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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

Mala Sundar
JUDGE



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BY ELECTRONIC MAIL

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Re: Kimco North Brunswick 617 Inc. v. Township of North Brunswick
Block 140, Lot 60.01
Docket No. 004435-2013

Dear Counsel:

This is the court's opinion with respect to defendant's unopposed motion to dismiss the above-captioned complaint for plaintiff's failure to respond to income and expense information request pursuant to N.J.S.A. 54:4-34, more commonly known as a "Chapter 91" request.

For the reasons stated below, the court denies the motion because the Chapter 91 request was unclear both as to the property and the information sought.

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FACTS

By letter dated July 2, 2012, defendant (“Township”) sought the income and expense information pursuant to Chapter 91 regarding property located at 901-993 US Route 1, designated as Block 140, Lot 60.01 (“Subject”). The information was requested for the period January 1, 2011 to December 31, 2011 for purposes of determining the 2013 assessment of the Subject.

The Chapter 91 request was addressed to “Kimco North Brunswick 617 Inc., 3333 New Hyde Park Road, New Hyde Park, NY 11042,” the property owner’s address of record. The mailing included: (1) a cover letter with the Subject’s information and explanation of the Chapter 91 request and consequences of a failure to respond, (2) a copy of N.J.S.A. 54:4-34, and (3) the form titled “Annual Statement of Income and Expenses for Income Producing Properties (“Income & Expense Statement”).”

The cover letter identified the property as “Block: 140 Lot: 60.01.” The line for identification of “Additional Block(s) & Lot(s)” was left blank.

On the Income and Expense Statement, the Township listed the same information as the cover letter, namely, the owner’s name and the block and lot number, in the portion titled “Property Identification.” However, unlike the cover letter, it also included information as to the “business name” which was “Walmart Mall,” and indicated “ADDL LOTS 44.01, 45, 46.” Further, in the portion identified as “Property Description” on the Income and Expense Statement, the Township indicated “1987” as being the “year of construction” and “452322 SF” as the “total gross floor area of all floors excluding basement and parking areas.”

Per the Township's assessor's certification, the Chapter 91 request was sent via certified mail on June 29, 2012. It was received July 2, 2012. The return receipt shows the same delivery address as the cover letter, and the block and lot number as "140 60.01."

There was no response to the Chapter 91 request.

ANALYSIS

N.J.S.A. 54:4-34 requires an owner of income producing property to "render a full and true account" of income from such property in response to a "written request of the assessor, made by certified mail."¹ The assessor must also include a copy of the statute with the written request. N.J.S.A. 54:4-34.

Failure or refusal to provide a response, or provision of a "false or fraudulent" response, within 45 days "of the" Chapter 91 request, bars the property owner from challenging the property's assessment. Ibid. A non-responding property owner is nonetheless entitled to a reasonableness hearing. Ocean Pines, Ltd. v. Borough of Point Pleasant, 112 N.J. 1, 15-16 (1988).

Although a township has legitimate interest in timely collecting income/expense information for issuing an assessment that will "spare both a municipality and taxpayers from the costs of unnecessary litigation" nonetheless, since the taxpayer's loss of appeal rights is so "draconian," N.J.S.A. 54:4-34 is to be strictly construed against a township. Tri-Martin Assoc. II L.L.C. v. City of Newark, 21 N.J. Tax 253, 260-61 (Tax 2004); J&J Realty Co. v. Township of Wayne, 22 N.J. Tax 157, 163-64 (Tax 2005). Therefore, "[t]he government must speak in clear and unequivocal language where the consequence of non-compliance [with a Chapter 91 request]

¹ A return receipt need not accompany the certified mailing. Green v. City of East Orange, 21 N.J. Tax 324, 334 (Tax 2004).

is the loss of the right to appeal assessments.” Cassini v. Orange City, 16 N.J. Tax 438, 453 (Tax 1997). If the information sought for is “unclear” or subject to any doubt, then, the property owner’s appeal may not be subject to the drastic remedy of dismissal. Id. at 446-47, 453. Thus, courts are disinclined to dismiss complaints “unless a municipality can demonstrate strict compliance by the assessor with the letter and purpose of the statute.” J&J Realty, supra, 22 N.J. Tax at 163.

Here, the information sought by the Township is not clear cut. The request is ambiguous as to which particular block and lot is the subject of the Chapter 91 request. While the cover letter lists only one block and one lot number, the accompanying Income and Expense Statement lists three additional lots.² The use of the business name “Walmart Mall,” in this conjunction leaves room for doubt whether the additional lots reference only to the Walmart Mall, and whether Walmart Mall or the three additional lots is/are owned by plaintiff.

Moreover, the Income and Expense Statement provides the answer as to the year of construction, but it is unclear as to which lots contain the construction; which construction is being addressed; and which lots are income producing. Again, the Income and Expense Statement includes the answer as to “total gross floor area of all floors excluding basement and parking areas.” However, this response by the Township to its own request leaves doubt as to which lots this information pertains to.

In sum, the evidence provided by the Township in support of its motion seeking a dismissal of plaintiff’s complaint does not establish a clear and unequivocal Chapter 91 request. Therefore, dismissal of the complaint is not warranted. That the motion is undisputed does not

² The return receipt card identifies the Subject as Block 140, Lot 60.01. Even the Township assessor’s certification in support of this instant motion addresses the Subject as Block 140, Lot 60.01. Neither document mentions the additional three lots.

prevent this result because courts are reluctant to dismiss a complaint for non-response to an unclear Chapter 91 request. See also Van Winkle v. Borough of Rutherford, 12 N.J. Tax 290, 291 (Tax 1992) (denying an unopposed application for relief under the Correction of Errors statute and noting that even if unopposed, parties “cannot agree to have the court grant relief for which there is no authority”).

CONCLUSION

For the foregoing reasons, defendant’s motion to dismiss the above-captioned complaint for failure to respond to a Chapter 91 income and expense request pursuant to N.J.S.A. 54:4-34 is denied.

An Order reflecting this memorandum opinion will be entered by the court and accompany this opinion.

Very truly yours

A handwritten signature in blue ink that reads "Mala Sundar". The signature is written in a cursive style with a horizontal line underneath the name.

Mala Sundar, J.T.C.