Webster Land Corp. and Nancy Grady
v.
Town of Holderness
Docket No. 9579-90

Peter and Helen Hiam
v.
Town of Holderness
Docket No. 9578-90

Mary Webster Harris
v.
Town of Holderness
Docket No. 9508-90

DECISION

This is a decision on the "Taxpayers'" rehearing motion. (In this decision, the term "Taxpayers" shall refer to all taxpayers. Where facts or analysis differs that taxpayer's name shall be used -- "Hiams," "Harris" and "Webster Land.") In the underlying order, the board dismissed the Taxpayers' RSA 76:16-a, property-tax appeals because the Taxpayers failed to file their RSA ch. 74 inventories. These appeals were consolidated because of the common issues of fact and law. For the reasons below the rehearing motion is denied.[1]

Facts and Procedures

For tax year 1990, the "Town" underwent a complete revaluation. The Town, therefore, decided to require RSA ch. 74 inventories. The Hiams were sent an inventory blank, but they did not return the completed inventory to the

[1] The board apologizes for the delay in sending out this decision. Presently, most decisions are sent out within 2-3 weeks of the hearing. However, as will be evident in the decision, the board required time to fully research and deliberate on this decision because of the "precedential" impact of this decision on the board's existing practice.

Town. Harris and Webster Land were not sent inventory blanks, and they did not file a completed inventory with the Town.

After receiving their 1990 tax bills, the Taxpayers filed RSA 76:16 abatement applications with the Town, and they appealed to this board pursuant to RSA 76:16-a. In response to a board inquiry, the Town stated the Taxpayers had not filed their inventories. The board then notified the Taxpayers of their noncompliance and provided the Taxpayers with an opportunity to avoid dismissal. Nothing was filed, and the appeals were dismissed pursuant to RSA 74:7-a I. See

also RSA 76:16, 16-a (party must first comply with RSA 74 to seek abatement). The Taxpayers requested a rehearing, and because of the Taxpayers' legal arguments, a hearing was held on the rehearing motion.

Issues

The major issue here is whether the Taxpayers' failure to file the inventories required dismissal. This seemingly simple matter raises four legal issues.

1) Did the Town's failure to send inventories to Harris and Webster excuse Harris' and Webster's failure to file completed inventories?

2) Does the Town's history of not following RSA 74:4-a excuse the Taxpayers' failure to file completed inventories?

3) Is the loss of the right to appeal under RSA 74:7-a dependent on or independent of the actual assessment of the RSA 74:7-a monetary penalty?

4) Does the board have any discretion to excuse the Taxpayers' failures?

These issues are recurring issues, and this decision is in line with the board's researched analysis and existing practice. The board readily admits it has struggled with these issues. However, absent a contrary opinion from the supreme court, the board has concluded this decision is the proper result.

Statutory Interpretation and Construction

The issues before the board require the board to interpret, and in some instances construe statutes in RSA ch. 74 and ch. 76. Therefore, the underlying rules that the board has relied upon and considered will be stated.

An administrative interpretation is entitled to some deference but is not controlling. Appeal of Rehabilitation Associates of New England, 131 N.H. 560, 565 (1989).

The supreme court is the final arbiter of a statute's meaning. State v. Johnson, 134 N.H. 570, 575 (1991).

Statutory interpretation begins with the words themselves, giving the words their plain meaning and keeping in mind the statute's context and purpose. Id. at 575-76.

A statute's words are the touchstone of legislative intent. Quality Carpets v. Carter, 133 N.H. 887, 889 (1991).

If the statutory words are plain and unambiguous, they must be so interpreted. Concord Steam v. City of Concord, 128 N.H. 724, 729 (1986).

Where the words themselves do not disclose intent, the legislative history shall be examined. Chriniak v. Golden Investment Corp., 133 N.H. 346, 350-51 (1990).

1) Does the Town's failure to send inventories to Harris and Webster excuse Harris' and Webster's failure to file completed inventories?

Under RSA 76:16 and RSA 76:16-a, only aggrieved persons who have complied with RSA ch. 74 may seek abatements. If an aggrieved person has not so complied, the board lacks jurisdiction to hear the appeal. To comply with RSA ch. 74, a person must file a completed inventory by April 15th of each year. RSA 74:7. RSA 74:8 provides an extension to June 1 in certain situations. None of the Taxpayers complied with RSA ch. 74, depriving the board of jurisdiction. See RSA 76:16-a.

By itself, RSA 76:16-a would be enough to dismiss these appeals. However, RSA 74:7-a makes the penalty explicit by stating the failure to file the inventory results in the loss of the right to appeal. Harris and Webster, however, claimed their failures should be excused because the Town did not comply with RSA 74:5, which required the Town to deliver a blank inventory to them.[2] Given the statutory scheme expressed in RSA ch. 74, the board disagrees with Harris and Webster.

RSA ch. 74 contains two separate responsibilities with two distinct consequences for failure to comply. Taxpayers must file a completed inventory or be penalized under RSA 74:7-a I. Towns must deliver blank inventories or be sanctioned under RSA 74:13. Admittedly, it is hard to imagine selectmen being sanctioned under RSA 74:13. Nevertheless, the chapter provides a separate sanction for a noncomplying town, and this statutory scheme supports reading RSA 74:7 as distinct from RSA 74:5. RSA 74:8 affirms this conclusion by stating:

> If a blank inventory is not mailed or hand delivered to any person or corporation before March 25, or if any person is prevented by accident mistake or misfortune from filing the same to the selectman or assessors on or before April 15, such person or corporation may make such return before June 1. (Emphasis added.)

---

[2] The information supplied by the Town indicated most taxpayers were sent inventories. The Town failed to explain why inventories were not mailed to Harris and Webster.

RSA 74:8 explicitly makes a taxpayer(s') responsibility independent of whether the town mailed an inventory. Given the plain language and assuming the board lacks discretion, the board concludes the Town's failure to deliver the inventories does not excuse Harris' and Webster's failure to file completed inventories by June 1, the extended date.

2) Does the Town's history of not following RSA 74:4-a excuse the Taxpayers' failure to file completed inventories?

Under RSA 74:4-a, towns "by vote of its board of selectmen may elect not to utilize the inventory form or procedure." In other words, absent a vote by

the selectmen, towns must comply with RSA ch. 74. The Town never voted to elect out of RSA ch. 74. Before 1990, inventories were last sent out in 1984. The minutes for the selectmen meetings from 1985-90 do not show any vote to require or to not require inventories for any given year. Obviously, the Town's noncompliance would confuse taxpayers about their duty to file inventories. However, absent discretion, there is nothing the board can find enabling the board to excuse the Taxpayers' failure because of the Town's history of noncompliance.

3) Is the loss of the right to appeal under RSA 74:7-a dependent on or independent of the actual assessment of the RSA 74:7-a monetary penalty?

The Taxpayers argued the right to appeal is only lost if two things occur: 1) the taxpayer must fail to file the inventory; and
2) the town must actually assess the RSA 74:7-a I monetary penalty.
The Taxpayers argued the second requirement can only be met if the town complies with RSA 74:7-c, which states in part:

> Notice of failure to file the property inventory form *** shall be sent to the property owner of record as of April 1 before the applicable monetary penalty shall apply.

Here the Town did not notify the Taxpayers under RSA 74:7-c, and the monetary penalty was not assessed. The Taxpayers asserted they did not lose the right to appeal. The Taxpayers' argument certainly deserves analysis, but it runs contrary to the board's longstanding interpretation of the statutes and the board's recent research of legislative intent.

The board concludes the loss of the right to appeal is independent of whether the monetary penalty is actually assessed and thus independent of the RSA 74:7-c notice requirement. This conclusion is supported by:
1) the various provisions of RSA ch. 74 when these provisions are read as a consistent statutory scheme; and
2) the legislative history of the notice requirement is RSA 74:7-c.

RSA 74:7-a I provides in part:

> Any person who fails to file a fully completed inventory *** <u>shall</u> <u>pay</u> a penalty of one percent of the property tax for which he is <u>liable</u>.

> *** This penalty has all the force of taxation and shall be treated as an incident to the tax. (Emphasis added.)

Thus, if a taxpayer fails to file the inventory they are liable for the monetary penalty. RSA 74:7-a I continues:

> Any person who fails to file the inventory and who becomes <u>liable</u> to pay the [monetary] penalty *** shall lose his right to appeal any matter pertaining to the property tax for which he is liable. (Emphasis added.) ***

Given this language, the actual assessment of the monetary penalty is not a prerequisite to the appeal penalty becoming effective. Rather, once the taxpayer

is liable for the monetary penalty, he/she loses the right to appeal even if the town fails to assess or collect the monetary penalty.

Now we turn to whether the above quoted RSA 74:7-c language, requiring notice before assessing the monetary penalty, changes the board's interpretation of RSA 74:7 I. The board concludes it does not. First, the statute speaks in terms of "liability" not actual assessment (discussed above). Second, the legislative history demonstrates the monetary and appeal penalties are independent (discussed next).

Senator Rock, who offered the RSA 74:7-c amendment in 1977, stated:

> The amendment that you have before you that I am proposing *** says that you can't be penalized with the monetary penalty until you have been notified again that you failed to file [the inventory]. So, if you fail to file now, if you adopt the amendment, **you will still lose your right to appeal** *** and if you get a second notice that you did not file you can be fined the monetary penalty. Senate Journal 1586 (May 19, 1977) (copy attached) (emphasis added).

The board concludes the RSA 74:7-c language, requiring notice before assessing the monetary penalty, was added because the monetary penalty has the full effect of taxation. Therefore, since the penalty means a town is imposing a new tax, with several significant implication, e.g., interest, tax lien and even possible tax sale, it is reasonable to require a town to notify taxpayers before assessing the monetary penalty. The same cannot be said for losing the right to appeal. In essence, if taxpayers fail to perform their duties, they penalize themselves. On the other hand, the monetary penalty is a penalty imposed by the town.

The board's conclusion is supported by the words of the statutes, RSA ch. 74's statutory scheme, and the legislative history. The Town's failure to assess the monetary penalty did not save the Taxpayers' right to appeal.

4. Does the board have discretion to excuse the Taxpayers' failure to file the inventories?

The board concludes it does not have any discretion to excuse the Taxpayers' failure to file the inventories. Underlying the board's conclusion is the recognition that the board's powers are entirely statutory. Appeal of Gillin, 132 N.H. 311, 313 (1989). Additionally, the supreme court has been

strict in ruling that a board must follow all statutory requirements, thereby boards have no discretion unless specifically authorized by statute. Pelham Plaza v. Town of Pelham, 117 N.H. 178, 181 (1977); see also Daniel v. B&J Realty, 135 N.H. 174, 176 (1991). The board, therefore, has been conservative in reading statutes and not exercising discretion unless specifically authorized by statute. The only discretion authorized by RSA ch. 74 is stated in RSA 74:8, which allows an extension to file the inventory by June 1 when it could not be

filed by April 15 due to accident, mistake or misfortune. Thus, after June 1 of the applicable year, the Town and the board lack discretion to provide a further extension.

The Taxpayers asserted the board has discretion under H.J.H, Inc. v. State Tax Commission, 108 N.H. 203 (1967). This often-cited case held the board had discretion on this issue. However, RSA ch. 74 was amended after H.J.H, Inc., adding RSA 74:7-a I, the language that specifically states the failure to file the inventory results in the loss of the right to appeal. Moreover, the court in Pelham Plaza, 117 N.H. at 181, held the board lacked any discretion when it stated:

> RSA 76:16-a I (Supp. 1975) makes clear that compliance with RSA chapter 74 is a condition precedent to the right to appeal. If the board finds the taxpayer in violation of the chapter, it must deny the abatement. RSA 76:16-a I (Supp. 1975) does not confer upon the board discretion to permit an appeal by a noncomplying taxpayer. See Parsons v. Durham, 70 N.H. 47 A. 600 (1900). Because no discretion is exercised, the abuse of discretion standard is inapplicable.

These dismissals seem harsh given the Town's noncompliance and given the lack of prejudice to the Town. If the board had discretion, we would have allowed the appeals of Harris and Webster Land to go forward. This decision would have been based on: 1) Harris and Webster Land were not sent an inventory; 2) the Town's failure to follow RSA 74:4-a; and 3) since this was the year of a town-wide revaluation, the Town would not have been prejudiced by the failure to file the inventory. We would have also heard the Hiams' appeal. Although Hiams did not return the inventory sent to them, the last two factors stated above did exist and would have been sufficient to excuse the Hiams' noncompliance.

Conclusion

Lacking discretion and in accordance with the law, the board denies the Taxpayers' rehearing motion, thereby affirming the dismissal of the appeals.
SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Dennis N. Perreault, Esq., Representative for the Taxpayers; and Chairman, Selectmen of Holderness.

Date: August 19, 1992
Valerie B. Lanigan, Clerk

Webster Land Corp. and Nancy Grady
v.
Town of Holderness

Docket No. 9579-90

ORDER

This order relates to the issue of whether the "Taxpayers'" appeal must be dismissed pursuant to RSA 74:7-a I because the Taxpayer failed to file an inventory with the "Town." The Town has asked the board to waive the Taxpayers' failure. For the reasons stated below, the appeal is dismissed pursuant to RSA 74:7-a I.

RSA 74:7 requires all taxpayers to file an inventory by April 15th of each year. RSA 74:8 allows an extension to June 1st, if the noncompliance was due to accident, mistake or misfortune. Here, June 1st passed, and the inventory was not filed. Therefore, RSA 74:7-a I was triggered, and under RSA 74:7-a I, the noncomplying Taxpayers lost their right to appeal. The present statutes do not provide the board with any discretion to deviate from the RSA 74:7a penalties. See Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's powers are entirely statutory); See also Daniel v. B & J Realty, ___ N.H. ___, slip op. at 2 (April 26, 1991)(statutory deadlines cannot be extended or waived without legislative authorization). We have reviewed Pelham Plaza v. Town of Pelham, 117 N.H. 178 (1977) and H.J. H Inc. v. State Tax Commission, 108 N.H. 203 (1967), which recognized extensions for accident, mistake or misfortune, but these cases preceded RSA 74:7-a, which was enacted effective April 1, 1978. Therefore, RSA 74:7-a controls, not the cases.

We note that RSA 74:5 requires the Town to mail out the inventory, which was apparently not done here. However, the Town's failure triggers the penalty under RSA 74:13, but this failure did not excuse the Taxpayers' failure to file. RSA 74:8 specifically addresses the issue of a town's failure to send the

inventory, and the statute merely provides the taxpayer an extension. Nothing in RSA ch. 74 excuses the filing, but rather the statutes place a burden on the taxpayer to file even if a town fails to send the blank inventory to the Taxpayer.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
George Twigg, III, Chairman

_____
Paul B. Franklin, Member

_____
Ignatius MacLellan, Esq., Member

_____
Michele E. LeBrun, Member

I certify that copies of the within Order have this date been mailed, postage prepaid, to Dennis N. Perreault, Esq., counsel for Webster Land Corp. and Nancy Grady, taxpayers; and the Chairman, Selectmen of Holderness.

_____
Brenda L. Tibbetts, Clerk

Date:

0009