

NOT FOR PUBLICATION WITHOUT APPROVAL OF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

TAX COURT OF NEW JERSEY

Patrick DeAlmeida
Presiding Judge



R.J. Hughes Justice Complex
P.O. Box 975
Trenton, New Jersey 08625-0975
(609) 292-8108 Fax: (609) 984-0805

June 24, 2015

John I. Frederick, Esq.
Frederick Baillie, LLP
491 Baltimore Pike, #311
Springfield, Pennsylvania 19064

Richard A. Rafanello, Esq.
Shain, Schaffer & Rafanello, P.C.
150 Morristown Road, Suite 105
Bernardsville, New Jersey 07924

Re: 2 JFK Blvd, LLC and D. Rubin v. Township of Franklin
Docket No. 005878-2015

Dear Counsel:

This letter constitutes the court's opinion with respect to defendant's motion to dismiss the Complaint due to plaintiffs' failure to respond to a request for income and expense information from the municipal tax assessor pursuant to N.J.S.A. 54:4-34, commonly known as Chapter 91 (L. 1979, c. 91). For the reasons explained more fully below, defendant's motion is denied.

*

I. Findings of Fact and Procedural History

The following findings of fact are based on the credible evidence submitted by the parties on defendant's motion. R. 1:6-2(f).

Plaintiff 2 JFK Blvd, LLC is the owner of real property in defendant Franklin Township, Somerset County. The property is designated in the records of the municipality as Block 386.17, Lot 138 and is commonly known as 2 JFK Boulevard. Plaintiff D. Rubin is the manager of the property and an authorized representative of 2 JFB Blvd, LLC.

On April 16, 2014, the municipal tax assessor mailed to plaintiffs, via first-class mail, a request for income and expense information relating to the subject property. According to the assessor, the taxpayer did not respond to the information request.

On August 14, 2014, the municipal tax assessor mailed to plaintiffs, via certified mail, return receipt requested, a second request for income and expense information relating the subject property. A signed return receipt evidences delivery of the information request to plaintiffs. According to the assessor, the taxpayer did not respond to the second information request.

Acting in what he believed to be an absence of a response from the taxpayer, the assessor determined that the assessment on the subject property for tax year 2015 would be a total of \$4,100,000.

On March 27, 2015, plaintiffs filed a Complaint challenging the tax year 2015 assessment on the subject property.

On April 27, 2015, defendant moved to dismiss the Complaint pursuant to N.J.S.A. 54:4-34 because of the taxpayer's failure to respond to the assessor's information requests.

Plaintiffs oppose the motion, arguing that a timely response was provided by the taxpayer to the assessor's first information request. In opposition to the municipality's motion, the taxpayer submitted the certification of Mr. Rubin. He certified that on April 26, 2014, he sent to the assessor by first-class, regular mail a complete response to the first information request. He certified that the response was sent in an envelope addressed to the assessor at 475 Demott Lane, Somerset, NJ 08873, the address which appears on the letterhead of the information request. Attached to Mr. Rubin's certification is a copy of his written response to the assessor, dated April 26, 2014 and signed by Mr. Rubin.

II. Conclusions of Law

N.J.S.A. 54:4-34 provides

Every owner of real property of the taxing district shall, on written request of the assessor, made by certified mail, render a full and true account of his name and real property and the income therefrom, in the case of income-producing property No appeal shall be heard from the assessor's valuation and assessment with respect to income-producing property where the owner has failed or refused to respond to such written request for information within 45 days of such request

“The purpose of Chapter 91 is to assist the municipal tax assessors, who are charged with the responsibility for property valuations, by affording them access to fiscal information that can aid the valuation of property.” Lucent Techs, Inc. v. Township of Berkeley Heights, 405 N.J. Super. 257, 263 (App. Div. 2009), rev'd in part, aff'd in part, 201 N.J. 237 (2010). “The correct and timely availability of this information to the tax assessor ‘avoid[s] unnecessary expense, time and effort in litigation.’” Ibid. (quoting Ocean Pines, Ltd., v. Borough of Point Pleasant, 112 N.J. 1, 7 (1988)(internal quotations omitted)). The assessor must send the request by certified mail to the owner of the property and must enclose the full text of the statute. N.J.S.A. 54:4-34. “The government must speak in clear and unequivocal language where the consequence of non-

compliance [with a Chapter 91 request] is the loss of the right to appeal assessments.” Cassini v. City of Orange, 16 N.J. Tax 438, 453 (Tax 1997). In addition, “[t]o advance the purpose of N.J.S.A. 54:4-34, the assessor’s request must be timely, so that upon its receipt, the assessor can utilize the information by January 10” in setting an assessment for the upcoming tax year. John Hancock Mut. Life Ins. Co. v. Township of Wayne, 13 N.J. Tax 417, 422 (Tax 1993).

The taxpayer does not dispute that the municipal tax assessor’s request for income and expense information satisfied the requirements of Chapter 91 and was timely made by the assessor. Plaintiffs’ defense to the motion to dismiss is that it responded to the assessor’s first information request.

The plain language of Chapter 91 states that the appeal-preclusion provision of the statute applies only “where the owner has failed or refused to respond to” an assessor’s request for income and expense information. N.J.S.A. 54:4-34. Thus, absent a dispute as to the validity and clarity of the Chapter 91 request, a taxpayer will be subject to the significant sanction in the statute only where the taxpayer has failed or refused to respond to the request. J&J Realty Co. v. Township of Wayne, 22 N.J. Tax 157, 165 (Tax 2005).

The court has no cause to doubt the credibility of either Mr. Rubin or the tax assessor. Mr. Rubin credibly certifies that he provided a timely response to the assessor’s first information request. The assessor certifies that he did not receive a response. Both witnesses kept records with respect to the question at issue. Neither suggests the other is prevaricating.

As a result, the record suggests two equally plausible scenarios: (1) for reasons not under Mr. Rubin’s control his response to the assessor’s first information request was not delivered to the tax assessor by the postal service; or (2) Mr. Rubin’s response to the assessor’s first information request was delivered to the tax assessor but misplaced or misfiled in the ordinary

course of processing what is surely a large volume of paperwork in a municipality the size of Franklin Township. The evidence is at equipoise. The court cannot, therefore, make a finding based on the motion record that plaintiffs “failed or refused to respond to” the assessor’s request for income and expense information.

Because of the severe sanction permitted by Chapter 91, this court has been reluctant to award relief in the absence of sufficient evidence of non-compliance by the taxpayer. See e.g. Great Adventure, Inc. v. Township of Jackson, 10 N.J. Tax 230, 233 (App. Div. 1988)(noting that “the severity of the penalty for noncompliance provided by N.J.S.A. 54:4-34, namely, the taxpayer’s loss of his right to appeal the assessment, requires a strict construction of the statute.”); J&J Realty, supra 22 N.J. Tax at 165 (holding that “when a taxpayer, in good faith, responds by regular mail to a Chapter 91 request, and, through no fault or negligence of the taxpayer, the assessor does not receive the response, the severe limitation on appeal rights contained in Chapter 91 should not be imposed.”)(footnote omitted). The court is not convinced that plaintiffs failed to respond to the assessor’s information request. Defendant’s request to dismiss the Complaint, therefore, is denied.

An Order effectuating the court’s decision will be filed today.

Very truly yours,

/s/Hon. Patrick DeAlmeida, P.J.T.C.