

**BEFORE THE TAX APPEAL BOARD
OF THE STATE OF DELAWARE**

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**TAX APPEAL BOARD
STATE OF DELAWARE**

WILMINGTON HOSPITALITY,)	
)	
 Petitioner,)	
)	
 v.)	Docket No. 1344
)	
DIRECTOR OF REVENUE,)	
)	
 Respondent.)	

MOTION TO DISMISS

COMES NOW The Director of Revenue, by and through his undersigned counsel, and hereby moves this Honorable Board for an Order dismissing the above-captioned and numbered action for failure to prosecute and as a basis therefore would respectfully represent as follows:

1. The petition was filed on or about June 8, 2001.
2. The answer was filed on or about June 21, 2001.
3. On or about June 22, 2001, the Tax Appeal Board ("Board") notified the Petitioner's counsel that a Pretrial Conference was scheduled for this matter on July 13, 2001.
4. On or about July 2, 2001, then-counsel for Petitioner, Henry A. Heiman, Esquire, advised the Board that Petitioner had filed a petition for relief under Chapter 11 of the United States Bankruptcy Code. As a result, further proceedings before the Board were stayed during the pendency of the bankruptcy.

5. Accordingly, no further action was taken concerning the appeal during the pendency of the bankruptcy. On several occasions, efforts were made by the Board to obtain a status report on the bankruptcy case. However, said efforts were unsuccessful.

6. A status conference was subsequently scheduled for July 9, 2004 and notice was sent to the Petitioner's attorney of record. In response, Mr. Heiman indicated he had not been involved in the bankruptcy proceedings and recommended that efforts be made to contact the bankruptcy attorney directly.

7. Accordingly, the Board's counsel sent a letter to Albert A. Ciardi, III, Esquire, the Petitioner's bankruptcy attorney, on or about July 13, 2004 in which a request was made for a status report. In addition, said counsel unsuccessfully attempted to contact Mr. Ciardi by telephone on several occasions.

8. On or about January 19, 2005 still another Status Hearing Notice letter was sent to Mr. Ciardi. Mr. Ciardi failed to respond to this letter.

9. On or about March 17, 2005, another letter was sent by the undersigned to Mr. Ciardi on behalf of his client. Mr. Ciardi's response, dated April 15, 2005, indicated that he would inquire as to his client's intentions. No timely reply was obtained.

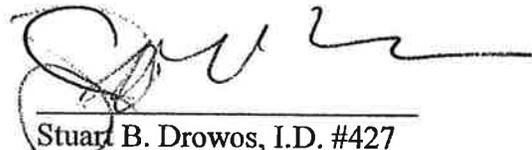
10. On both August 26, 2005 and September 29, 2005, notices from the Board's Secretary were mailed to Mr. Ciardi, advising him of mandatory Status Hearings. Mr. Ciardi did not respond until October 7, 2005 at which time he stated he was not admitted to practice in Delaware nor had he entered an appearance in the long-standing appeal. Nonetheless, he indicated he would make himself available telephonically. At the October 12, 2005 Board meeting, the Board was advised that the bankruptcy remained pending. As a result, no action was taken on the appeal but the Board requested

that the undersigned again attempt to contact Mr. Ciardi and determine when the bankruptcy might end and the appeal could proceed.

11. In response to the undersigned's October 31, 2005 letter, Mr. Ciardi provided on December 6, 2005 a Notice of Motion for Entry of a Final Decree in the Petitioner's bankruptcy. Said Motion was granted and the Order was signed on or about January 27, 2006, thereby closing the bankruptcy action. In turn, the automatic stay was terminated, allowing the instant matter to be concluded.

12. Despite repeated requests made of Petitioner's counsel, the undersigned has been unable to determine the intent of Petitioner to proceed with the appeal. In the absence of an express desire to continue, the undersigned believes the matter is ripe for dismissal given Petitioner's failure to prosecute the appeal or even suggest it intended to do so.

WHEREFORE, for the above-stated reasons and Petitioner's repeated failure to affirmatively pursue the appeal, the undersigned counsel for Respondent respectfully requests that this Honorable Board enter and Order dismissing the appeal with prejudice for Petitioner's failure to prosecute.



Stuart B. Drowos, I.D. #427
Deputy Attorney General
820 N. French Street, 8th Floor
Wilmington, DE 19801
(302) 577-8660
Attorney for Respondent

Dated: February 16, 2006

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WILMINGTON HOSPITALITY,)	
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Petitioner,)	
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v.)	Docket No. 1344
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DIRECTOR OF REVENUE,)	
)	
Respondent.)	

ORDER

The foregoing Motion of the Director having been heard and considered and it appearing to the Board that the Petitioner has failed to prosecute the matter;

IT IS HEREBY ORDERED this 12th day of April 2006, that the above-captioned and numbered matter is hereby dismissed without prejudice ~~until March 31, 2006, at which time the matter will be dismissed with prejudice.~~ [^] yes



Chairman
Tax Appeal Board

CERTIFICATE OF MAILING AND/OR DELIVERY

The undersigned certifies that on February 16, 2006, he caused the attached *Motion to Dismiss* to be delivered to the following person(s) in the form and manner indicated:

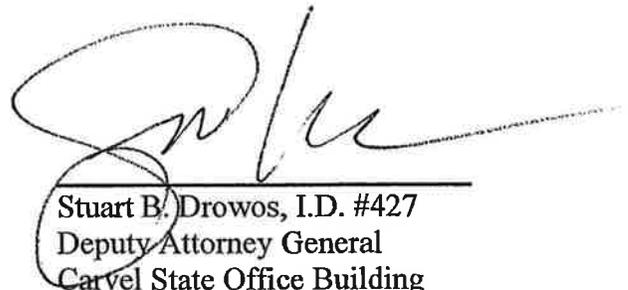
NAME AND ADDRESS OF RECIPIENT(S):

Albert A. Ciardi, III, Esq.
1900 Spruce Street
Philadelphia, PA 19103

Henry A. Heiman, Esquire
Heiman Gouge & Kaufman LLP
800 King Street, Suite 303
Wilmington, DE 19801

MANNER OF DELIVERY:

- One true copy by facsimile transmission to each recipient.
- Two true copies by first class mail, postage prepaid, to each recipient.
- Two true copies by Federal Express.
- Two true copies by hand delivery to each recipient.



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