Herrera's Mexican Restaurant, LLC, d/b/a The Red Iguana

v.

Department of Revenue Administration

Docket No.: 26700-13MR

DECISION

On August 26, 2013, the board issued an Order granting the "Motion to Order Petitioner to Post a Bond. . ." (the "Motion") filed by the department of revenue administration ("DRA"). That Order gave the "Taxpayer" twenty (20) days "to post a bond with a surety company authorized to do business within this State. . . ."

Instead of posting the required bond within this period, the Taxpayer filed two pleadings on September 13 and September 16, 2013 (each labeled as "a petition for extension") seeking more time (an additional thirty (30) days) to comply with the Order for various stated reasons.[1] In response, the DRA filed an "Objection" on September 16, 2013, stating the Taxpayer "has had ample time to obtain a bond pursuant to the [b]oard's Order," further noting the Taxpayer "has

[1] These stated reasons include payment (on September 16, 2013) of the amount allegedly due to the DRA for a subsequent month (July, 2013), an "error" associated with an advertising company issuing promotional coupons resulting in an unintended "loan" to these companies, a proposed "guarantee" by the Taxpayer's landlord (who is presently out of the country) and an attempt to obtain a new "partner," as well as additional time allegedly needed by an insurance company to obtain a bond.

continued to sell taxable meals and collect M&R [Meals and Rooms] taxes without remitting all amounts collected to the state in violation of RSA [ch.] 78-A." (See Objection, pp. 1-2.)

The board agrees with the DRA's position that the Taxpayer has already had sufficient time and therefore denies the Taxpayer's request for an extension of time. The posting of the bond should have occurred by September 16, 2013. The statutes giving the board jurisdiction (RSA 78-A:5, II and RSA 78-A:13, III) obligated the Taxpayer to post the bond as a condition for maintaining the appeal of the restaurant license revocation. The appeal is therefore 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).[2]

[2] If no appeal is filed and the Decision "becomes final," RSA 71-B:13 will govern any remaining "Enforcement" issues concerning the DRA.

SO ORDERED

BOARD OF TAX AND LAND APPEALS

_____
Albert F. Shamash, Member

_____
Theresa M. Walker, Member

DISSENTING OPINION

I respectfully dissent from the majority decision. On the facts presented, this board member would grant the Taxpayer an additional thirty (30) days.

_____
Michele E. LeBrun, Chair

CERTIFICATION

I hereby certify copies of the foregoing Decision have been mailed this date, postage prepaid, to: Edgar Mario Herrera Canales, 2 Post Lane, East Kingston, NH 03827, Taxpayer; and Carollynn J. Ward, Esq., State of New Hampshire, Department of Revenue Administration, 109 Pleasant Street, Concord, NH 03302-0457, counsel for the DRA.

Dated: September 25, 2013

_____
Anne M. Stelmach, Clerk