

Chester D. (Sr.) and Nancy J. Mohr

v.

Town of Amherst

Docket Nos. 5546-88 & 7898-89

DECISION

This decision relates to the "Taxpayers'" 1988 and 1989 property tax appeals. A hearing was held with the first issue being whether the Taxpayers' appeals were properly before the board. At the hearing, the board decided the appeals were not properly before it, and the board stated this written decision would follow. Because of the nature of the issues raised by these appeals and because we want to fully inform the parties of the basis of this decision, we have taken great length to describe the factual and legal foundations of our decision.

The 1988 Appeal

The question before the board is whether the 1988 appeal should be dismissed where the Taxpayers and the "Town" had already settled the 1988 appeal. For the reasons stated below, the 1988 appeal is dismissed.

Facts

The Taxpayers authorized an attorney to file a petition in the superior court to appeal their 1987 taxes (the 1987 Court Action). See Town's Exhibit A, "Petition for Tax Abatement Pursuant to RSA 76:17," Hillsborough County Superior Court 88-E-00431. After negotiations between the Town and the Taxpayers' attorney, the 1987 Court Action was settled. Under the settlement, the Taxpayers' 1988 taxes were abated by reducing the assessment by 17%. The testimony and the exhibits established the settlement was based on the

Taxpayers

giving up any right to challenge the 1988 taxes. See e.g., Taxpayers' Exhibit 1, May 5, 1988 "Memorandum" ("The proposal which I made was that Atherton Commons would forego any further appeal, based on a compromised settlement for 1987 and subsequent years."); also review testimony of Mr. Elcik. After the settlement was reached the: a) docket markings were filed for the 1987 Court Action; b) the Taxpayers' 1988 taxes were abated; and c) the Taxpayers received and cashed the 1988 abatement check. Despite the settlement, which was reached in February of 1989, the Taxpayers filed a 1988 appeal with this board in May of 1989.

The Town argued the 1988 appeal was barred by the settlement of the 1987 Court Action. The Taxpayers' position was somewhat unclear. Apparently, the Taxpayers thought the settlement did not bar their individual appeal to this board. The Taxpayers, however, did not articulate any reason to support their position. Moreover, the Taxpayer (Mr. Mohr) acknowledged he knew of the settlement terms and accepted and cashed the abatement check with that knowledge. He also testified that he disagreed with the settlement, but he admitted that he never told anyone about his disagreement.

Discussion

The law favors the settlement of disputes and treats settlement agreements as binding on the parties even when entered into by a party's attorney. RSA 541-A:1-c; see e.g., Bock v. Lunstrom, 133 N.H. 161, 163-64 (1990); Bossi v. Bossi, 131 N.H. 262, 264 (1988). This longstanding law is intended (i) to protect the parties and (ii) to promote the orderly and prompt dispatch of a tribunal's business. Bock, 133 N.H. at 164.

Based on the established law and the presented facts, the 1988 appeal was barred by the settlement of the 1987 Court Action. Even though the settlement was made in the context of the 1987 Court Action, the settlement was premised on the Taxpayers giving up their right to appeal their 1988 taxes. The Town (Mr. Elcik) testified so, and he also testified the Town would not have settled with the Taxpayers if the Taxpayers had not, through their attorney, agreed to surrender their right to appeal the 1988 taxes. Lastly, we must decide whether the settlement was made with the Taxpayers' authority. Even the Taxpayers conceded this point.

In conclusion, a settlement was reached barring the Taxpayers' 1988 appeal, the settlement was reached by the Taxpayers' authorized attorney, the Taxpayers knew the settlement terms and cashed the settlement (abatement) check with that knowledge. Given these facts, the 1988 appeal must be dismissed because of the settlement agreement.

In addition to enforcing the parties' agreement, barring the appeal promotes the proper and efficient administration of the board's business. The board has been strongly encouraging municipalities and taxpayers to discuss their positions and to work to settle appeals. Discussion and settlement are essential for increasing the communication between the parties and assisting the board in effectively managing the pending 3,100 appeals. Thus, the board, as it has in this case, enforces settlement agreements. To do otherwise would run contrary to RSA 541-A:1-c, existing caselaw and the board's responsibility to manage its substantial caseload.

The 1989 Appeal

Preliminary Issue

The settlement agreement purports to bind the parties for years after 1988. Thus, the 1989 appeal **might** be barred by the settlement agreement. Whether this is legally so, however, is not clear given the mandates of RSA 72:6 and RSA ch. 76, concerning the Town's duty to annually assess property and the Taxpayers' burden to show disproportionality for each tax year. See also PMC Realty v. Derry, 125 N.H. 126, 130-31 (1984) (A town may only exercise its authority in accordance with the applicable statutes and acts not authorized by the applicable statutes are ultra vires.) We do not need to decide this issue because the appeal was not timely filed with the board.

Timely Filed Issue

The question presented is whether the Taxpayers timely filed their 1989 appeal with the board. To appeal to the board, a taxpayer must have first timely filed an abatement application with their municipality. RSA 76:16-a. The abatement application must be filed within four months of the "notice of tax." RSA 76:16 (1989). The term "notice of tax" is the date the department of revenue determines to be the date the last tax bill was mailed by the

municipality.

After timely filing with their municipality, a taxpayer can then appeal to this board within 6 months of the notice of tax. RSA 76:16.

Facts

For the 1989 tax year, the notice of tax date for the Town was November 10, 1989. Thus, the Taxpayers were required to file with the Town by March 12, 1990, and with the board by May 10, 1990. The Town admitted the Taxpayers had timely filed the abatement application with it. On the other hand, the appeal to this board was filed on May 16, 1990, and thus was untimely. The Taxpayers agreed their appeal was not filed by the May 10, 1990 deadline, but they argued they filed late because the Town informed them that the deadline was May 16, 1990. The factual basis for their position is somewhat unclear.

In an April 26, 1990 letter to the Taxpayers, the Town's assessor stated, "The deadline for filing with the board of tax and land appeals is May 16, 1990." (Emphasis added.) (This letter was not marked as an exhibit but was submitted by the Taxpayers in response to an earlier board order.) The Taxpayer (Mr. Mohr) testified he received the letter after work on May 10, 1990. Confusion rears its head because the Taxpayer also testified that before receiving the letter but sometime after May 10th, he went to the Town to inquire on the status of the abatement application and was told the letter had been sent but contained an error--the May 16th deadline. The Taxpayer was also then told the correct filing deadline.

Discussion

The above facts and arguments raise the following questions--the first a legal one; the second a factual one:

1) can the board accept an untimely appeal where the late filing was made because a town provided the taxpayer with the wrong filing deadline?¹ and

2) if so, do the facts in this appeal warrant a finding that the Town's error was the cause of the Taxpayers' late filing?

The timely filing requirement in RSA 76:16-a is in the nature of a

¹ This is a recurring issue that the board has consistently answered in accordance with the decision and analysis in this decision.

statute of limitations, and thus must be strictly adhered to. Appeal of
Roketenetz, 122

N.H. 869, 890 (1982); Missionaries of La Salette Corporation v. Town of Enfield,

116 N.H. 274, 275 (1976).² The board cannot even extend the deadline when the untimeliness was due to accident, mistake or misfortune. Arlington American Sample Book Company v. Board of Taxation, 116 N.H. 573, 576-77 (1976). Given this clear mandate, the board cannot accept untimely appeals even if the untimeliness were attributable to a town giving a taxpayer the wrong filing deadline. For us to decide otherwise would be contrary to existing law and thus beyond our jurisdiction. See Appeal of Gillin, 131 N.H. 311, 313 (1989). Therefore, we must dismiss the 1989 appeal as untimely.

Even if we were to have reached a contrary conclusion on this legal issue, we would have found the Taxpayers' untimeliness was not caused by information received from the Town. Rather, the untimely filing was due to the Taxpayers' own neglect. The Taxpayer (Mr. Mohr) testified he received the Town's letter on May 10, 1990, after work. May 10, 1990, was the filing deadline. Thus, when the Taxpayers were provided with the erroneous May 16th deadline, it was already too late for the Taxpayers to timely file. Even the Taxpayer admitted that if the letter had had the correct filing date, he would not have been able to file by May 10, 1990, because he had received the letter after work on May 10th and thus would have been unable to meet the deadline.

² We note, the court in Missionaries of La Salette Corporation v. Town of Enfield, 116 N.H. 274, 275-76 (1976), did not foreclose on the argument that estoppel could bar a town from challenging a taxpayer's untimely appeal where the town was responsible for the untimeliness. See also Appeal of C.H.R.I.S.T, Inc., 122 N.H. 982, 984 (1982) (Taxpayer's failure to file a financial statement along with application for charitable exemption was not denied right to exemption where department of revenue had erroneously told the taxpayer a financial statement was not required.). However, the supreme court has not yet decided that a town can be estopped from raising the untimeliness of an appeal where the town gave the taxpayer an incorrect filing deadline. The existing caselaw and statutes appear inflexible, and the board cannot under the present law allow taxpayers to file untimely because of erroneous information received from a town. The present law establishes the Taxpayer alone is responsible for complying with the RSA 76:16-a deadline. In this case even if the Town could be legally estopped, no estoppel would be found because the Taxpayers did not establish the estoppel elements set forth in City of Concord v. Tompkins, 124 N.H. 463 (1984).

Based on the evidence, including the Taxpayer's testimony, we find the Taxpayers did not timely file their appeal because they were waiting for the Town to respond to the abatement application. This conclusion is supported by (i) the Taxpayer's testimony concerning his visit to the Town and (ii) the Taxpayer's failure to file until they heard from the Town. These circumstances, unfortunately, do not extend the filing deadline. RSA 76:16-a states, "If the selectman neglect or refuse to so abate ***, " an appeal may be filed with the board within 6 months of the notice of tax. (Emphasis added.) Thus, the Town's failure to respond until the May 10th deadline did not extend the filing deadline, and this board could not hear the appeal. See Appeal of Roketenetz, 122 N.H. at 890. Because the Taxpayers' failed to timely file, the 1989 appeal is dismissed.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Member

Date:

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Chester D., Sr. and Nancy J. Mohr, taxpayers; and the Chairman, Selectmen of Amherst.

Michele E. LeBrun, Clerk

Date:

0009