

Thicket Hill MHC, LLC

v.

Town of Hinsdale

Docket No.: 26979-12PT

DECISION

This Decision results from the “Taxpayer’s” repeated failures to comply with the board’s rules regarding meaningful mediation, as prescribed in Tax 203.07, and prior orders. These prior orders, discussed below, gave the Taxpayer ample opportunities to do so and redress the noncompliance. The appeal is therefore dismissed.

The record in this appeal reflects the Taxpayer first defaulted in its Tax 203.07 timely filing obligations in March, 2014, resulting in entry of a conditional default. (See the March 10, 2014 Order.) Eight days later, the Taxpayer’s attorney (Michael P. Bentley) filed a motion “to extend the deadline to file the Report of Settlement Meeting & Order to June 1, 2014” and to strike the conditional default, stating the Taxpayer was “in the process of obtaining a real estate appraisal which is essential to pursue this matter.”¹ Based on representations from Attorney Bentley, the board granted the motion, extending the deadline to June 1, 2014 and striking the conditional default. (See the March 20, 2014 Order.)

¹ The Taxpayer and/or Attorney Bentley have repeatedly represented to both the Town and the board (dating back to the December 2012 abatement application) that an “appraisal [is] to be performed.”

The Taxpayer again failed to comply or respond in any manner by June 1, 2014, resulting in a second conditional default and notification the Taxpayer “will be placed in final default” if it did not comply within ten (10) days. (See June 13, 2104 Order.) Seven days later, Attorney Bentley on behalf of the Taxpayer, again filed a motion for an “extension of the deadline to file the Report of Settlement Meeting & Order to October 1, 2014” and to strike the second “conditional default entered. . . [on] June 13, 2014,” stating once again that “the Taxpayer is in the process of obtaining a real estate appraisal which is essential to pursue this matter.” The “Town” filed an objection to the Taxpayer’s motion on June 26, 2014, providing details regarding the numerous unsuccessful attempts of its contract assessor (Vision Government Solutions, Inc.) to communicate with Attorney Bentley by telephone and email.

In response to this second Taxpayer motion, the board first “recognize[d] the Town’s concerns regarding prior delays by the Taxpayer. . .” and then stated “placing the Taxpayer in final default would be an overly harsh sanction to apply at this time.” Consequently, the board granted this second motion to extend the mediation deadline to October 1, 2014 and ruled “no further extensions will be granted.” (See July 8, 2014 Order.)

The only response the board has received to the July 8, 2014 Order is from the Town, not the Taxpayer. In a letter filed October 1, 2014, the Town notes the additional extension was granted until October 1, 2014 and states: “No appraisal has been produced and mediation could not take place.” The Town copied Attorney Bentley with this letter, but neither he nor his client, the Taxpayer, has filed any response.

On this record, the board finds the Taxpayer has demonstrated a culpable lack of diligence by failing to comply with the board’s rules and its prior orders, even after requesting

and receiving several extensions of time, and therefore has waived any reasonable ground for avoiding the sanction of dismissal. Dismissal of the appeal is therefore warranted.

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

Michele E. LeBrun, Chair

Albert F. Shamash, Member

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Michael P. Bentley, Esq., Lane & Bentley, PC, PO Box 472, Keene, NH 03431, counsel for the Taxpayer; Chairman, Board of Selectmen, Town of Hinsdale, P.O. Box 13, Hinsdale, NH 03451; and Mike Tarello and Paul R. McKenney, Vision Government Solutions, 44 Barefoot Road, 2nd Floor, Northborough, MA 01532, Contracted Assessing Firm.

Date: 10/28/14

Anne M. Stelmach, Clerk