

No. A09-466

STATE OF MINNESOTA

OFFICE OF
APPELLATE COURTS

IN SUPREME COURT

AUG 23 2010

Kevin E. Burns,

FILED

Petitioner,

vs.

Commissioner of Revenue,

Respondent.

**RESPONDENT'S MEMORANDUM IN
OPPOSITION TO MOTION FOR REHEARING**

KEVIN E. BURNS
Petitioner

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INTRODUCTION

On August 5, 2010, this Court affirmed the decision of the Minnesota Tax Court, which in turn had affirmed the order of the Commissioner of Revenue that Kevin Burns was not entitled to the homeowner property tax refund for taxes paid in 2003. *Burns v. Commissioner of Revenue*, No. A09-466, __ N.W.2d __, 2010 W.L. 3034264, (Minn., Aug. 5, 2010) (“*Burns*”). Relator, Kevin Burns, has now brought a motion for rehearing. The Commissioner of Revenue opposes this motion on the grounds that relator has not shown any basis for this Court to reconsider its decision.

ARGUMENT

Rule 140, Minn. R. Civ. App. P., authorizes a petition for rehearing in this Court.

The petition is required to set forth with particularity:

- (a) Any controlling statute, decision or principle of law; or
- (b) Any material fact; or
- (c) Any material question in the case which, in the opinion of the petitioner, the Supreme Court has overlooked, failed to consider, misapplied or misconceived.

Despite Relator’s lengthy motion for rehearing, Relator has failed to point to any controlling legal principle, material fact, or material question which this Court has failed to consider properly.

In *Burns* the Court analyzed the requirements for obtaining a property tax refund as a homeowner under Minn. Stat. § 290A.04, subd. 2. The Court held that Kevin Burns failed to meet those requirements because he neither owned nor occupied the property in question on January 2, 2004. *Burns*, 2010 W.L. 3034264, at 2.

First, this Court noted that the issue of ownership of the property in question during the relevant period was fully and finally adjudicated by the Dakota County District Court in December 2003 in a proceeding involving Relator, and therefore the principle of collateral estoppel precludes Relator from re-litigating the matter in this Court. *Burns*, at 2. In his motion Relator argues that the Minnesota judgments in question are void for lack of jurisdiction. Motion for Rehearing, at 20. As best as Respondent can determine, Relator's argument is based upon an alleged verbal statement by a federal court judge in Minnesota that the particular federal court action, which was transferred to the Southern District of New York, in some way preempted all state actions regarding the [REDACTED] property. Petitioners' Motion, at 4, 8, and 26.

In fact, the decision of the federal court in New York supports Respondent's position. That court explicitly held that Relator was barred by collateral estoppel from relitigating the issue of the propriety of the foreclosure and Sheriff sale which vested ownership of the property in Bank of America because the Dakota County district court had already concluded that the foreclosure and sale "were proper in every material respect." *Burns v. Bank of America*, 655 F.Supp.2d 240, 256 (S.D.N.Y. 2008), *aff'd* by *Burns v. Bank of America*, 360 Fed. Appx. 255, 2010 WL 106715 (2nd Cir. 2010).

Second, this Court concluded that there was sufficient evidence to support the Tax Court's finding that Relator did not occupy the [REDACTED] property as of Jan. 2, 2004. *Burns*, at 2. Relator does not point to any rationale for why the evidence that supported the tax court's finding is not credible or is otherwise invalid in some respect.

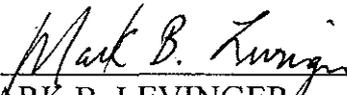
CONCLUSION

For the reasons stated above, Respondent requests that this Court deny Relator's motion for rehearing.

Dated: Aug. 20, 2016

Respectfully submitted,

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