

**Walgreen Company**

**v.**

**Town of Hampstead**

**Docket No. 25417-09PT**

**DECISION**

For the reasons stated below, the board finds the “Taxpayer” has not complied in good faith with the board’s rules governing “Mediation” (Tax 203.07) and the curing of a default (Tax 201.04 and 201.05). The Taxpayer is therefore placed in final default and the appeal is dismissed.

Parties and their representatives have an obligation to comply in good faith with the board’s rules, including those pertaining to Tax 203.07 as well as the terms of any default order entered for non-compliance. The board promulgated this mediation rule in 2009, after due notice to all interested parties and a formal rule making process which included the opportunity for public comment on the proposed rule. The documents submitted by the parties and discussed below reflect a manifest failure to comply, not only with the mediation rule, but also with the board’s specific orders regarding it and the ensuing default.

On November 10, 2010, the board’s clerk issued an order directing the parties to participate in mediation (within a four month period) and file the required mediation report with the board by March 10, 2011. When neither the Taxpayer nor the “Town” complied, the clerk

issued subsequent orders on March 18, 2011, placing each in “default” for such non-compliance and prescribing a ten (10) day period to cure. The consequence for the Taxpayer for non-compliance with the March 18, 2011 Order was explicitly spelled out as follows: “the Taxpayer will be placed in final default pursuant to Tax 201.05 and the appeal will be dismissed.”

Both the Town and the Taxpayer responded by filing signed mediation reports within the ten (10) day period prescribed for curing the default. These documents, however, demonstrate no mediation meeting of any kind (either in person or by other means, as prescribed in Tax 203.07(d)(1)) occurred during the four month period prescribed by the board. Instead, Joe Lessard of Municipal Resources, Inc., the Town’s representative, indicates in his signed mediation report (with a copy forwarded to the Taxpayer’s representative, Paradigm Tax Group, on March 22, 2011), that Mr. Lessard had called the representative on March 2, 2011 and was told the representative would call back “by week[’]s end to set a date for the meeting. No call back was received.” Paradigm’s representative, Todd Tessier, on March 25, 2011, signed the copy of the report mailed to him by Mr. Lessard and sent it to the board, without disputing or questioning in any way Mr. Lessard’s statement that no mediation meeting had taken place. In brief, no mediation meeting ever occurred despite the Town’s effort to set up such a meeting and discharge its own responsibilities under the mediation rule.

On these facts, the board finds the Taxpayer (through its representative) never complied with the board’s mediation rule and default orders in good faith. The Taxpayer is therefore placed in final default pursuant to Tax 201.05 and the appeal is hereby dismissed. Final default will only be set aside if the Taxpayer files a motion stating the reasons for non-compliance with the board’s rules and failure to timely cure the default once ordered to do so and the board grants the motion on the grounds of accident, mistake or misfortune. See Tax 201.06 and 102.02.

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 a copy of the foregoing Decision has been mailed this date, postage prepaid, to: Todd Tessier, Paradigm Tax Group LLC, 31 St. James Avenue, Suite 510, Boston, MA 02116, representative for the Taxpayer; Chairman, Board of Selectmen, Town of Hampstead, 11 Main Street, Hampstead, NH 03841; and Municipal Resources, Inc., 295 No. Main Street, Salem, NH 03079, Contracted Assessing Firm.

Dated: April 4, 2011

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Anne M. Stelmach, Clerk