

NOT FOR PUBLICATION WITHOUT APPROVAL OF
THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY



Mala Sundar
JUDGE

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Re: Savita, L.L.C v. Township of Neptune
Block 802, Lot 36 (706 Highway 35)
Docket No. 006161-2015

Dear Counsel:

This matter comes before the court on defendant's motion to dismiss plaintiff's 2015 property tax appeal for failure to respond to the tax assessor's request for financial information pursuant to N.J.S.A. 54:4-34 (commonly known as "Chapter 91 request"). The motion is supported by the certification of its assessor. By a letter brief only, plaintiff opposed the motion contending that the Chapter 91 request was defective due to the assessor's failure to include a copy of N.J.S.A. 54:4-34 and/or an enclosed form for the taxpayer to inscribe the requested income and expense information. For the reasons explained below the court rejects plaintiff's arguments as unsupported, and grants the defendant's motion.

FACTS

Plaintiff (“Savita”) owns the above captioned property (“Subject”) located in defendant (“Township”). By letter dated June 2, 2014, the tax assessor for the Township made a Chapter 91 request to Savita seeking “detailed income and expense [“I&E”] information for the year ending 12/31/13, or the most recent fiscal year available” to be submitted on the enclosed form. The letter noted that “the use of the form is not mandatory, provided that the information requested on the form is supplied.” It also advised Savita that a response is required within 45-days or it would lose its right to pursue a tax appeal. The letter informed Savita that the assessor’s office could be contacted for any questions concerning the Chapter 91 request.

The assessor certified that printed on the reverse side of the letter, a copy of N.J.S.A. 54:4-34, as required by statute, was provided, and the letter had been mailed via certified mail, return receipt requested. Appended to his certification was a copy of the letter dated June 2, 2014; a complete copy of N.J.S.A. 54:4-34 printed on the reverse side of the letter, and a copy of the green card receipt which was received at the address on record for the owner of the Subject.

It is undisputed that the Chapter 91 request was received by Savita. It is also undisputed that Savita did not respond to the request.

On March 28, 2015, Savita filed an appeal challenging the 2015 assessment. The Township timely filed the instant motion. Savita opposition was its counsel’s letter brief which asserted that the Chapter 91 request was non-compliant with N.J.S.A. 54:4-34 as “the tax assessor’s letter does not state exactly what information is being requested.” Savita further contended that the assessor’s letter references, but does not include either a copy of N.J.S.A. 54:4-34 or form to be used for completing the income and expense information. There is no certification from Savita’s owners or other employees with personal knowledge of the facts.

Township's reply disputed the lack of inclusion of a copy of the statute and noted that the assessor's letter "specifically indicated . . . that an appropriate form was included," pointing out to the absence of any certifications from Savita to the contrary.

ANALYSIS

N.J.S.A. 54:4-34 requires a property owner to "render a full and true account of" the property owner's "name and real property and income therefrom," if the property is "income-producing." Failure or refusal to respond within 45 days of the Chapter 91 request (i) allows the assessor to reasonably determine the property's "full and fair value" based upon any information he or she has; and (ii) bar the property owner from appealing that assessment. Ibid.

The purpose of a Chapter 91 request is so that an assessor can "secure as much information as possible to aid in ascertaining the fair market value of income-producing property." Westmark Partners v. Township of Deptford, 12 N.J. Tax 591, 596 (Tax 1992). An assessor is allowed by law to have "access to fiscal information that can aid in valuing the property" and the law is aimed to "encourage compliance with the accounting requirement." SKG Realty Corp. v. Township of Wall, 8 N.J. Tax 209, 211 (App. Div.1985).

Given the severity of the sanction of failing to provide a timely response to a Chapter 91 request, courts require a municipality to strictly adhere to the statutory requirements. Although a township has legitimate interests in timely collecting I&E information for issuing an assessment that will "spare both a municipality and taxpayers from the costs of unnecessary litigation" nonetheless, since the taxpayer's loss of appeal rights is so "draconian," N.J.S.A. 54:4-34 is to be strictly construed against a township. Tri-Martin Assoc. II L.L.C. v. City of Newark, 21 N.J. Tax 253, 260-61 (Tax 2004); J&J Realty Co. v. Township of Wayne, 22 N.J. Tax 157, 163-64 (Tax 2005).

Therefore, and as part of an assessor's obligation, the Chapter 91 request must be framed in language that is both clear and unequivocal so that the taxpayer may understand its obligation to respond. Assessors "are experts in the field of real estate valuation . . . while the owners of income producing properties include not only substantial business enterprises . . . but also small business persons who may have difficulty reading complex and confusing forms and may lack ready access to legal advice." Cassini v. City of Orange, 16 N.J. Tax 438, 447 (Tax 1997). Any "doubt" as to the "information sought by the assessor" will be construed in "favor the property owner given the consequences of non-compliance." Ibid.

A) Failure to Include a Copy of N.J.S.A. 54:4-34.

The plain language of N.J.S.A. 54:4-34 requires the assessor to include a complete copy of the statute when making a Chapter 91 request. Here, the assessor certified that he provided a copy with his request. The request provided to the court shows a printed copy of the statute on the back of the letter. It is undisputed that the letter was received by Savita. Therefore, Savita's contention that the Chapter 91 request did not include a copy of the statute is wholly void of any merit or factual evidence to the contrary with supporting certification.

B) Failure to Attach the I&E Form Referenced in the Chapter 91 Request to the Assessor's Certification

The crux of Savita's argument is that because the assessor's certification for the Township's instant motion does not include the I&E form referenced in the Chapter 91 request letter, the request is ambiguous since it is unclear what information was being sought, thus, it was "not possible for the taxpayer to respond."

Plaintiff is correct that the Township's instant motion and the assessor's certification in support thereof, does not contain the I&E form referenced in the Chapter 91 request. A negative

inference could be drawn from such an omission, or a failure to explain its lack of inclusion, that the form may not have been provided to Savita.

However, the assessor has affirmatively represented in his certification that he sent a request for the I&E in his Chapter 91 request letter (the letter was included in his certification), and that letter specifically referenced an enclosed form for reporting I&E. The letter noted that the use of the form was not mandatory as long as the information requested therein was provided. Additionally, the letter directs Savita to contact the assessor's office if there are any questions concerning the Chapter 91 request.

Savita received a copy of the assessor's Chapter 91 request, as evidenced by the signed certified mail return receipt. It has provided no factual material contradicting the assessor's certification. It has not presented any factual evidence, by certification or otherwise, that the Chapter 91 request either failed to include the form for the reporting of the I&E information, or that the form was confusing, or that the request otherwise failed to advise Savita of its obligations in clear and unequivocal language. There was nothing showing that Savita contacted or attempted to contact the assessor's office inquiring about a missing enclosure or about how to provide the requested I&E information. After receiving the Chapter 91 request, Savita was obliged to come forward with evidence that the assessor failed to comply with the statutory requirements or otherwise failed to give it appropriate notice of the information sought. See TMC Properties v. Borough of Wharton, 15 N.J. Tax 455, 463 (Tax 1996) (taxpayer must make sufficient response within 45 days of the request and communicate plausible "good cause" basis for failure to provide information). It did not.

As such, there is nothing here to contradict the assessor's certification that he prepared and mailed the Chapter 91 request in compliance with N.J.S.A. 54:4-34, and thus, he also included an

I&E form with the request. From the evidence properly before the court, it concludes that the Township's Chapter 91 request complied with the statute, that Savita failed to respond to the assessor's Chapter 91 request, and that pursuant to N.J.S.A. 54:4-34, "no appeal shall be heard" from the assessment, except to the extent that the plaintiff is entitled to a reasonableness hearing as set forth in Ocean Pines Ltd. v. Borough of Point Pleasant, 112 N.J. 1 (1988).

CONCLUSION

For the aforementioned reasons, the Township's motion is granted in part. An Order reflecting this opinion and providing Savita the opportunity to seek a reasonableness hearing will be simultaneously entered.

Very Truly Yours

A handwritten signature in blue ink that reads "Mala Sundar". The signature is written in a cursive style with a horizontal line underneath the name.

Mala Sundar, J.T.C.