

**Millennium Borthwick, II, LLC, et al.**

**v.**

**City of Portsmouth**

**Docket Nos.: 25356-09PT, et al.**

**(SEE ATTACHED LISTING OF ALL 17 PORTSMOUTH APPEALS)**

**ORDER**

On June 8, 2011, the “City” filed a Motion for Conditional Default (“Motion”) against the “Taxpayer” in each of these 17 appeals. The Motion seeks entry of sanctions, including a “conditional default,” because Christopher Snow of Property Tax Advisors, Inc., the Taxpayers’ representative:

- (1) failed to have his clients answer the City’s interrogatories, but rather did so himself;
- and
- (2) should be precluded from using “appraisals not submitted during the settlement meetings.”

Mr. Snow filed a “Response” to the Motion on June 15, 2011 objecting to these sanctions.

Upon review, the board finds the Motion should be granted in part and denied in part, as follows:

- A. Pursuant to Tax 201.04, each Taxpayer is hereby placed in default (for the reasons

- explained in detail below) and, unless the default is cured as prescribed below, the “Final Default” sanction stated in Tax 201.05 shall be entered in each docket;
- B. To cure the default and avoid this sanction, Mr. Snow, within thirty (30) days of the Clerk’s date shown below, shall in each appeal: (1) review his interrogatory answers and consult with his clients (the Taxpayers) to decide who is most knowledgeable to answer the City’s interrogatories fully and in compliance with the applicable discovery rules (particularly, Superior Court Rule 36 pertaining to “Written Interrogatories”); and (2) provide the City with a complete set of interrogatory answers under oath; and
- C. Mr. Snow is barred from using any appraisal not submitted to the City by the time of the settlement meeting at the substantive hearing for each appeal (except to the extent there is material attached to the appeal document that can be deemed an appraisal, as prescribed in Tax 102.07; if so, then such material can be presented at the hearing).

The board’s findings and reasons for these rulings are discussed briefly below.

It is fundamental that each tax representative is obligated to have a “working knowledge” of the board’s rules and to comply with them in good faith. See, e.g., Tax 207.03 (Standards of Conduct). Tax 201.19 specifically pertains to “Discovery” and provides that “[e]xcept as modified by these rules, the superior court discovery rules shall apply to all board proceedings.” (See also Tax 202.05.) Thus, compliance with the superior court’s discovery rules is required of each Taxpayer and it is the representative’s responsibility to achieve such compliance.

Superior Court Rule 36 governs interrogatories and how they should be answered. In particular, this rule provides that interrogatives can be served on each “party” and it is that party’s obligation to answer them, as follows: “Interrogatories shall be answered in writing under

oath by the party upon whom served, if an individual, or, if a public or private corporation, a partnership or association, by an officer or agent who shall furnish all information available to the party.” Further, “[i]f a party, who has furnished answers to interrogatories, thereafter obtains information which renders such answers incomplete or inaccurate, amended answers shall be served . . .” Id.

The plain meaning of these provisions is that every tax representative who receives interrogatories served on his taxpayer clients has a duty to advise them of these discovery requirements and to assist them in furnishing answers “in writing under oath” based upon “all information available to the party (the Taxpayer).” While, in theory, a tax representative could be the “agent” having all such information, it is more probable that the person most knowledgeable regarding at least some of the interrogatories will be an employee or officer of the taxpayer entity (and not the tax representative, Mr. Snow). In the Response, Mr. Snow states he filed the appeals as an authorized agent of each taxpayer, but this fact is not sufficient, in and of itself, to conclude he is the most appropriate person to answer the interrogatories on each taxpayer’s behalf under oath.

Taking a common sense approach to these discovery obligations, there may be some interrogatories (such as the basis for a valuation analysis or opinion of value) where a tax representative is the most logical and reasonable person to answer or may be the person who received and reviewed the relevant documents prepared or compiled by others (such as income and expense statements). In other instances, however, the person most capable of answering an interrogatory fully and completely will be someone else and therefore the board finds it is reasonable for the City to object to answers where it is unclear who is the person (or persons) with the requisite knowledge needed to comply with each Taxpayer’s discovery obligations.

This approach also comports with the board's general experience in discovery matters. For example, when an attorney represents a taxpayer he or she will not answer interrogatories under oath, but instead require an officer, employee or another agent of the client taxpayer to do so.

For these reasons, the board finds the City's general objection to Mr. Snow signing the interrogatories under oath on the Taxpayers' behalfs has partial merit, unless Mr. Snow can confirm in the interrogatory answers he will provide to the City, in writing and under oath, which answers are based on his own knowledge and which were based on information supplied by others and can then either identify those persons or have them sign the answers under oath themselves. As noted above, Mr. Snow shall comply with these rulings and provide amended answers to each set of interrogatories to the City within thirty (30) days of the Clerk's date shown below.

Finally, the board has ruled in prior appeals involving Mr. Snow that appraisals cannot be submitted after the settlement meeting required by the board's mediation rules. See Tax 203.07; and, e.g., the board's orders in Rose Lawn Properties, LLC v. Town of Durham, BTLA Docket No. 24671-08PT, Sttipfield, LLC v. Town of Pittsfield, BTLA Docket No. 25366-09PT, et al., and Telegraph Publishing Co. v. Town of Hudson, BTLA Docket No. 25377-09PT. For the reasons mentioned in those orders, the board finds the relief requested by the City (exclusion of subsequently submitted appraisals) is a reasonable and appropriate remedy. As in those appeals, Mr. Snow is ordered to certify to the board (in writing within ten (10) days) that he has provided a copy of this Order to the Taxpayers in these appeals.

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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Albert F. Shamash, Esq., Member

**CERTIFICATION**

I hereby certify that copies of the foregoing Order have been mailed this date, postage prepaid, to: Christopher Snow, Property Tax Advisors, Inc., 125 Brewery Lane, Suite 6, Portsmouth, NH 03801, representative for the Taxpayers; and Chairman, Board of Assessors, City of Portsmouth, 1 Junkins Avenue, Portsmouth, NH 03801.

Date: July 7, 2011

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Anne M. Stelmach, Clerk