

Strawberry Oaks Associates, Inc.

v.

City of Manchester

Docket No.: 22856-06PT

ORDER

On June 16, 2008, the board held a limited hearing on the “Taxpayer’s” April 15, 2008 “Motion for Reconsideration” (the “Motion”) of the board’s March 25, 2008 “Dismissal Order.” The Motion is denied.

The Dismissal Order was based on several prior inquiries by the board which resulted in the dismissal of this appeal with respect to eight of nine lots located in the “City.” (These nine lots are further identified on the spreadsheet attached to the board’s March 5, 2008 Order.)

On August 24, 2007, the Taxpayer (through its representative, Robert E. Lisk of Commercial Property Tax Management, LLC) filed one appeal document and paid one filing fee in this proceeding for all nine lots. Of the nine lots, only one, Map TPK3-22 (27 Ferry Street), has a deeded ownership in the name of the corporate entity shown above.

Upon further investigation initiated by the board’s Clerk and a review of the deeds and other evidence, the other eight lots appear to be held in other names by two individuals, Ronald Dupont and Mark Guilmain or “Strawberry Oak Associates.” Mr. Dupont attended the June 16, 2008 hearing and testified to owning, together with Mr. Guilmain as his “partner,” a number of properties in the City,

beginning in the mid-1980's. Mr. Dupont further acknowledged they have done business as "Strawberry Oak Associates" (sometimes also as "Strawberry Oaks Associates").

The Taxpayer's representative, Mr. Lisk, testified at the hearing, along with Mr. Dupont, and acknowledged an error was made in filing the appeal document by using the word "Inc." with respect to his client because no such entity was ever incorporated. Since no such corporation ever existed, it cannot legally own any of the lots. Mr. Lisk testified his company "incorrectly chose" this corporate name and proceeded to file one appeal for all nine lots under it. Notwithstanding the considerable confusion caused by this erroneous filing, he contended all nine lots should be kept in the appeal presumably because, in his view, the misnaming of the Taxpayer is inconsequential¹ and should not result in dismissal of the appeal as to the other eight lots.

The City, represented by Assessor Stephan Hamilton, disagreed. The City argued the Motion should be denied and the Dismissal Order upheld. See the City's April 23, 2008 "Objection to Appellant's Rehearing [Reconsideration] Motion" (the "Objection") and its "Memorandum" submitted at the hearing. Upon review, the board finds merit in the City's position and the Motion is therefore denied.²

1. The "Corrective Warranty Deed" prepared by the Taxpayer's attorney (Mark G. May, PC), submitted for recording on April 9, 2008 and attached to the Motion apparently to demonstrate the error has been corrected, is problematical at best because it purports to transfer title from the corporate entity (that never existed) to "Strawberry Oak Associates" and is signed by Mr. Dupont as the "President" of the corporation. There is serious doubt whether this instrument is sufficient to establish transferable title to the 27 Ferry Street property. See also the recorded instrument ("Amendment to Mortgages") attached to the City's Objection, which names, and has signatures by Mr. Guilmain and Mr. Dupont, for both a corporation and a partnership with the "Strawberry Oak Associates" name and where, as the City points out, they held these entities out as being "separate and discrete." See City's Memorandum, p. 4.

2 In light of this resolution, the board need not address the City's further argument that the Taxpayer's responses are untimely and inadequate under Tax 203.03(f).

Rehearing/reconsideration motions are governed by RSA 541:3 and Tax 201.37 and are granted only if the moving party, the Taxpayer in this appeal, demonstrates “good reason” for doing so. In this appeal, the board finds the Taxpayer has not demonstrated good reason and did not meet the burden of proving the Dismissal Order is in error: in other words, “that the board overlooked or misapprehended the facts or the law and such error affected the board’s decision.” See, e.g., Tax 201.37(e). Whatever error(s) caused the incorrect filing were made by the Taxpayer and the Taxpayer’s representative, not anyone else, and caused the board’s staff and the City to expend undue time and effort to clarify the status of each lot and its actual ownership. (See also the more extensive list of properties owned by Mr. Dupont submitted by the City on June 19, 2008, shortly after the hearing and at the board’s request.)

The City acknowledged some of the ownership information contained on its computerized records (including those on its website) may have been incorrect. A municipality, however, is not a title company and must rely, to a great extent, upon the documents prepared and recorded by taxpayers, as well as their representations and dealings with the municipality. The City therefore does not have any independent obligation to verify the legal ownership of each property that is assessed, especially when taxpayers pay the bills for many years without complaint or correction and without bringing the apparent errors to the City’s attention. Here, Mr. Dupont testified he paid the taxes owed with respect to all property owned by the partners (in one named entity or another) with one check each year for approximately 20 years and made no effort to correct the City’s records or provide more accurate information regarding the ownership of each lot to his tax representative.

Turning to the law, the City aptly cites the board’s recent ruling in several “Wal-Mart” appeals in the City of Lebanon (in Docket Nos. 21162-04PT, 21677-05PT, 22703-06PT and 22704-06PT). The board’s May 23, 2008 Order in Wal-Mart (at p. 3) confirms that RSA 73:10 “allows a person to be taxed

even if the person does not have actual title to the property, provided that such person consents to the taxation.” Although “title is not the test of taxability,” standing is still necessary because only a “person aggrieved” can file for an abatement with the municipality and then, if dissatisfied, perfect a timely appeal with the board under RSA 76:16 and 76:16-a. Wal-Mart. at pp. 2 – 3. When the party named in the appeal document is different than the party for whom the abatement is requested, however, the requisite standing can be lost. Along with standing, identification of who the taxpayer is can be essential because the taxpayer’s entire estate within the municipality is normally considered to determine the proportionality of the assessment(s) under appeal. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985), also cited and quoted in Wal-Mart at pp. 2-3.

The City takes the reasonable, if not entirely consistent, position that 27 Ferry Street is the only lot for which an appeal was ‘perfected’ and the only lot for which the Taxpayer has standing. The City also indicates it will not contend, for purposes of this appeal at least, the Taxpayer’s entire estate includes other property within the City (such as the other eight lots, for example). Notwithstanding the Taxpayer’s admission that the corporate entity does not exist, the board finds this approach represents a reasonable middle ground to resolve the issues presented and is the most equitable outcome in light of the naming/identity problems described above.

In summary, the Taxpayer’s two witnesses at the hearing, Mr. Dupont and Mr. Lisk, admit the corporate entity designated in this appeal was never created and does not exist. For simplicity and continuity, however, the board will not change the caption of this appeal; the appeal will proceed only with respect to 27 Ferry Street, not the other eight lots also referenced in the appeal document, and the Motion is dismissed.

The City’s “Request[s] for Findings of Fact/Rulings of Law” are replicated below, in the form

submitted and without any typographical corrections or other changes. The board's responses are in bold face. With respect to the Requests, "neither granted nor denied" generally means one of the following:

- a. the Request contained multiple requests for which a consistent response could not be given;
- b. the Request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;
- c. the Request contained matters not in evidence or not sufficiently supported to grant or deny;
- d. the Request was irrelevant; or
- e. the Request is specifically addressed in the Report.

City's Requests for Findings and Rulings

1. The Appellant seasonably filed an abatement request with the City on February 26, 2007, in the name of Strawberry Oaks Associates, Inc. for the property identified as Map/Lot TPK3-22 (27 Ferry Street).

Granted.

2. The Appellant seasonably filed an appeal of the City's refusal to grant an abatement request with the Board on August 24, 2007, in the name of Strawberry Oaks Associates, Inc. for the property identified as Map/Lot TPK3-22 (27 Ferry Street).

Granted.

3. The Appellant is a person aggrieved of a tax, having accepted a deed to the property and consented to taxation for twenty years in the name Strawberry Oaks Associates, Inc., and having paid the property taxes for Map/Lot TPK3-22 (27 Ferry Street) in tax year 2006.

Granted.

4. The Board provided the Appellant an opportunity pursuant to Tax 203.03(f) to reform the original petition based on the ownership names for the various parcels.

Granted.

5. The Appellant failed, within the 10 day time-frame, to reform the petition, provide additional filing fees, or request new cases be opened for the other ownerships identified.

Neither granted nor denied.

6. The Board properly dismissed from the instant appeal all properties listed in the original appeal document except for Map/Lot TPK3-22 (27 Ferry Street).

Granted.

7. Case law, in part, establishes the standard for who is a person aggrieved of a tax. “For the purpose of taxation, it is immaterial who is the ultimate owner of the fee. The title is not the test of taxability.” Piper v. Town of Meredith, 83 N.H. 107, 109 (1927); quoted in Lin-Wood Dev. Corp. v. Town of Lincoln, 117 N.H. 709, 711 (1977); Quimby v. Quimby, 118 N.H. 907, 910 (1978); and Appeal of Reid, 143 N.H. 246, 249 (1998).

Granted.

8. The acceptance of a tax bill for twenty years is sufficient proof that Strawberry Oaks Associates, Inc. was an entity that had consented to taxation, and had standing as a person aggrieved. RSA 76:16 and RSA 76:16-a.

Granted.

9. The Boards rules identify what multiple parcel sets a taxpayer may appeal in a single appeal document. In such instances, all properties must have common ownership, that is, complete unity of ownership. Tax 203.03(c).

Granted.

10. If a taxpayer fails to comply with Tax 203.03(b), the board, on its own or by municipality motion, shall declare the taxpayer in default and order it cured within 10 days of the clerk’s date. If the taxpayer fails to comply with the default order, the board shall dismiss the appeal. Tax 203.03(f).

Neither granted nor denied.

11. Parties are barred, with the exception of by leave of the Board, from submitting new evidence with rehearing motions. Tax 201.37(g).

Neither granted nor denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that copies of the foregoing Order have been mailed this date, postage prepaid, to: Robert E. Lisk and Patrick F. Bigg, CPTM, 10 Commerce Park North, Suite 13B, Bedford, NH 03110-6959, Representative for the Taxpayer; and Chairman, Board of Assessors, One City Hall Plaza – West Wing, Manchester, NH 03101.

Dated: July 8, 2008

Anne M. Stelmach, Clerk