

Georgia-Pacific Gypsum, LLC

v.

Town of Newington

Docket Nos.: 23457-07PT/24196-08PT

ORDER

The board scheduled a limited hearing on June 3, 2010 on two motions filed by the “Town”: (1) a “Non-Assented to Motion to Enforce Settlement Agreement”; and (2) a “Non-Assented to Motion to Enforce Request for Production of Documents.” After the board heard testimony and arguments on the first motion, however, the second motion was withdrawn (because the Taxpayer agreed to comply with the Town’s document request).

In the first motion, the Town contends, and the Taxpayer denies, the appeals should be dismissed because the parties, through their representatives, agreed in mid-November, 2009 to settle on a specific assessment for each of the two years under appeal.¹ Upon review of all the documents, testimony and arguments presented, but without extensive elaboration of the conflicting testimony and documents presented at the hearing, the board finds the Town did not

¹ “[A]t \$12,667,894 with no equalization and no interest,” according to the Town’s motion.

meet its burden of proving there was a “meeting of the minds” regarding settlement.² The motion is therefore denied.

There is little doubt the Town’s contract assessors (Monica Gordon and Wil Corcoran of Corcoran Consulting Associates, Inc.) believed the Taxpayer, acting entirely through its tax representative, William Carroll of International Appraisal Company, made a direct and definite offer to settle these appeals in a November, 2009 telephone conversation with Ms. Gordon.³ They promptly acted on this belief by “polling” the Town’s selectmen regarding the specific settlement terms proposed by Mr. Carroll and obtaining their approval the next day. When they contacted Mr. Carroll to communicate this approval, however, he disagreed that a settlement had occurred. At the hearing, Mr. Carroll, testifying under oath, denied making any statement to Ms. Gordon offering to settle the appeals on behalf of the Taxpayer at a specific amount.

The evidence presented regarding these disputed facts is mixed and ambiguous at best and is not sufficient to meet the Town’s burden of proof. Mr. Carroll directly contradicted key points in Ms. Gordon’s recollection of what occurred during their telephone communications.

² For the relevant law pertaining to settlement agreements, see, e.g., Infinity Sherwood Properties, Ltd. Pte. v. Tilton, BTLA Docket No. 24298-08PT (April 19, 2010), at pp. 2-3:

The board has the inherent authority to determine whether this . . . appeal has been settled. See Appeal of Land Acquisition, 145 N.H. 492, 494 (2000). Ideally, settlements should be embodied or confirmed in one clear document, signed by each party or its representative, and stating all material terms, but an “oral settlement agreement” can also be valid, id. at 496, even if there is no writing signed by the party to be bound by the settlement. The board’s authority to act includes the ability to “mark[] the case as ‘settled’ on its docket” when it finds a settlement has been reached. Id. at 495.

. . .

Whether oral or written, “[s]ettlement agreements are contractual in nature” and require, in addition to offer, acceptance and consideration, a “meeting of the minds” which “occurs when there is mutual assent to the essential terms of the contract. (Citations omitted.)” See, e.g., Poland v. Twomey, 156 N.H. 412, 414 (2007). Deciding whether a settlement was entered into and making findings regarding its terms are mixed questions of law and fact and a tribunal’s determination will not be overturned unless it is clearly erroneous. Id.

³ The motion mistakenly refers to the date of this conversation between Ms. Gordon and Mr. Carroll as “November 19,” but, according to Ms. Gordon, it occurred on “Wednesday,” which is November 18, 2009 on the calendar.

(Her notes, submitted as Municipality Exhibit A, are not dated and are not conclusive regarding what was discussed or agreed to and with whom.) Mr. Carroll also denied ever having the authority to enter into a settlement on behalf of the Taxpayer and presented Taxpayer Exhibit No. 1, a “Statement of Agency,” to corroborate his statement; this document does not mention any authority given by the Taxpayer to him or his company (International Appraisal Company) to enter into a settlement of any sort.

In addition, the supposition that the parties reached agreement upon a settlement based upon one or more telephone conversations between Ms. Gordon and Mr. Carroll in mid-November, 2009 is not consistent with the subsequent chronology of proceedings. The record reflects the Town made no attempt to obtain a dismissal of the appeals promptly after these conversations. Instead, the Town (on November 23, 2009) filed a Motion to Continue the merit hearing (then scheduled for December 8, 2009), which the board granted. That motion mentioned the Town was “working on finalizing its case” and was “awaiting responses” to interrogatories from the Taxpayer. The Town then continued its discovery and other preparations. The Town did not file its motion to “enforce” the settlement until May 14, 2010, just three weeks prior to the rescheduled hearing date.

In summary, the board does not agree with the Town’s arguments or request for relief because, on the record presented, the Town failed to establish a settlement was validly entered into by the Taxpayer through its representative, Mr. Carroll. The Town’s motion is therefore denied and no dismissal is proper on the grounds alleged.

In retrospect, the board finds the time and expense devoted to resolving this dispute regarding whether a settlement was agreed to could have been avoided had the parties demonstrated more diligence. The individuals involved are quite experienced in handling tax

appeals for municipalities and taxpayers, respectively, and should have done a better job of clarifying and documenting their respective settlement communications (as well as the limits, if any, on their authority to settle tax appeals without further approvals) in order to avoid the problems encountered in this factual dispute.

The board has rescheduled the merit hearing on these appeals for August 12, 2010. (A separate Hearing Notice is enclosed.)

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify a copy of the above Order has been faxed this date to: Henry LaCap, Esq., Janata, LaCap & Associates, P.C., 155 North Main Street, New City, New York 10956; counsel for the Taxpayer; Newington Board of Selectmen, 205 Nimble Hill Road, Newington, NH 03801; and Corcoran Consulting Associates, Inc., Bayside Village, PO Box 1175, Wolfeboro Falls, NH 03896, Contracted Assessing Firm.

Dated: June 14, 2010

Anne M. Stelmach, Clerk