Respondent did not oppose the Exception.

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[11] In the event that the CALJ's initial review of a petition appears to necessitate certain judgment calls that may place demands on the CALJ that go beyond the performance of ministerial tasks, the best course of action would be to assign the matter to an ALJ (which may include an assignment of the case to the CALJ him or herself), who would be fully permitted to "hear and determine any issue of fact or law" as provided for in the NYC Charter and TAT Rules, and consistent with the duties and responsibilities of the ALJ as outlined in the NYC Charter and TAT Rules. See NYC Charter Ch. 7, Sections 169(d) and 170(d); see TAT Rules generally. It is axiomatic that if the CALJ has a conflict of interest that would make it inappropriate to assign the matter to himself or herself, the CALJ should not hear the merits of a case and should assign the matter to an ALJ.

Accordingly, we grant the Exception and vacate the Dismissal Determination of the CALJ dated February 5, 2026, which dismissed this matter for lack of jurisdiction, and remand this case to the ALJ Division so that the ALJ Division can properly determine whether, in the first instance, the ALJ Division has jurisdiction to hear the Petition.[12]

IT IS SO ORDERED.

Dated: May 15, 2026
New York, NY

/s/
Neil Schaier
President and Commissioner

/s/
Robert J. Firestone
Commissioner

/s/
Vlad Frants
Commissioner

[12] We have considered all the other arguments of the Parties and find them unpersuasive.