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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

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Jennifer R. Jacobus, Esq.
Jacobus & Associates, LLC
301 South Livingston Avenue, Suite 105
Livingston, New Jersey 07039

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

Re: 2200 Cottontail Assocs c/o Matthew, M. v.
Township of Franklin
Docket No. 004646-2015

Dear Counsel:

This letter constitutes the court's opinion with respect to defendant's motion to dismiss the Complaint because of plaintiff's failure to respond to a request for income and expense information 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.

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I. Findings of Fact

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 findings of fact are based on the certifications and exhibits submitted by the parties on the motion.

Plaintiff 2200 Cottontail Associates is the owner of real property in Franklin Township, Somerset County. The property, which is income producing, is designated in the records of the municipality as Block 517.02, Lot 19.01 and is commonly known as 2200 Cottontail Lane.

On August 14, 2014, the municipal tax assessor mailed a request for income and expense information to plaintiff pursuant to N.J.S.A. 54:4-34 by certified mail, return receipt requested. The information request was addressed to plaintiff at 3071-A Bordentown Ave, Parlin, NJ, 08859. This is the address on file with the tax assessor for plaintiff. It was also the correct address for plaintiff at the time that the information request was mailed.

For reasons that are unexplained, the postal service returned the information request to the municipal tax assessor. The return receipt card was not signed. The address on the return receipt card was covered over with a marker, as was the tracking number of the mailing. The municipality did not include in its moving papers a copy of the envelope in which the information request was mailed. A certification from an employee at the assessor's office states that the address on the envelope was the same as the address on the return receipt card. The court will accept this representation as credible.

A mail tracking record of the postal service indicates that the information request arrived at the Parlin, New Jersey post office on the morning of August 15, 2014 for delivery. An entry for the afternoon of August 15, 2014 states "Moved, Left no Address." The information request was thereafter returned to the assessor, to whom it was delivered on August 19, 2014.

In the absence of a response from plaintiff to his information requests, the assessor determined that the assessment on the property for tax year 2015 would be a total of \$13,100,000.

On March 24, 2015, plaintiff filed a Complaint in this court challenging the tax year 2015 assessment on the property.

On April 23, 2015, the municipality moved to dismiss the Complaint pursuant to N.J.S.A. 54:4-34, based on plaintiff's failure to respond to the assessor's information request.

Plaintiff opposed the motion. According to an uncontested certification, a tenant at the property is responsible for all local property taxes. A representative of the tenant certified that the address on the return receipt card was correct address for delivery of tax-related mail in August 2014. The tenant maintains regular office hours at the subject property and did so in August, 2014. In addition, the tenant receives the quarterly local property tax bills for the property at the Parlin address and is current in its tax payments. It has not moved from the Parlin address or requested that its mail be delivered to another address. In previous years, the tax assessor sent Chapter 91 information requests with respect to the subject property to the Parlin address. Those requests were delivered by the postal service and timely responses were sent to the assessor.

The record contains no evidence that the postal service provided notice of the August 2014 information request or that delivery of the information request was refused by any party. The court finds that it is more likely than not that the postal service erred when it marked the information request "Moved, Left no Address" and returned the request to the assessor.

The parties waived oral argument on the motion.

II. Conclusions of Law

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

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 . . . and if he shall fail or refuse to respond to the written request of the assessor within 45 days of such request . . . the assessor shall value his property at such amount as he may, from any information in his possession or available to him, reasonably determine to be the full and fair value thereof. 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 In making such written request for information pursuant to this section the assessor shall enclose therewith a copy of this section.

The courts have consistently held that municipal tax assessors must strictly comply with N.J.S.A. 54:4-34 if dismissal of a Complaint is to be granted under the statute. Southland Corp. v. Township of Dover, 21 N.J. Tax 573, 578 (Tax 2004); Cassini v. City of Orange, 16 N.J. Tax 438, 453 (Tax 1997); John Hancock Mut. Life Ins. Co. v. Township of Wayne, 13 N.J. Tax 417, 422 (Tax 1993). In light of the extent of the relief sought, to prevail defendant must establish that the property owner was adequately notified of its statutory obligations. See 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.”). “The defendant municipality cannot seek to close the door of tax appeals until it has given property owners fair notice of their obligations in the Chapter 91 request” Cassini, supra, 16 N.J. Tax at 450.

The Legislature established an orderly process through which municipal tax assessors are provided the names and addresses of the owners of real property. N.J.S.A. 54:4-29 provides that a purchaser of real property may provide to the tax assessor a deed or other evidence of title. In such circumstances, the assessor is charged with noting and recording the change in ownership in the books and records of the assessor, and certifying on the deed that the assessor has done so. N.J.S.A. 54:4-29. If no assessor's certification appears on the deed, the register of deeds and mortgages or the county clerk with whom the deed is filed shall ascertain from the person filing the deed the post office address of the grantee and shall mark that address on the face of the deed. N.J.S.A. 54:4-30. According to that statute, where the grantee "is a firm, partnership, association or corporation, the address shall include the location of the firm or partnership or the principal office of the association or corporation in this State, or if it be a corporation of a foreign State, then the principal office of the corporation in that State." N.J.S.A. 54:4-30. The official with whom the deed is recorded within one week "shall mail an abstract therefore, together with the address of the grantee, to such assessor . . . who shall properly note the facts therein contained." N.J.S.A. 54:4-31. Pursuant to N.J.S.A. 54:4-32, "[t]he county clerk or register of deeds and mortgages shall refuse to record any such deed or other evidence of title unless the post-office address . . . as required by section 54:4-30, [is] contained in or marked upon the face of such instrument" N.J.S.A. 54:4-34, or Chapter 91, which immediately follows the statutory provisions cited above, allows the tax assessor to send a written request by certified mail to any real property owner for income and expense information relating to income-producing property. It is clear that the Legislature intended for the assessor to send information requests to the addresses obtained from the deed recording process.

In this case, the municipal tax assessor sent his information request by certified mail to plaintiff at the address in the assessor's records, which plaintiff concedes was the correct address for delivery of tax-related mail in August 2014. In previous years, information requests from the assessor were mailed to the same address. Those requests were delivered and plaintiff provided timely responses to the assessor.

There is no evidence that plaintiff's tenant, who is responsible for all local property taxes on the subject property, and who receives and pays all quarterly tax bills sent to the Parlin address, moved or requested that the postal service forward mail sent to the Parlin address. There is no evidence in the motion record that delivery of the information request was attempted and rebuffed by plaintiff or its tenant. It appears that the failure of delivery rests with the postal service, not the assessor, the property owner or the tenant.

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 cannot conclude that plaintiff refused or failed to respond to a request which was not delivered to plaintiff due to an error by the postal service. Plaintiff and its tenant played no part in the non-delivery of the request. They cannot be made to bear the burden imposed by the appeal-preclusion provision of N.J.S.A. 54:4-34. While the court cannot fault the assessor for relying on the address on file for the taxpayer, the record does not contain evidence of the taxpayer's refusal or failure to respond to the assessor's request.

Defendant's motion is, therefore, denied. An Order effectuating the court's decision will be filed today.

Very truly yours,

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