

BEFORE THE MONTANA TAX APPEAL BOARD

TIMOTHY L. BLIXSETH,)	
)	Docket No. IT-2011-2
Appellant,)	
-vs-)	
)	ORDER on
DEPARTMENT OF REVENUE)	<u>MOTION IN LIMINE</u>
OF THE STATE OF MONTANA,)	
)	
Respondent.)	

The Montana Department of Revenue (DOR) has filed a timely Motion in Limine requesting this Board issue a ruling barring Mr. Blixseth from introducing into evidence any document not yet provided in response to the DOR's Third Combined Discovery Request or calling any witness other than Mr. Blixseth.

Mr. Blixseth has not filed a response to this motion.

Rule 37(d), M.R.Civ.P., is relied upon by the DOR for authorizing sanctions against parties who fail to respond to interrogatories or requests for inspection of records. The possible sanctions include, among others, "prohibiting the disobedient party . . . from introducing designated matters in evidence;" which is the sanction requested by the DOR.

Background

In support of the Motion, the DOR submits an affidavit from DOR lead counsel Keith Jones, recounting the many requests for documents and a witness list, and failures by Mr. Blixseth to respond, as well as 19 supporting documents. Since Mr. Blixseth does not dispute the facts alleged by the Motion, we need not examine them in detail.

Briefly, the DOR has served three extensive discovery requests. Only the first was partially answered by Mr. Blixseth in his May 21, 2012 Response. His answers, however, were frequently incomplete as Blixseth alleged that he did not have access to his personal records which Mrs. Blixseth removed from the home following their divorce and were then in the possession of a Philadelphia law firm. The answers were never amended after access to the documents was gained and no additional documentation has ever been submitted by Mr. Blixseth. Finally, a Subpoena and Subpoena Duces Tecum were served on Mr. Blixseth to appear for deposition on September 2, 2014 and bring any documents relevant to the hearing. Mr. Blixseth appeared for the deposition but did not submit any documents. Affidavit of Keith A. Jones in support of Montana Department of Revenue's September 12, 2014 Motions, ¶¶ 2, 4, 5, 14.

In addition, Mr. Blixseth was asked to submit his witness list, but has not done so. Initially, he named the entire Yellowstone Mountain Club membership, as well as some others, but then said he would amend his list by July 6, 2012. He has never done so, despite repeated requests from the DOR, and would not communicate with the DOR to arrange depositions. Affidavit, Exhs. 130, 131, 132, 133, 134. Finally, on July 23, 2014, the DOR made one last request for his revised witness list but none has been received. Affidavit, ¶ 7; Motion in Limine, p.1.

The DOR documents a compelling case of Mr. Blixseth's abuse of the discovery process and cites cases in which courts have dismissed the cause of action for similar recalcitrance. *See Xu v. McLaughlin Research Inst.*, 2005 MT 209, ¶ 19, 328 Mont. 232, 119 P. 3d 100 (2005). Indeed, this Board dismissed the appeal of a taxpayer who did not respond to discovery and that decision was upheld by the Montana Supreme Court. *Menholt v. Montana Department of Revenue*, Case # 2006-1-IT (April 26, 2007), 2009 MT 38, 349 Mont. 239, 203 P.3d 792.

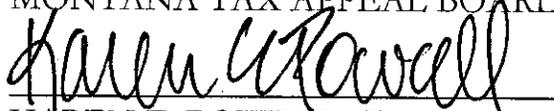
In this instance, the DOR does not ask for dismissal, but a lesser sanction which prohibits Mr. Blixseth from submitting any additional documents responsive to the discovery requests or from calling any witnesses other than himself. Given the two and a half years since the incomplete documents and witness lists were first received and the repeated failures to respond to complete the information sought, we find that sanctions requested and authorized by Rule 37(d) M.R.Civ.P. are reasonable.

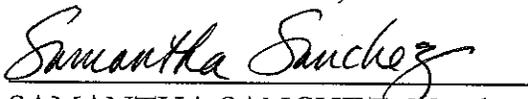
This Board hereby grants the Motion in Limine, precluding Mr. Blixseth from introducing any document into evidence that would have been responsive to the DOR's Third Combined Discovery Request or from calling any witness other than Mr. Blixseth to testify on Mr. Blixseth's behalf.

DATED this 3rd day of November, 2014.

(S E A L)

BY ORDER OF THE
MONTANA TAX APPEAL BOARD


KAREN E. POWELL, Chairwoman


SAMANTHA SANCHEZ, Member


DAVID L. McALPIN, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3rd day of November, 2014, a true and correct copy of the foregoing has been served on the parties hereto by the method indicated below and addressed as follows:

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