

In re: David Irwin

Docket No.: 16751-97OS

ORDER

This order responds to the issues raised in the board's July 25, 1997 order. Pursuant to that order, the board held a hearing on September 8, 1997, to examine whether the board should sanction Irwin under RSA 71-B:7-a (supp. 1996). As described below, while the board has concerns about Irwin's conduct in this case, the board concludes no board sanction is required.

Chronology

The following is a brief chronology of the events underlying this matter.

- May 7, 1997** Board schedules hearing in Dupont v. Belmont, Docket No.: 15233-94PT (Dupont Appeal) for a July 24, 1997 hearing.
- July 21, 1997** Irwin sends letter to board and Town in Dupont Appeal which (rec'd by BTLA stated in toto: "I withdraw from representing Mr. Dupont in the July 22, 1997) above case. I assume he will represent himself at Thursday's hearing. I have sent the municipality's comparables to him." This purported withdrawal did not comply with TAX 201.11 (discussed further below).
- July 23, 1997** The board, pursuant to TAX 201.11, disallowed the purported withdrawal because the hearing had already been scheduled and was to be heard the next day.
- July 24, 1997** Board holds hearing in Dupont Appeal, opening hearing to address Irwin's withdrawal of appearance. Matter is concluded when the Taxpayer (Dupont) withdraws the appeal.

July 25, 1997 Board asserts its RSA 71-B:7-a (supp. 1996) jurisdiction against Irwin.

September 8, 1997 Board holds hearing concerning this matter.

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At the hearing on this matter, the board heard from Irwin and Dupont. Irwin asserted he could no longer represent Dupont because: 1) he thought the information in his (Irwin's) report may not have been accurate; 2) he learned of the possible inaccuracy the week before the hearing; and 3) he attempted to discuss the issue with Dupont to no avail. Dupont asserted he had no idea why Irwin would not continue to represent him.

The board concludes that Irwin had an honest belief that his report may have contained inaccuracies given certain activity that was taking place on property owned by Dupont. Dupont asserted that Irwin was incorrect and was looking at activities on a nonappealed property. The board has some questions about whether the information that Irwin received just before the hearing required the drastic action that he subsequently took. There were alternative ways to handle the possible discrepancy, including making a presentation to the board with full disclosure of the underlying issues. The board expects all witnesses to be completely honest. Nonetheless, the board concludes Irwin thought he was doing the right thing. We do wonder, however, why he concluded he could not appear yet he could allow the report to be submitted without his presence. Either the information was accurate or not.

Whatever the factual situation underlying the report, it was obvious to

the board that Dupont and Irwin did not see eye to eye concerning the underlying facts or how the appeal should be handled. This can be attributed to either the disagreement concerning the underlying facts or to personality differences. Therefore, we will assume that Irwin had legitimate grounds to withdraw his appearance.

Despite the above conclusion, the board has concerns about how Irwin handled his withdrawal of appearance. Specifically, the board has two concerns.

First, Irwin should have done a better job of researching the Property involved, including a more thorough inspection. This would have, presumably, revealed the underlying issues earlier than the week before the hearing. The board expects all agents and appraisers to perform diligent research and to

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perform this research sufficiently before the appeal is filed and the case is heard. If Irwin had done his research earlier, perhaps the subsequent problems of communication and representation would have been resolved with a better result.

Second, Irwin's conduct concerning this matter raises questions about his familiarity with the board's rules and with the proper way to protect a taxpayer's interest in an appeal after the withdrawal occurs. Concerning the board's rules, TAX 201.11 governs withdrawals of appearances. Irwin's July 21, 1997 letter did not comply with that rule, especially where the letter was not a motion. Because there was a hearing scheduled, the board was not required to automatically grant the withdrawal of appearance. TAX 201.11 (b). In addition to complying with the board's rules, Irwin should have been more diligent in protecting Dupont's rights. For example, assuming Irwin had been diligent in

his research (see above), upon discovery of the inaccuracy, Irwin should have been substantially more diligent in contacting Dupont to discuss this matter and to see if there was a way to preserve the representation at the hearing or to otherwise protect Dupont's rights such as exploring whether seeking a continuance would be of benefit. Instead, when Irwin's attempt to communicate with the Taxpayer failed, Irwin simply withdrew without giving the board sufficient information and without giving the Taxpayer a sufficient opportunity to protect his rights. The board does admit, however, that Dupont probably contributed to Irwin's frustration because Dupont did not return Mr. Irwin's telephone call. Perhaps in the future, Irwin would be advised to take additional steps to communicate with taxpayers such as by fax or by hand delivering a letter.

The board also notes, with disapproval, Irwin's statement that this was his first mobile-home park, and he had to learn as he went along. Agents should not use a taxpayer's case for educational purposes. Rather, agents should be knowledgeable enough to take on a case.

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Based on the above, the board has some concerns about Irwin's performance in this particular case, and there is substantial room for improvement. Nonetheless, the board concludes it will not take any steps under RSA 71-B:7-a against Irwin concerning this matter. This matter is therefore marked: "Closed; no further action."

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Concurred, unavailable for signature
Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to David Irwin; Michael J. Kasten, Esq., counsel for Mr. Irwin; Lawrence Dupont, Taxpayer; Jeffrey M. Earls, Agent for the Town of Belmont; and Chairman, Board of Selectmen for the Town of Belmont.

Date: September 30, 1997

Valerie B. Lanigan, Clerk

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