

Peaceful Assembly Church

v.

Town of Grafton

Docket No.: 26926-12EX

DECISION

The board has reviewed the “Taxpayer’s” December 2, 2013 Motion for Reconsideration (the “Motion”) of the October 30, 2013 Decision dismissing this RSA 72:23, III religious exemption appeal. The Motion is denied for the following reasons.

The board granted the “Town’s” October 2, 2013 Motion to Dismiss because, on the facts presented, the Taxpayer did not meet its burden of showing it could satisfy the statutory requirement of ownership of the “Property” as of the applicable date (April 1, 2012) for tax year 2012. Further, and as stated in the Decision (p. 1), the Taxpayer did not respond to the Motion to Dismiss in a timely manner [within 10 days, pursuant to Tax 201.18(d)], but instead delayed 10 additional days before filing its response (consisting of a one-page “Assignment of Rights” signed by “John Connell”).

The Motion raises two separate issues – one entirely procedural and one somewhat more substantive. Neither issue satisfies the “good reason” requirement for granting the Motion. (See RSA 541:3 and Tax 201.37.)

The procedural ground stated in the Motion involves a claim of a “lack of standing and authorization to bring the [Motion to Dismiss]” based on “Tax 201.08.” “Standing” generally

refers to the right of a party to bring or defend an action before the tribunal. The party involved in this tax abatement appeal is the Town, not Mr. Stetson or Avitar Associates of New England, Inc. (“Avitar”). The Motion presents no facts that would raise any inference, let alone establish, that the Town did not grant Avitar full “authority” to defend the appeal on its behalf, including the filing of the Motion to Dismiss.

A municipality, like a corporation, cannot act for itself, but can do so only through employees, agents, attorneys or consultants. Tax 201.08 prescribes procedures for filing of an “appearance” by a “party’s attorney, agent or municipal consultant.” The intended purpose of this rule is to provide contact information to other parties and the board regarding whom to serve with any subsequent pleadings. The Town’s municipal consultant (Avitar, through its employee, Mark Stetson) did not file a separate appearance document when it filed the Motion to Dismiss. The Taxpayer, however, was not misled and did not suffer any prejudice by this lack of an appearance because the Taxpayer was duly served with a copy of that motion and served its response on the Town, not Avitar. While in hindsight Avitar could have filed an appearance, on the facts presented the board finds it was not fatal to the Town’s position that Avitar did not do so. In other words, if Avitar had filed an appearance, the only effect would have been on whom the Taxpayer should have served its response, not on the ultimate outcome of the Motion to Dismiss.

As for the second ground stated in the Motion, the board finds the Taxpayer misinterprets the meaning and intent of Tax 201.12. This rule mentions an “assignment of rights” as a means for a subsequent owner of property to assume the rights of the prior owner, provided the prior owner had a right to maintain a property tax appeal. The undated (and unrecorded) “Assignment of Rights” document presented to the board as the Taxpayer’s response to the Motion to Dismiss

does not establish that the Taxpayer held title to the Property as of the applicable April 1, 2012 date.¹ The record reflects Mr. Connell, not the Taxpayer, owned the Property at that time.

In order to qualify for the tax year 2012 RSA 72:23, III religious exemption that it seeks, the Taxpayer, not Mr. Connell, was required to own, use and occupy the Property as of that date. (See Decision, p. 2.) Mr. Connell, the prior owner, had no statutory right to a religious exemption because this exemption applies to religious institutions only, not to individuals. See Father Christy D’Cruz v. Town of Warren, BTLA Docket No. 19455-02EX (September 10, 2003) (“Pastor and President” owning property used by a religious denomination did not qualify for a religious tax exemption).

For all of these reasons, the Motion is denied.

Pursuant to RSA 541:6, any appeal of the Decision must be filed with the supreme court within thirty (30) days of the Clerk’s date shown below, 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, Member

Theresa M. Walker, Member

¹ In the Motion, the Taxpayer asserts the Assignment of Rights need not be recorded, but does not explain why it is undated.

Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Peaceful Assembly Church, c/o Thomas Ploszaj, 860 Main Street, Grafton, NH 03240, Taxpayer; Town of Grafton, Chairman, Board of Selectmen, P.O. Box 299, Grafton, NH 03240; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 12/17/13

Anne M. Stelmach, Clerk