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**IN THE
INDIANA TAX COURT**



MICHAEL DAUGHERTY,)
)
 Petitioner,)
)
 v.) Cause No. 21T-TA-00026
)
 BENTON COUNTY ASSESSOR,)
)
 KELLY BALENSIEFER,)
)
 Respondent.)

ON APPEAL FROM A FINAL DETERMINATION OF
THE INDIANA BOARD OF TAX REVIEW

**FOR PUBLICATION
March 30, 2022**

WENTWORTH, J.

Michael Daugherty challenges the Indiana Board of Tax Review's final determination denying his assessment appeal for the 2020 tax year. Upon review, the Court affirms the Indiana Board's final determination.

FACTS AND PROCEDURAL HISTORY

In March of 2020, Michael Daugherty, as President/Owner of Daugherty Real Estate Holdings, LLC, initiated an appeal with the Assessor challenging the assessed

value of his company's racetrack property located in Boswell, Indiana. (See Cert. Admin. R. at 12-17.) While the property was assessed at \$457,900 (\$393,000 for land and \$64,900 for improvements), Daugherty asserted that "[t]he per acre value of [the] land is way high [] compared to other land [in the county]." (Cert. Admin. R. at 13.)

Upon review, the Benton County Property Tax Assessment Board of Appeals ("PTABOA") reduced Daugherty's land assessment to \$315,200. (See Cert. Admin. R. at 3-5, 29.) Still dissatisfied, Daugherty sought relief with the Indiana Board on August 20, 2020. (See Cert. Admin. R. at 1-5.)

On September 28, 2020, the Indiana Board notified both Daugherty and the Assessor that due to COVID-19 restrictions imposed by Governor Holcomb, it would be conducting its hearing on the matter telephonically and scheduled it for November 19, 2020. (See Cert. Admin. R. at 8, 10.) The Indiana Board also instructed the parties to exchange and submit any evidence they intended to offer during the hearing prior to the hearing via mail or email. (See Cert. Admin. R. at 10.) Both parties submitted evidence electronically, the Assessor on November 2, 2020, and Daugherty seven days later. (See Cert. Admin. R. at 9, 12-36.)

On November 17, 2020, the Assessor requested that the hearing be rescheduled. (See Cert. Admin. R. at 37.) Although Daugherty objected to the request, the Indiana Board granted it and rescheduled the telephonic hearing for 9:00 a.m. on January 5, 2021. (See Cert. Admin. R. at 38-40.)

On the morning of the hearing, the Assessor sent an email to both the Indiana Board and Daugherty, attaching evidence she intended to use in her rebuttal presentation and stating that she "look[ed] forward to our meeting at 9 am." (See Cert. Admin. R. at

41.) But when the Indiana Board initiated its telephonic hearing at that designated time, Daugherty never called in.¹ (See Cert. Admin. R. at 65 ¶ 3 (indicating that the Indiana Board and the Assessor waited for Daugherty until 9:25 a.m. to no avail).)

On January 11, 2021, the Indiana Board issued a notice to Daugherty indicating that because he failed to appear for the hearing, it would be dismissing his appeal unless he could show “just cause.” (See Cert. Admin. R. at 64.) In response, Daugherty claimed that he never received notice that the hearing had been rescheduled for January 5; as a result, the Indiana Board issued another notice to both Daugherty and the Assessor rescheduling the telephonic hearing for May 4, 2021. (See Cert. Admin. R. at 69-70.) On both March 23 and April 20, 2021, Daugherty electronically submitted additional documentation he intended to offer as evidence during the hearing. (See Cert. Admin. R. at 71-79.)

On May 4, 2021, the Indiana Board initiated its telephonic hearing but Daugherty again failed to call in. (See Cert. Admin. R. at 80, 81 ¶ 3 (indicating that the Indiana Board and the Assessor waited for twenty minutes for Daugherty before ending the hearing).) On May 10, 2021, the Indiana Board issued another notice to Daugherty indicating that because he again failed to appear for the hearing, it would be dismissing his appeal unless he could show “just cause.” (See Cert. Admin. R. at 80.) On June 2, 2021, the Indiana Board received the following response from Daugherty: “I apologize [for not appearing at the hearing], I was unable to file a continuance request due to a last minute doctor[']s appointment regarding surgery for my mother[.]” (Cert. Admin. R. at 84.)

On June 8, 2021, the Indiana Board issued a final determination denying

¹ The record evidence shows that at 9:50 a.m. that same morning, however, Daugherty replied to the Assessor’s email, attaching his own rebuttal evidence. (See Cert. Admin. R. at 61-63.)

Daugherty's appeal. (Cert. Admin. R. at 85-88.) In its final determination, the Indiana Board stated:

The Board will not make the case for a petitioner. The Board bases its decision on the evidence presented and the issues raised during the hearing. . . . The [appeal] is denied because [Daugherty] failed to call in to the hearing and [therefore] failed to offer any evidence or argument into the record in support of [his] case. There will be no change to the 2020 assessment of the subject property.

(Cert. Admin. R. at 87 ¶¶ 8-9 (internal citation and footnote omitted).) The Indiana Board subsequently received a rehearing request from Daugherty that it promptly denied. (See Cert. Admin. R. at 90-91.)

On July 20, 2021, Daugherty initiated an original tax appeal. In his appeal petition, Daugherty alleged that

[t]he [PTABOA] used prejudicial evidence that was inaccurate in making [its] determination. The [PTABOA] was biased against [me], and had a conflict of interest in making a decision based upon [its] relationship with the comparable properties. The [Indiana Board] refused to hear the appeal of the case and dismissed without hearing a single piece of evidence.

(Pet'r Pet. Original Tax Appeal Final Determination Indiana Bd. Tax Rev. ("Pet'r Pet.") at 3 ¶ 4.)

On September 2, 2021, the Indiana Board filed notice in accordance with Indiana Code § 6-1.1-15-6 that the certified administrative record in Daugherty's case had been prepared. Pursuant to Indiana Tax Court Rule 3(G), Daugherty was required to file both that record and a written brief with the Court on or before October 4, 2021. Daugherty timely filed the record, but did not file a brief.

On October 19, 2021, after the Assessor had already filed her brief, Daugherty filed a "Response to [the Assessor's] Brief." That response, in its entirety, stated:

The telephonic administrative hearing provided no TTY or TDD option which violates the Americans with Disabilities Act (ADA) of 1990. No in person meeting was offered. This administrative hearing was invalid due to violating said ADA Act of 1990.²

(Pet'r Resp. Br. (footnote added).)

The Court took the matter under advisement on October 21, 2021. Additional facts will be supplied when necessary.

STANDARD OF REVIEW

The party seeking to overturn an Indiana Board final determination bears the burden of demonstrating its invalidity. Osolo Twp. Assessor v. Elkhart Maple Lane Assocs., 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003). Thus, to prevail in his appeal, Daugherty must demonstrate to the Court that the Indiana Board's final determination is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege or immunity; in excess of or short of statutory jurisdiction, authority, or limitations; without observance of the procedure required by law; or unsupported by substantial or reliable evidence. See IND. CODE § 33-26-6-6(e)(1)-(5) (2022).

ANALYSIS

Daugherty argues on appeal that the Indiana Board's final determination must be reversed because the Indiana Board: (1) failed to conduct a hearing, or (2) to the extent it did have a hearing, the hearing violated the ADA. (Compare, e.g., Pet'r Pet. at 3 ¶ 4, with Pet'r Resp. Br.) The Court does not find either of these arguments persuasive.

² Beginning in March of 2020, Governor Holcomb issued a sequence of Executive Orders in response to the public health emergency created by the COVID-19 pandemic; those Orders not only directed Indiana citizens to stay-at-home, but also, implemented the closure of government buildings. See, e.g., <https://www.in.gov/gov/newsroom/executive-orders/> (last visited Nov. 22, 2021).

(1)

The record evidence in this case demonstrates that the Indiana Board conducted two hearings on Daugherty's appeal, but he did not appear for either one of them. (See Cert. Admin. R. at 65 ¶ 3, 80, 81 ¶ 3, 82 ¶ 5.) Pursuant to the Indiana Board's duly-promulgated regulations that were in effect at the time of those two hearings, the failure of a party to appear at a hearing is a proper basis to dismiss an appeal. See 52 IND. ADMIN. CODE 4-9-4 (2020).

Based on Daugherty's claim that he did not receive proper notice of the first hearing (i.e., the one scheduled for January 5, 2021), however, the Indiana Board rescheduled the matter for, and commenced the hearing on, May 4, 2021. When Daugherty did not appear at the rescheduled hearing either, it was within the Indiana Board's discretion to dismiss the appeal. See 52 I.A.C. 4-9-4. Accordingly, the Court will not reverse the Indiana Board's final determination on the basis that it failed to conduct a hearing.³

(2)

Alternatively, Daugherty has alleged that the Indiana Board's hearing was invalid because it violated the ADA. (Pet'r Resp. Br.) Specifically, Daugherty alleges that no TTY or TDD options were provided for the Indiana Board's hearing. (Pet'r Resp. Br.)

Congress enacted the ADA to eliminate discrimination against individuals with disabilities and create causes of action for those who have faced such discrimination.

³ Moreover, Daugherty has not presented the Court with any argument to demonstrate how the Indiana Board's dismissal either constituted an abuse of discretion or was contrary to law. (See Pet'r Pet. Original Tax Appeal Final Determination Indiana Bd. Tax Rev. at 3 ¶ 4; Pet'r Resp. Br.) See also Osolo Twp. Assessor v. Elkhart Maple Lane Assocs., 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003) (indicating that Daugherty bore the burden of demonstrating that the final determination constituted an abuse of discretion or was contrary to law).

See 42 U.S.C. § 12101(b). The ADA provides in relevant part that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

To that end, the ADA requires that a public entity make reasonable accommodation to allow the disabled person to receive the services or to participate in the public entity’s programs. See, e.g., 28 C.F.R. § 35.130(b)(7). For instance, all state and local governments are required to take steps to ensure that their communications with people with disabilities are as “effective” as its communications with others. See 28 C.F.R. § 35.160. This requirement can be accomplished through the use of appropriate “auxiliary aids and services” which, for the hearing-impaired, include the use of a teletypewriter (“TTY”).⁴ See 28 C.F.R. §§ 35.160-161. Nonetheless, the government’s requirement to communicate using an auxiliary aid or service is triggered only when a person with a disability requests it. See 28 C.F.R. § 35.160(b)(2).

Daugherty claims that the Indiana Board failed to make reasonable accommodations for him to participate in the Indiana Board’s hearing, however, the certified administrative record is devoid of any evidence that he ever stated that he was disabled or requested accommodation. (See Cert. Admin. R. at 1-2, 30-38, 61-63, 69, 71-79, 84, 90 (indicating that in the eight instances of correspondence Daugherty had with the Indiana Board, not once did he request the use of an auxiliary aid or service such

⁴ A TTY is a device like a typewriter that has a small readout; it has also been called a Telecommunication Device for the Deaf (TDD) but that name is not commonly used within the deaf community. See https://en.wikipedia.org/wiki/Telecommunications_device_for_the_deaf (last visited Nov. 22, 2021).

as the TTY during the Indiana Board's hearing).) Accordingly, the Indiana Board's final determination will not be reversed on this basis either.

CONCLUSION

For the foregoing reasons, Daugherty has not demonstrated that the Indiana Board's final determination is erroneous. The Indiana Board's final determination is therefore AFFIRMED.