

NOT FOR PUBLICATION WITHOUT APPROVAL OF  
THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY



Patrick DeAlmeida  
Presiding Judge

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Re: Harshad Patel v. Township of Maple Shade  
Docket No. 013117-2012

Dear Counsel:

This letter constitutes the court's opinion with respect to defendant's motion pursuant to N.J.S.A. 54:51A-1(c)(2) to dismiss the Complaint because of plaintiff's failure to prosecute his appeal before the Burlington County Board of Taxation. For the reasons explained more fully below, defendant's motion is granted.

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I. Findings of Fact and Procedural History

This letter opinion sets forth the court’s findings of fact and conclusions of law on defendant’s motion to dismiss. R. 1:6-2(f). The following findings of fact are based on the certifications and exhibits submitted by the parties on the motion. R. 1:6-2(d).

Plaintiff, Harshad Patel, is the owner of real property in defendant Township of Maple Shade. The property is designated by the township as Block 189.03, Lot 5.01 and is commonly known as 2816 Route 73 North. For tax year 2012, the property was assessed as follows:

Land	\$755,000
Improvements	<u>\$ 5,000</u>
Total	\$760,000

On March 31, 2012, plaintiff filed an appeal of that assessment with the Burlington County Board of Taxation.

The matter was scheduled for a hearing before the board on June 1, 2012.

On May 30, 2012, two days before the hearing, plaintiff’s counsel faxed to the board a request that the assessment be affirmed without prejudice because an appeal of the tax year 2011 assessment was pending before the Tax Court. Plaintiff’s counsel faxed a copy of the request to the municipal tax assessor. Plaintiff’s counsel did not fax a copy of the request to the municipality’s counsel.

On the afternoon of May 31, 2012, counsel for the municipality met with the assessor to prepare for the hearing scheduled for the following day. The assessor informed counsel of plaintiff’s request and asked that she object to having the matter affirmed without prejudice. The municipality’s counsel telephoned plaintiff’s counsel and left a message with his staff advising that the township did not consent to an affirmance without prejudice. The municipality’s counsel did not follow up with a written letter, as her meeting with the assessor took place in the

assessor's office, municipal counsel did not return to her office that afternoon, and the hearing was the following day.

Plaintiff's counsel does not directly dispute this account. He certifies that "[n]o written objection was filed with respect to the 2012 Petition, which listed the 2011 case as tax court pending, nor with respect to the tax court pending AWP submission." Read carefully, the certification of plaintiff's counsel does not address the question of whether plaintiff's counsel was notified of the municipality's objection to plaintiff's request that the 2012 assessment be affirmed without prejudice. Plaintiff's counsel states that no written objection was filed to the 2012 Petition of Appeal. This statement is not relevant to whether an objection was made to plaintiff's request to have the assessment affirmed without prejudice. Plaintiff's counsel also states that no written objection was filed with respect to "the tax court pending AWP submission." It is not at all clear what is meant by "the tax court pending AWP submission." If this phrase is intended to describe plaintiff's May 30, 2012 request that the 2012 assessment be affirmed without prejudice, counsel merely certifies that no written objection was filed, presumably with the county board, in opposition to the request. Plaintiff's counsel does not certify that he did not receive the message left for him by the municipality's counsel that the township did not consent to an affirmance of the assessment without prejudice. Noticeably absent from the record is a certification by plaintiff's counsel that he secured the municipality's consent to plaintiff's request to affirm the 2012 assessment without prejudice.

On June 1, 2012, the county board held the hearing on plaintiff's appeal. No representative of plaintiff appeared at the hearing. As a result, on June 1, 2012, the board entered a Judgment affirming the assessment under judgment code 5A, "Non-appearance (lack of prosecution)."

On August 8, 2012, plaintiff filed a Complaint in this court challenging the June 1, 2012 Judgment of the county board. The Complaint erroneously states that the county board affirmed the 2012 assessment without prejudice.

On October 21, 2013, the municipality moved to dismiss the Complaint pursuant to N.J.S.A. 54:51A-1(c)(2) because of plaintiff's failure to prosecute his appeal before the board. The parties waived oral argument.

## II. Conclusions of Law

N.J.S.A. 54:51A-1(c) provides:

If the Tax Court shall determine that the appeal to the county board of taxation has been . . . (2) dismissed because of appellant's failure to prosecute the appeal at a hearing called by the county tax board . . . there shall be no review. This provision shall not preclude a review by the Tax Court in the event that the appeal was "dismissed without prejudice" by the county board of taxation.

Dismissal of an appeal by the Board for failure to appear deprives this court of jurisdiction over a subsequent appeal. See Pipquarryco, Inc. v. Borough of Hamburg, 15 N.J. Tax 413, 418 (Tax 1996). This court, however, is vested with the power to determine, de novo, whether there has been a failure to prosecute before the county board within the intendment of N.J.S.A. 54:51A-1(c)(2) and whether dismissal for lack of prosecution by a county board was warranted. See Veeder v. Township of Berkeley, 109 N.J. Super. 540, 545 (App. Div. 1970); Pipquarryco, supra, 15 N.J. Tax at 418. Such a dismissal should, therefore, be circumscribed by the same obligations to administer justice as are applicable to the Tax Court, and all doubts should be resolved in favor of the taxpayer. See Ibid. A motion to dismiss should be granted only in the most egregious circumstances. See Wilshire Oil Co. of Texas v. Township of Jefferson, 17 N.J. Tax 583, 585 (Tax 1998). Whether there has been a failure to prosecute involves a question of fact. See Veeder, supra, 109 N.J. Super. at 545. "In reviewing the

determination of a county board of taxation, the Tax Court must take into account the facts available to the county board at the time of its ruling.” Pipquarryco, supra, 15 N.J. Tax 418. As the Appellate Division has noted, “[n]ormally, . . . dismissals [for failure to prosecute] should not be invoked in the absence of prejudice and unless the plaintiff’s behavior is deliberate and contumacious.” VSH Realty, Inc. v. Township of Harding, 291 N.J. Super. 295, 300 (App. Div. 1996).

There can be little doubt that plaintiff failed to prosecute his appeal before the board. Affirmance of an assessment without prejudice at the county board is a common practice generally used for properties that are the subject of pending appeals in the Tax Court for prior tax years. The parties and the board often use this method to dispose of appeals so that challenges to assessments on the property for multiple years can be heard together by one tribunal. There is, however, no right to have tax appeals before the county boards resolved in this fashion. Neither the municipality nor the board is under an obligation to grant a taxpayer’s request to affirm an assessment without prejudice in order to permit plaintiff to file an appeal with this court.

Appeals before the county board of taxation are not meaningless exercises. County boards were designed by the Legislature, in part, to provide for a simplified and expedient review of tax assessments. A municipality has a valid interest in having tax appeals heard by the board in an attempt to resolve tax assessment disputes without the additional expense and expenditure of resources necessary to defend an assessment in this court. In addition, the expedient nature of the board’s deliberations allow for tax assessments to be finalized prior to the commencement of the fiscal year starting on July 1<sup>st</sup>. The county board also has an interest in controlling its docket and hearing tax appeals that it may determine are capable of expedient resolution. If any taxpayer could demand entry of an order affirming the assessment without

prejudice without the consent of the municipality and without the approval of the county board then the legislative scheme providing for a two-tier process of review of property assessments would easily be circumvented. See Ganifas Trust v. City of Wildwood, 15 N.J. Tax 722, 727 (App. Div. 1996).

These interests exist whether or not appeals of assessments for prior tax years for the same property are pending before this court. It is not unprecedented for a tax appeal for a particular year to be resolved through a settlement that includes withdrawal of appeals for prior years. It may well be true that a county board appeal will be settled with an adjustment to the assessment for the year before the county board provided that an appeal pending for a prior year in this court is withdrawn. In these circumstances a county board appeal might result in the resolution of both the county board appeal and the appeal of a prior year's assessment then pending in the Tax Court.

Having not obtained the municipality's consent to an affirmance without prejudice, or the board's approval of this approach to resolving the 2012 appeal, plaintiff deliberately failed to appear at the June 1, 2012 hearing. The court's conclusion is the same whether or not plaintiff's counsel received the message left for him by the municipality's counsel. In either case plaintiff's counsel deliberately did not appear at the June 1, 2012 hearing even though he had not secured the consent of the municipality to his request that the board affirm the assessment without prejudice. In addition, in either case, plaintiff's counsel did not appear at the June 1, 2012 hearing even though he had not received word from the board that it agreed to affirm the assessment without prejudice. The board's judgment dismissing this matter for lack of prosecution was, therefore, justified.

The court is not persuaded by plaintiff's argument that the Board was compelled to affirm the 2012 assessment without prejudice because both the 2011 and 2013 assessments on the subject property were affirmed by the board without prejudice. It is well established that local property taxes are annual assessments and that each tax year stands on its own for purposes of legal challenges. See Aperion Enterps., Inc. v. Borough of Fair Lawn, 25 N.J. Tax 70, 86 (Tax 2009). The fact that plaintiff was able to secure the consent of the municipality and the acquiescence of the board of taxation to affirm the 2011 and 2013 assessments without prejudice does not support the conclusion that plaintiff was entitled to an identical outcome for its challenge to the 2012 assessment.

Nor does the court find in the moving papers any support for plaintiff's contention that defendant's motion to dismiss the Complaint was untimely. Plaintiff cites no statute, court rule or legal precedent in support of its argument that "under no circumstances should this Court approve the Defendant's decision to wait more than 14 months after the filing and service of the 2012 Tax Court Complaint, and after the 2013 Tax Court Complaint was filed, to seek dismissal of the 2012 Tax Court Complaint . . . ." N.J.S.A. 54:51A-1(c) establishes a limitation on this court's jurisdiction. There is nothing in the statute eliminating the jurisdictional limitation after a specified period of time.

Finally, the court's decision does not conflict with Judge Bianco's recent opinion in Schaefer v. Borough of Chatham, 27 N.J. Tax 102 (Tax 2013), in which the court held that a dismissal of a tax appeal for lack of prosecution by the county board of taxation was not warranted where the taxpayers appeared for their hearings prepared to present appraisal experts as witnesses. The board would not permit the experts to testify because their reports contained boilerplate language indicating they there were prepared for purposes of securing financing. Id.

at 104-05. After appeals from the board's judgments were filed in this court, the municipality moved to dismiss the Tax Court Complaints based on the taxpayers' lack of prosecution at the county board. Id. at 105. Judge Bianco held that dismissal was not justified because the taxpayers had effectively been precluded from presenting their appeals to the board, even though they appeared at the hearings prepared to present evidence, which may or may not, in the board's view, have been flawed. Id. at 106-08.

The facts here are entirely dissimilar from those before the court in Schaefer. Plaintiff's counsel, having faxed a request for an affirmance without prejudice to the board and the municipal assessor two days before the hearing, elected not to appear at the June 1, 2012 hearing. The decision not to appear was made despite the fact that plaintiff had not secured the consent of the municipality or the acquiescence of the board to its request (and, if defendant's evidence is credited, after having been notified by telephone that the municipality did not consent). The board took no steps to prevent plaintiff from presenting evidence at the June 1, 2012 hearing. Plaintiff did not take advantage of its opportunity to have a fair hearing before the board with respect to its 2012 appeal.

An Order effectuating the court's decision is enclosed.

Very truly yours,

A handwritten signature in cursive script that reads "Patrick DeAlmeida". The signature is written in black ink and is positioned above the printed name.

Patrick DeAlmeida, P.J.T.C.