

In re: Mark Lutter

Docket No. 21527-06OS

ORDER

Pursuant to TAX 207.09, the board has conducted a preliminary review of the response (the April 27, 2006 “Answer of Respondent Mark Lutter” – “Answer”) filed in this proceeding.

The board determines reasonable cause exists to hold an adjudicative hearing as described in TAX 207.11. The hearing will address the concerns noted in the board’s March 8, 2006 Order and is scheduled for **June 15, 2006 at 11:00 a.m. in the board’s offices, 3rd Floor, Johnson Hall, 107 Pleasant Street, Concord, New Hampshire 03301.**

The Answer at Paragraph 35 (which pertains to Pemigewasset National Bank v. City of Franklin, BTLA Docket No. 19031-01PT (“Pemigewasset”)), asks for clarification regarding whether the board “has some complaint with his conduct in the Tilton case [First Savings & Loan Assoc. v. Tilton, BTLA Docket No. 17667-97 PT].” The parenthetical description in the board’s March 8, 2006 order of the “untimely filing of motion for enforcement” relates to the Tilton case reference in Pemigewasset and pertains to this action insofar as Mr. Lutter demonstrated a lack of understanding of the board’s rules and the specific ruling in Tilton and then misstated that ruling in the later Pemigewasset appeal. Tilton was resolved by the parties with a settlement agreement in October, 1999 without a board decision; several years later, on March 23, 2002, Mr. Lutter made a motion for enforcement (questioning assessments for 1999

and 2000) and that motion, as stated in the board's April 4, 2002 order, was "denied because it was untimely. See TAX 203.05 (f) and (j)." Mr. Lutter cited Tilton in two filings in the Pemigewasset appeal (to support a March 19, 2003 objection to the town's dismissal motion and an April 25, 2003 motion for reconsideration of the dismissal), misstating the basis for the board's "decision" in Tilton (to the effect the board supposedly "would not enforce the settlement agreement" and that "settlement agreements [appear to be] only binding for the taxpayer and not the Town"). The board's March 28, 2003 order in Pemigewasset accurately described Tilton as a case where Mr. Lutter simply waited too long (by several years) to make an enforcement motion.

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 a copy of the foregoing Order has this date been mailed, postage prepaid, to: Steven E. Hengen, Esq. and Lisa M. Lee, Esq., Ransmeier & Spellman PC, PO Box 600, Concord, NH 03302, counsel for Mark Lutter; and Stephan Hamilton, City of Manchester, Chairman, Board of Assessors, One City Hall Plaza-West Wing, Manchester, NH 03101, Interested Party.

Dated: 5/17/06

Anne M. Stelmach, Clerk