

66 Dracut Road

v.

Town of Hudson

Docket #24921-09PT

ORDER

The “Town” indicated in its response on the checklist and the October 27, 2010 letter addressed to Anne M. Stelmach, Clerk from Jim Michaud, Assistant Assessor,¹ that the “Taxpayer” had not signed the abatement application filed with the Town and thus the abatement had been denied. (See also copy of May 25, 2010 letter signed by Kenneth Massey, Chairman of the Hudson Board of Selectmen to the property owner.) As a consequence, a clerk order dated November 4, 2010 was issued directing the Taxpayer to respond as to why the appeal should not be dismissed due to the lack of the Taxpayer’s signature on the abatement application in accordance with the board’s ruling in Wilson v. Town of Sugar Hill, BTLA Docket No.: 24093-08PT.

In the Bigg Response, Mr. Bigg asserted the Taxpayer had signed the abatement application but due to a clerical error, the pre-taxpayer signed copy of the abatement application had been filed with the Town and, despite an attempt by Mr. Bigg to submit the

¹ This letter was not received by the board when the checklist was filed on October 27, 2010. However, a copy of that letter was attached in Mr. Bigg’s November 11, 2010 response (“Bigg Response”).

proper signature page to the abatement application (see Mr. Bigg's June 3, 2010 letter to the Chairman, Board of Selectmen), the Town denied the abatement due to the lack of signature. Brian C. McDonagh, the Town's attorney, filed an "Objection" and an "Amended Objection" collectively (the "Objections") to the Bigg Response asserting the Taxpayer had not submitted "sufficient justification" for the board to not dismiss the appeal in keeping with Wilson. The board disagrees for the following reasons.

Tax 203.02(d) is the board's rule that implements the provision of RSA 76:16, III (g) that the abatement application shall be signed by the taxpayer.

Tax 203.02(d):

The taxpayer shall sign the abatement application. An attorney or agent shall not sign the abatement application for the taxpayer. An attorney or agent may, however, sign the abatement application along with the taxpayer to indicate the attorney's or agent's representation. The lack of the taxpayer's signature and certification shall preclude an RSA 76:16-a appeal to the board unless it was due to reasonable cause and not willful neglect.

After a review of the Bigg Response and the Objections, the board finds the lack of the Taxpayer's signature on the abatement application initially filed with the Town was due to "reasonable cause" and not "willful neglect." The date the Taxpayer signed the abatement application form was February 16, 2010 predating the filing date of the abatement application with the Town of March 1, 2010. The fact that Mr. Bigg had in his possession the Taxpayer's signed abatement application, but inadvertently submitted the pre-signed prepared abatement application to the Town, indicates his act was not due to purposeful or willful neglect but rather a mistake or clerical error.

To obtain some guidance as to the definition of the term "willful neglect", the board has reviewed New Hampshire case law and Black's Law Dictionary. Ives v. Manchester

Subaru, Inc., 126 N.H. 796, 801 (1985), states:

“A willful act is a voluntary act committed with an intent to cause its results. Black’s Law Dictionary, at 1434 (rev. 5th ed. 1979). It is not, by contrast, an accident or an act committed on the basis of a mistake of fact.”

Black’s Law Dictionary at 1600 (6th ed. 1990), defines “willful neglect” as”

“[t]he intentional disregard of a plain or manifest duty, in the performance of which the public *** has an interest. Willful neglect suggests intentional, conscious, or known negligence – a knowing or intentional mistake.” Black’s at 810, defines “intent” as “a state of mind in which a person seeks to accomplish a given result through a course of action.” Black’s at 810, defines “intentionally” as doing “something purposely, and not accidentally.” Black’s at 472, defines “disregard” as “[t]o treat as unworthy of regard or notice; to take no notice of, to leave out of consideration; to ignore; to overlook; to fail to observe.”

The board finds the facts here are easily distinguishable from those in Wilson. In Wilson, the taxpayer’s representative disagreed with the board’s rule that a taxpayer sign the abatement application and knowingly and purposely chose to ignore the board’s rule. Here, no intentional or purposeful motive has been presented. Rather, the Taxpayer did sign the abatement application but the Taxpayer’s representative inadvertently supplied the unsigned copy of the abatement application to the Town. Moreover, after being made aware of the error, Mr. Bigg provided the signed copy to the Town. Thus, the board finds its holdings in Wilson are not applicable to the facts in this case.

Because the Town never reviewed the abatement application on its merits, pursuant to Tax 203.07, the board orders the parties to meet and for the Town to review the Taxpayer’s basis for the abatement (including the attached appraisal). See attached Report of Settlement Meeting & Order. If the parties cannot resolve the appeal through the Tax 203.07 mediation process, the board will schedule a hearing in due course.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

CERTIFICATION

I hereby certify a copy of this Order has been mailed this date, postage prepaid, to: CPTM Consulting Group, LLC, Attn: Patrick Bigg, President 10 Commerce Park North - Suite 13B, Bedford, NH 03110, representative for the Taxpayer; Brian C. McDonagh, Esq., Hage Hodes Professional Association, 1855 Elm Street, Manchester, NH 03104, counsel for the Town of Hudson; and Chairman, Board of Selectmen, Town of Hudson, 12 School Street, Hudson, NH 03051.

Dated:

Anne M. Stelmach, Clerk