

Isabella Revocable Trust

v.

Town of Deerfield

Docket No. 25576-10PT

ORDER

This Order responds to a January 4, 2012 request that the \$65.00 filing fee paid by the “Taxpayer” be refunded (“Request”). This Request was filed by Ms. Harriet Cady on behalf of the Taxpayer. The file indicates Ms. Cady has not filed an appearance in this appeal.

A review of the file reflects the following events. The appeal was filed on August 18, 2011 and the \$65 filing fee was paid by Joseph McKenzie, Trustee for the Taxpayer. On December 29, 2011, the “Town” filed a settlement agreement with the board signed by both Mr. McKenzie and the Chairman of the Board of Selectmen for the Town. The settlement agreement does not specify a refund of the filing fee, and further, item number four states “case settled, no further action, no costs to either party.”

On January 3, 2012, Avitar Associates, the Town’s contracted assessing firm, filed a report of mediation with the board. The report indicates the appeal was settled and an agreement “will be submitted within 30 days in accordance with Tax 201.23 and the appeal shall be marked: ‘case settled; no further action, no costs’ without further board order.” This report of

mediation was signed by Mr. McKenzie, Ms. Loren Martin of Avitar Associates and “Ms. Harriet Cady, Representative.”

Tax 201.23, “Settlement and Stipulations,” states the board “shall reject any settlement agreement which would result in disproportionate, illegal, or fraudulent assessment or taxation.” The board did not find any of those criteria existed in the agreement and therefore accepted it and closed this appeal on December 29, 2011.

The Request quotes and relies upon RSA 76:17-b. This statute, as presently enacted, makes no provision for refund of the filing fee unless the board first “grants an abatement of taxes.” In this appeal, the board did not grant an abatement. Instead, the parties reached a settlement during the mediation process. (See also the Town’s December 27, 2011 letter to Ms. Cady, attached to the Request, which explains why RSA 76:17-b “does not apply” and why “the [T]own is not going to issue any reimbursement of filing fee(s).”)

As part of the mediation process, the parties can negotiate, if they choose to, whether the filing fee should be refunded (by the municipality). The Taxpayer and the Town apparently did not do so before signing the settlement agreement and the report of mediation. Since both documents contain the statement “no costs”, both parties, in effect, have waived any right to request “Costs” pursuant to Tax 201.39.

Finally, Tax 201.39(b) states: “filing fees shall be refundable in accordance with RSA 76:17-b, and the board shall refund the filing fees if the board determines a matter was frivolously brought, maintained or defended.” No evidence has been presented to allow the board to make such findings in this appeal. For all these reasons, the board denies the “Request.”

Any party seeking a rehearing, reconsideration or clarification of this Order must file a motion (collectively “rehearing motion”) within thirty (30) days of the clerk’s date below, not the date this decision is received. RSA 541:3; Tax 201.37(a). The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; Tax 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the Order needs clarification; or 2) based on the evidence and arguments submitted to the board, the board’s decision was erroneous in fact or in law. Thus, new evidence and arguments are only allowed in very limited circumstances as stated in board rule Tax 201.37(f). Filing a rehearing motion is a prerequisite for appealing to the Supreme Court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:3 and RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the Supreme Court must be filed within thirty (30) days of the date on the board’s denial, with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Albert F. Shamash, Esq., Member

Theresa M. Walker, Member

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CERTIFICATION

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Isabella Revocable Trust, c/o Joseph McKenzie, Trustee, 1 Charlie Lane, Deerfield, NH, 03037, Taxpayer; Town of Deerfield, Chairman, Board of Selectmen, PO Box 159, Deerfield, NH, 03037; Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH, 03258, Contracted Assessing Firm; and Harriet E. Cady, Consultant, PO Box 149, Deerfield, NH 03037-0149.

Date: 2/21/12

Anne M. Stelmach, Clerk