

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
R. REYNOSO

) OTA Case No. 18010912
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: R. Reynoso

For Respondent: Brian Miller, Tax Counsel III

R. TAY, Administrative Law Judge: On June 9, 2020, we issued an Opinion finding Franchise Tax Board (respondent) did not err in its action denying the protests of R. Reynoso (appellant) of respondent’s proposed assessments of additional tax, penalties and interest for the 1997 through 2002 tax years.

Appellant filed a timely petition for rehearing (petition) with the Office of Tax Appeals (OTA) under Revenue and Taxation Code section 19048. A rehearing may be granted where one of the following five grounds exists, and the substantial rights of the complaining party are materially affected: (a) an irregularity in the appeal proceedings that occurred prior to the issuance of the written Opinion and prevented fair consideration of the appeal; (b) an accident or surprise that occurred during the appeal proceedings and prior to the issuance of the written Opinion, which ordinary caution could not have prevented; (c) newly discovered, relevant evidence, which the party could not have reasonably discovered and provided prior to the issuance of the written Opinion; (d) insufficient evidence to justify the written Opinion or the Opinion is contrary to law; or (e) an error in law. (Cal. Code Regs., tit.18, § 30604(a)-(e).)¹

¹ This regulation is essentially based upon the provisions of California Code of Civil Procedure (CCP) section 657. (See *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654 [the State Board of Equalization (SBE) looks to CCP section 657 in determining the SBE’s grounds for rehearing]; *Appeal of Do*, 2018-OTA-002P [OTA adopts the SBE’s grounds for rehearing].) Therefore, the language of CCP section 657 and case law pertaining to the statute are persuasive authority in interpreting this regulation.

Upon consideration of appellant’s petition, we conclude that the grounds set forth therein do not meet the requirements to grant a rehearing.²

In his petition, appellant requests a rehearing solely on the first ground, that an irregularity in the appeal proceedings prevented fair consideration of the appeal because OTA submitted the appeal for decision based on the written record without an oral hearing. “Courts have defined an irregularity in the proceedings as ‘any departure by the court from the due and orderly method of disposition of an action by which the substantial rights of a party have been materially affected’ ” (*Appeal of Graham and Smith*, 2018-OTA-154P at pp. 6-7.) Indeed, courts have found that an irregularity in the proceeding is “any act that (1) violates the right of a party to a fair trial and (2) which a party ‘cannot fully present by exceptions taken during the progress of the trial’ [citation].” (*Montoya v. Barragan* (2013) 220 Cal.App.4th 1215.) For reasons discussed next, we find no such irregularity occurred here.

OTA’s Rules for Tax Appeals govern this appeal. At the conclusion of the briefing period, we scheduled an oral hearing for August 20, 2019, and sent appellant a Notice of Oral Hearing. Appellant responded to this notice as required by OTA’s Rules for Tax Appeals. (Cal. Code Regs., tit. 18, § 30403.) Before the hearing, appellant had time to submit additional documentation for this panel’s consideration. Appellant submitted additional documents in an email in early August 2019, and although his submission was after the deadline set at the pre-hearing conference pursuant to OTA’s Rules for Tax Appeals, we accepted the documents to be included in the record. (Cal. Code Regs., tit.18, § 30420(a).)

Appellant failed to appear at his August 2019 oral hearing and he requested a continuance. We granted his request, and twice rescheduled the oral hearing to accommodate his schedule. We issued a Notice of Oral Hearing on December 16, 2019, and a corrected notice on December 18, 2019. Appellant failed to submit a timely response to either notice, and we treated his nonresponse as a waiver of his right to an oral hearing. On January 13, 2020, two weeks after appellant’s response was due, and pursuant to California Code of Regulations, title 18, (Regulations) section 30404, we removed this matter from the oral hearing calendar and

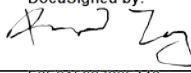
²Portions of appellant’s petition rehash arguments that we already addressed and rejected in our Opinion. We find no error in the Opinion’s analysis and conclusions as to those arguments, and therefore find a rehearing is not warranted under appellant’s reiteration of those arguments on petition. (See *Appeal of Smith*, 2018-OTA-154P [dissatisfaction with an Opinion and an attempt to reargue the same issues are not proper grounds for reconsideration].) Therefore, we focus our discussion on the remaining contentions in appellant’s petition.

submitted the matter for a decision on the basis of the written record without an oral hearing. (Cal. Code Regs., tit. 18, § 30404.)


Appellant filed his response to the Notice of Oral Hearing on January 21, 2020, approximately three weeks after the deadline. When asked to show good cause for his late filing, as required by Regulations section 30404(b), appellant stated he believed it was sent timely, but provided no evidence of his timely submission. Appellant provided no evidence or other explanation to show good cause, and we also found no basis for a finding of good cause. Consequently, we denied his request to return the matter to the oral hearing calendar and issued the June 9, 2020 Opinion based on the written record.


In his petition, appellant also argues that we deprived him of due process and a fair appeal by denying his request to return the matter to the oral hearing calendar. However, appellant provides no legal basis or evidence to support his position. OTA's Rules for Tax Appeals are clear in that a party that fails to respond to a notice of oral hearing waives the right to an oral hearing absent a showing of good cause for failure to respond to the hearing notice. (Cal. Code Regs., tit. 18, § 30404.) Appellant did not show good cause for his late response to the December 2019 notices and was not entitled to have his matter returned to the oral hearing calendar. Moreover, the parties were entitled to OTA's enforcement of the filing deadlines, and our finding that appellant did not show good cause was not an abuse of discretion. (See *Bozzi v. Nordstrom, Inc.* (2010) 186 Cal.App.4th 755, 765) [Affirming the trial court's refusal to consider plaintiff's late-filed papers, the appellate court stated, "Defendants followed all the rules and were entitled to expect the trial court to enforce them"].) Thus, we conclude that appellant's appeal did not suffer from an irregularity in the proceeding that prevented fair consideration of his appeal.

For the foregoing reasons, we deny appellant’s petition.

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Richard Tay
Administrative Law Judge

We concur:

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Alberto T. Rosas
Administrative Law Judge

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 12/16/2020