In re: Patrick F. Bigg

Docket No.: 23334-07OS

DECISION

On January 7, 2008, the board held the noticed adjudicative hearing in this matter as provided in the board's rules, see Tax 207.11, and as scheduled in the board's December 7, 2007 Order. Mr. Bigg appeared at the hearing with his attorney, John G. Cronin, Esq. Also in attendance were Gary Roberge and Loren J. Martin of Avitar Associates of New England, Inc. ("Avitar"), the assessing company for the Town of Tilton (the "Town"), and David Cornell and Stephan Hamilton of the Board of Assessors for the City of Manchester (the "City").

The board first heard from Attorney Cronin who then presented testimony from Mr. Bigg. Attorney Cronin also submitted two affidavits from Mr. Bigg's clients: one from Marc Bourgeois, Managing Member of Summa Humma Realty, LLC, ("Summa Humma Realty"), a taxpayer in the Town, that was not signed and not notarized (apparently because it had been prepared on short notice); and one from Bernard Gamache, manager of an investment company (1850 Elm Street, LLC) that purchased a property located in the City from the Visiting Nurse Association ("VNA"). The board accepted these documents as exhibits. The board also heard comments from Mr. Hamilton in response to Mr. Bigg's testimony.

The hearing addressed the concerns mentioned in the November 26, 2007 Order initiating these proceedings because they had not been satisfactorily resolved by Mr. Bigg's written response filed just three days later (on November 29, 2007). The board's specific concerns pertain to the quality of representation provided in the tax year 2006 appeals filed on behalf of Summa Humma Realty and VNA (BTLA Docket Nos. 22764-06PT and 22863-06PT, respectively) and Mr. Bigg's obligations under RSA 71-B:7-a (Representation by Nonattorneys) and Tax 207.03 (Standards of Conduct) as a tax representative. The Town and the City received copies of the board's orders and Mr. Bigg's written response as interested parties.

At the hearing, Mr. Bigg and his attorney conceded certain "miscommunications" had occurred which resulted in the unnecessary filing of each appeal. Mr. Bigg requested withdrawal of the Summa Humma Realty appeal on November 1, 2007 and the VNA appeal on December 3, 2007. Although he intended to bill his clients for the filing fees, Mr. Bigg maintained they had suffered no harm or "detriment" as a result of the unnecessary filings.

Regarding the specifics of the "miscommunications," Mr. Bigg retracted certain incorrect contentions made in his November 29, 2007 response, where he "completely disagree[d]" with Ms. Martin's statements in her September 20, 2007 letter to the board accompanying the Town's "checklist" required after the filing of the appeal. In particular, Mr. Bigg corrected his statement that he had a conversation with Ms. Martin about the Summa Humma Realty property only "after the appeal had already been filed to the BTLA" (on August 6, 2007). In his sworn testimony, Mr. Bigg conceded Ms. Martin's recollection of events was, in fact, correct and that he did not have a conversation with her regarding this property at any time but rather his recollection of a conversation with her related to another property. Instead, one of his employees, William Boatwright, had met with Ms. Martin and had agreed to withdraw the abatement application

(before the appeal was filed with the board) because of information provided by the Town regarding the level of assessment in tax year 2006. Mr. Bigg acknowledged his own misstatements and indicated better communications (with his own employee, Mr. Boatwright, presumably) would have caused him not to file the Summa Humma Realty appeal with the board.

As to the VNA appeal, Mr. Bigg again explained the abatement request to the City and appeal to the board also occurred because of "miscommunications," this time with his client, Mr. Gamache. Mr. Gamache's company purchased the property from VNA after the assessment date (April 1, 2006). Mr. Gamache claims not to have known the property was tax exempt for the entire 2006 tax year and that he "paid property taxes for the tax year." (See Exhibit 1.) Mr. Bigg testified he assumed Mr. Gamache's statements to be true, checking the City's "online" information for the assessed value, but not the tax bills or other information indicating VNA was tax exempt and no taxes had in fact been levied or paid to the City by anyone for tax year 2006. Cf. RSA 76:16 and 76:16-a (only a "person aggrieved" by the imposition of a tax can apply for an abatement or file an appeal).

In response to Mr. Bigg's testimony, Mr. Hamilton indicated information regarding the tax exempt status of the VNA property was available from the tax bill information, also provided online by the City. The board further notes the exemption is indicated on the assessment-record card itself, which should be a basic part of any analysis regarding whether to seek an abatement. Mr. Hamilton further testified he had met with two employees of Mr. Bigg (Mr. Boatwright and Brandon Potter) on August 16, 2007 (eight days prior to the filing of the VNA appeal with the board on August 24, 2007) and had advised them the property was tax exempt. Notwithstanding this meeting, "miscommunications" occurred between Mr. Bigg and his employees which caused

Mr. Bigg to proceed to file the appeal. Mr. Bigg is therefore not correct in stating (in his November 29, 2007 letter to the board) that "the exempt status" of the VNA property was not "revealed to us" (his company) until the City's October 22, 2007 letter to the board. In his testimony, Mr. Bigg conceded these points and admitted the VNA tax abatement request and appeal should not have been filed for tax year 2006.

On balance, the board is persuaded these errors pertaining to the Summa Humma Realty and VNA appeals occurred largely because of "miscommunications" that were inadvertent in nature, not the result of any deliberate or intentional misconduct. Neither the Town nor the City disagreed with Mr. Bigg's explanations and admissions at the hearing regarding these errors and they expressed no position regarding culpability for what had caused them.

The board finds the miscommunications acknowledged by Mr. Bigg, while regrettable and no doubt entirely avoidable with proper diligence, do not rise to a level where imposition of any of the sanctions prescribed in Tax 207.06 is warranted at this time. The board makes this finding mindful of the preponderance of the evidence standard noted in Tax 207.12(b) and the bases for sanctions articulated in Tax 207.05. The board will therefore close this docket.

In light of this board review, however, it is incumbent on Mr. Bigg to pay closer and more careful attention to his ongoing obligations as a tax representative under RSA 71-B:7-a and Tax 207.03. As reflected by the facts presented, these obligations require Mr. Bigg to develop better communications and coordination with his employees in order to determine the actual tax status of a property before any abatement request is made or appeal filed. Such steps are basic and fundamental, not just to prevent "detriment" or harm to Mr. Bigg's own clients[1] (the

[1] The board further notes a taxpayer may lose credibility in dealing with the municipality and suffer additional detriment if the tax representative pursues positions which reflect chronic miscommunications or other lack of proper preparation.

argument advanced by his attorney at the hearing regarding the purpose of these obligations), but also to preserve the integrity and efficiency of the tax abatement and appeal process, which are important and serious matters for the municipalities and their taxpayers as a whole (a point also noted by the City at the hearing). In addition, the orderly administration of the board's docket requires it not to be cluttered with unnecessary or frivolous appeals that are later withdrawn. Needless cost, effort and time delays are consumed when unwarranted tax abatements are pursued by tax representatives. Mr. Bigg is therefore expected to take all necessary steps of his own accord to avoid a recurrence of these or other problems pertaining to the representation of taxpayers that may require further investigation and remedial action by the board.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

Certification

I hereby certify copies of the foregoing Decision have been mailed, this date, to: John G. Cronin, Esq., Cronin & Bisson, P.C., 722 Chestnut Street, Manchester, NH 03104, counsel for Patrick F. Bigg; Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258; Chairman, Board of Selectmen, Town of Tilton, 257 Main Street, Tilton, NH 03276; and Chairman, Board of Assessors, City of Manchester, One City Hall Plaza-West Wing, Manchester, NH 03101, Interested Parties.

Date: January 18, 2007

Anne M. Stelmach, Clerk