

**TMT Salem Park Plaza, Inc.**

**v.**

**Town of Salem**

**Docket No. 25658-10PT**

**DECISION**

The board has reviewed the Town's October 12, 2011 Motion to Dismiss ("Motion") and the October 24, 2011 "Opposition" to the Motion filed by the "Taxpayer's" representative, William J. Carroll of International Appraisal Company. The Motion is granted and the appeal is dismissed for the following reasons.

The Motion seeks dismissal because the Taxpayer did not sign the abatement application ("Application") filed with the Town, as required by RSA 76:16, the board's rules and the case law. Instead, Mr. Carroll, as "Consultant," signed two sections of the Application (Section H and Section I) and included an agent authorization form signed by the Taxpayer. A tax representative is permitted to sign Section I, but Section H is explicit in stating the "applicant" (the Taxpayer) "**MUST** sign the (A)pplication" and this signature constitutes a certification, under penalty of perjury, "the (A)pplication has a good faith basis, and the facts stated are true to the best of (the) knowledge" of the Taxpayer.

The Opposition presents various arguments and attaches an "amended Authorization" signed by a managing employee of the Taxpayer. Even this document, however, does not

contain any statement affirming, under penalty of perjury, that “the application has a good faith basis and the facts stated are true . . .,” the affirmation in Section H required by the statute and rules quoted below.

RSA 76:16, III provides as follows:

The [Application] shall include the following and such other information deemed necessary by the board: . . .

(g) a place for the applicant’s signature with a certification by the person applying that the application has a good faith basis and the facts in the application are true.

The board’s rules are in harmony with this statute. Tax 203.02(b) states the abatement application: “shall . . . include[] all of the following: . . . (4) The taxpayer’s signature on the abatement application certifying that the taxpayer has a good faith basis and the facts contained [in the Application] are true.” Tax 203.02(d) provides:

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.

(Emphasis added.)

These rules were upheld by the supreme court in Appeal of Wilson, 161 N.H. 659 (2011). In that appeal, like this one, a tax representative filed an abatement application without the taxpayer’s signature, but with an authorization, and the board dismissed the appeal. The supreme court, presented with similar, if not identical, arguments as to why the appeal should not have been dismissed, rejected all of them and upheld the board’s decision, noting, “the information required by RSA 76:16, III, including the taxpayer’s signature and certification that the information submitted is true, affects the right to seek tax relief.” Id. at 663. In Wilson, the appellants argued

the taxpayer signature and certification requirements were inconsistent with the statute (RSA 71-B:7-a) allowing a taxpayer to have a non-attorney representative. The supreme court rejected this argument and stated it “fail[ed] to see the inconsistency. Had the legislature intended a representative’s signature to suffice, it could have so stated.” Id. at 655.

In the Opposition, Mr. Carroll argues dismissal of the appeal should not occur because he filed the Application with the Town on March 1, 2011, before the supreme court “rendered” the Wilson decision (on March 31, 2011). The board disagrees.

The board’s rules pertaining to the signature requirement have been in effect since 2007 and, more importantly, the board’s decision (in Wilson) was issued well before the time of Mr. Carroll’s filing of the Application. See Ned and Theresa Wilson v. Town of Sugar Hill, BTLA Docket No. 24093-08PT (January 22, 2010). In dismissing that appeal, the board reasoned:

The taxpayer signature and certification requirement on the abatement application is equivalent, in purpose, to an affidavit requirement because it requires a taxpayer, not his attorney, tax representative or other agent, to certify (swear under the penalties for perjury and other false statements set forth in RSA ch. 641 (Falsification in Official Matters)) that the abatement application has been filed in good faith on the truth and not on some frivolous or false basis.

Id. at p. 3.

The board can give no weight to Mr. Carroll’s explanation he has long followed the practice of not complying with the board’s rules regarding taxpayer signatures on abatement applications. As a tax representative, he is obligated to follow the board’s rules on behalf of his clients, rather than ignore or disregard them, whether or not there has been any prior objection to his violation of them.

The board's rules regulating the conduct of tax representatives (see Tax Part 207) makes this obligation perfectly clear. Tax 207.03 (Standards of Conduct) is applicable and provides the following (in subparagraphs (a) (1) and (a) (4)):

Tax representatives shall:

- (1) Possess a working knowledge of the statutes, rules and case law . . . ; [and]
- (4) Comply with all statutes, rules, case law and board orders when representing taxpayers.

It is therefore incumbent on tax representatives such as Mr. Carroll to have a working knowledge of the board's rules and orders (including Wilson) and to apply that knowledge in representing taxpayers before municipalities and the board.

As noted above, another defect in Mr. Carroll's arguments, as in Wilson, is that the "amended Authorization" attached to the Opposition still does not state the Taxpayer has a good faith basis for filing the Application and the facts contained in the Application are true. Even if a taxpayer authorization is more carefully worded, the board does not agree such an authorization to the representative is a substitute for the taxpayer signature requirement on the Application.

For all of these reasons, the board finds the Opposition is without merit and the appeal is dismissed.

Any party seeking a rehearing, reconsideration or clarification of this Decision 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. 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 decision 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 new arguments are only allowed in very limited circumstances as stated in board rule Tax 201.37(g). 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 541:6. 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

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Michele E. LeBrun, Chair

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**CERTIFICATION**

I hereby certify copies of the foregoing Decision have been mailed this date, postage prepaid, to: William J. Carroll, International Appraisal Co., 110 Pleasant Avenue, Upper Saddle River, NJ 07458, Taxpayer's Representative; and Town of Salem, Chairman, Board of Selectmen, 33 Geremonty Drive, Salem, NH 03079.

Dated: 12/2/11

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Anne M. Stelmach, Clerk