**Paul Pagliarulo**

**v.**

**Town of Jackson**

**Docket No. 23037-06PT**

**DECISION**

In this appeal, the board has received: (i) a Motion for Reconsideration ("Motion") by the "Taxpayer" of the board's March 20, 2009 Decision denying the appeal based on his default (non-attendance at the scheduled hearing); and (ii) a letter request for reimbursement of costs ("Request") from the "Town" under Tax 202.06 based on that non-attendance. The board denies the Motion and denies the Request for the reasons stated below.

In the Motion, the Taxpayer seeks reconsideration of the default entered in this appeal when he did not attend the hearing duly scheduled for March 19, 2009. The board's rules are clear that if a taxpayer fails to make a timely motion in writing to reschedule the hearing date or appear within 30 minutes of the time scheduled (9:00 a.m.), the taxpayer will be defaulted and the appeal will be dismissed. See Tax 202.06(i). To be fair to all parties, the board consistently applies this rule since some time and effort by the other party is always involved in preparing for and attending a scheduled hearing.

Upon careful review of the Motion and the evidence presented, the board finds the Taxpayer has not met his burden of demonstrating why the board's default rule should not be applied in this appeal. Good reason is required to grant a reconsideration motion. See Tax 201.37 and RSA 541:3.

The record reflects the Taxpayer first telephoned the board's office on March 16, 2009, three days prior to the hearing, to discuss various difficulties in proceeding with the hearing on March 19th, even though this hearing had been scheduled three months earlier (as reflected in the board's December 18, 2008 Hearing Notice). In his telephone conversation with the board's Clerk at 4:15 p.m. on March 16th, the Taxpayer stated he had some personal difficulties and made a verbal request to continue the hearing. He was asked to put his request in writing, copying the Town, so the board could act on it, but he did not do so. The Clerk nonetheless advised the board of the Taxpayer's oral request for a continuance, which the board denied. The Clerk then made several attempts to reach the Taxpayer by telephone on March 18, 2009 to communicate this outcome, but there was no answer and no voicemail on his phone. On the day of the hearing, March 19, 2009, the Taxpayer called again. He spoke with the board's Deputy Clerk, who advised him the board had denied his verbal request for a continuance and the procedures available for a reconsideration motion because a default would be entered.

In light of these facts, it is clear the Taxpayer could have filed a written motion for continuance of the hearing, sending a copy to the Town. The Motion cites Tax 201.26 (Continuances), but this rule specifies what is required for the board to grant a continuance, including a written motion and the demonstration of "extraordinary circumstances" where a continuance would serve "justice and efficiency." The board finds the Taxpayer has not met the standards established by this rule and the Motion is therefore denied.

As for the Request, the Town seeks reimbursement of $514.95 in costs from the Taxpayer based on an "Invoice" submitted by Jason Call of Northtown Associates, LLC, the Town's assessor, which states he came to the scheduled hearing on March 19th and waited until "10:30 AM" at the board's office. The board's records show, however, the Deputy Clerk met with Mr. Call and advised him at 9:50 a.m. the Taxpayer had called and would not come to the hearing and that he would be defaulted. While the Town's assessor was clearly inconvenienced by the Taxpayer's nonattendance at the hearing, the board finds there are additional extenuating circumstances that advise against the imposition of costs.

In the Request, Mr. Call acknowledges the Taxpayer called "seven days prior to the hearing" and left a message to advise he "couldn't make the hearing next week due to family issues," but Mr. Call did not make much of an effort to contact him to discuss the matter further. Mr. Call called the board's Clerk on March 11, 2009 to advise her of this call from the Taxpayer. The record reflects Mr. Call told her the Town "was not totally against it, but were hoping the case would go on as scheduled," a somewhat ambiguous indication of the Town's intentions.

While the Taxpayer could have been more diligent in communicating with the Town, as well as the board, and in complying with the board's rules, the board does not find imposing hundreds of dollars in costs on the Taxpayer is proper in light of all the facts presented (including the personal health and other difficulties he has mentioned) and the somewhat contentious atmosphere between the parties, perhaps caused in part by the Taxpayer's rejection of an offer of settlement from the Town in June, 2008 (mentioned in the Request). Any request for costs must be considered under the standards set forth in Tax 201.39, which requires a finding that a party has acted "frivolously." While the Taxpayer failed to comply with the board's rules regarding continuances and could have acted more responsibly, the board is unable

to find he acted frivolously, given the totality of the facts presented, including the health problems and family difficulties he has mentioned. In other words, the board finds denial of the appeal is a sufficient sanction on the Taxpayer, without the imposition of the very substantial costs claimed by the Town.

For all of these reasons, the Motion and the Request are both denied.

Any appeal of the Decision must be by petition to the supreme court filed within 30 days of the date of this Order. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**CERTIFICATION**

I certify that copies of the foregoing Order have this date been mailed, postage prepaid, to: Paul Pagliarulo, PO Box 11, Jackson, NH 03846, Taxpayer; Chairman, Board of Selectmen, Town of Jackson, PO Box 268, Jackson Falls Center, NH 03846; and Jason Call, Northtown Associates, LLC, 1794 Presidential Highway, Jefferson, NH 03583, representative for the Town.

Date: May 15, 2009

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Anne M. Stelmach, Clerk