

Marcello Stisi

v.

Town of Bartlett

Docket No.: 24460-08PT

ORDER

In an August 2, 2010 order, the board awarded the “Town” costs pursuant to RSA 71-B:9 and Tax 201.39 in the amount of \$750.00 for Ellis B. Withington (of Mayflower Valuation, Ltd.) and \$102.00 for Lynn P. Jones, Administrative Assistant to the selectmen, for their attendance at a duly noticed hearing on July 8, 2010 which the “Taxpayer” did not attend. The Taxpayer, on August 13, 2010, filed a Motion for Reconsideration (“Motion”), accepting the board’s order relative to the mileage cost for Ms. Jones but contesting the reasonableness of the \$750.00 cost relative to Ellis B. Withington’s attendance and travel. The board granted the Motion and heard arguments from both parties as the first issue at the merits hearing on October 27, 2010.

While the board stated from the bench that it would address the Motion with the merit decision, the board is issuing this separate Order relative to costs, because the board has directed its RSA 71-B:14 review appraisers to perform an investigation and file an appraisal estimating the market value of the “Property” (see enclosed letter).

The board, after consideration of the testimony presented on the costs issue, amends the August 2, 2010 order relative to Mr. Withington's costs. Tax 201.39(d) provides "costs for a party's expert witness shall be limited to those reasonable fees incurred for the witnesses testimony...." (Emphasis added). The board finds no costs for Mr. Withington's hearing attendance or related travel should be assessed against the Taxpayer because Mr. Withington is not certified pursuant to RSA 21-J:14-f to perform assessing work for a New Hampshire municipality. Mr. Withington signed in at the hearing as an "Assessor Consultant" and testified extensively as to his general assessing work performed in the Town and specifically to the property under appeal. Upon questioning by the board, however, Mr. Withington stated he was not certified by the department of revenue administration ("DRA") pursuant to RSA 21-J:14-f because he had not kept current with the educational requirements enumerated in RSA 21-J:14-f, II.

The board has reviewed the complete certification requirements of RSA 21-J:14-f and the penalties imposed under RSA 21-J:39, IV as cited below.

RSA 21-J:14-f Certification Required. –

I. Every person, whether working individually, for a firm or corporation, or as a municipal employee, making appraisals of a municipality for tax assessment purposes, except elected officials making appraisals pursuant to RSA 75:1, shall be certified by the department according to rules adopted by the assessing standards board as provided in paragraph II. Department of revenue administration employees shall be certified at the level appropriate to their duties.

II. The assessing standards board shall adopt rules, pursuant to RSA 541-A, relative to qualifications for certification, requirements for continuing education, and decertification of persons required to be certified in paragraph I. Such rules shall specify the minimum qualifications with respect to education and training required for certification according to the following functional job categories ranked in ascending hierarchical order:

- (a) Building measurer and lister.
- (b) Property assessor assistant.
- (c) Property assessor.
- (d) Property assessor supervisor.

III. No person, except boards of assessors and selectmen making appraisals pursuant to RSA 75:1, shall make appraisals without first obtaining the certification required by this section. Certification is non-assignable and cannot be transferred. Any person who willfully fails to obtain certification as provided in this section shall be subject to the penalties imposed under RSA 21-J:39, IV.

21-J:39 Criminal Penalties. –

IV. (a) No person, except elected officials making appraisals pursuant to RSA 75:1, shall willfully engage in making appraisals of a municipality for tax assessment purposes, unless such person is certified as provided in RSA 21-J:14-f.

(b) No person engaged in making appraisals of a municipality for tax assessment purposes shall willfully fail to maintain and provide the department access to the records required to be kept under RSA 21-J:14-e.

(c) Any person who violates subparagraph (a) or (b) shall be guilty of a class B misdemeanor.

The statutes clearly require individuals doing assessing work (except elected officials) to be certified by the DRA as having met the educational and training requirements set forth by the assessing standards board and administered by the DRA or be subject to decertification pursuant to RSA 21-J:14-g or the penalties set out in RSA 21-J:39, IV.

Based on the statutory requirements set forth above, the board determines Mr. Withington had no authority to perform assessing work in Bartlett or any other New Hampshire municipality and, thus, it is not “reasonable” to assess costs to the Taxpayer for his hearing attendance and mileage.

In brief, the board finds, because Mr. Withington is not certified to perform assessing work in New Hampshire, the August 2, 2010 order is amended to limit the awardable costs solely to the mileage expense of \$112.00 for the hearing related travel of Lynn P. Jones, Administrative Assistant. The board further amends the August 2, 2010

order requiring the Taxpayer pay the Town \$102.00 within thirty (30) days of the clerk's date below, sending a copy of a payment confirmation letter to the board.

Because this Order modifies the original August 2, 2010 order adversely to the Town, it must timely file its own rehearing motion with the Board pursuant to RSA 541:3 if the Town wishes to appeal to the supreme court. Appeal of White Mountain Education Association, 125 N.H. 771, 775 (1984) (when a decision is reversed by an administrative board on rehearing, the "newly losing party" must move for rehearing before appealing to supreme court); see also Supreme Court Rule 10. Further, if the Taxpayer wishes to appeal this Order to the supreme court, it must do so within thirty (30) days of the clerk's date below pursuant to RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Todd Haywood, Granite Hill Municipal Services, PO Box 1484, Concord, NH 03302, representative for the Taxpayer; Chairman, Board of Selectmen, Town of Bartlett, RFD 1, Box 49, Intervale, NH 03845; Stephan W. Hamilton, Director of Property Appraisal Division, State of New Hampshire, Department of Revenue Administration, 109 Pleasant Street, Concord, NH 03301; and a courtesy copy to Ellis B. Withington, Mayflower Valuation, Ltd., 150 Bump Rock Road, Plymouth, MA 02360.

Date: 11/10/10

Anne M. Stelmach, Clerk