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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY



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JUDGE

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Re: The Easton, L.L.C. v. City of New Brunswick  
Block 55, Lot 2.02  
Docket No. 001273-2017

Dear Counsel:

This opinion decides defendant's motion to dismiss the above captioned complaint on grounds plaintiff failed to respond to the tax assessor's request for income and expense information pursuant to N.J.S.A. 54:4-34 (commonly known as Chapter 91). Plaintiff contends that it did not respond because the Chapter 91 request was confusing.

For the reasons following, the court grants the motion, subject to plaintiff's right to a reasonableness hearing under Ocean Pines, Ltd., v. Borough of Point Pleasant, 112 N.J. 1 (1988).

The facts are taken from the certifications of the assessor for defendant ("City"). On or about June 1, 2016, the assessor mailed by certified mail, return receipt requested, a Chapter 91 request to plaintiff for income and expense ("I&E") information for the "last year," or the prior

calendar year, or if owner for part of the year, then to so indicate and provide information for the period of ownership.<sup>1</sup> The cover letter requesting such information was addressed to plaintiff at its address in New York, and separately referenced the above captioned property (“Subject”) with its street address, block/lot identification, and property class, and sought a response within 45 days of receipt. The cover letter also asked the property owner to contact the assessor’s office for “any questions” concerning the Chapter 91 request.

Separately included was a copy of the statute, and the I&E form. The I&E form contained pre-printed information being sought. Part 1 titled “Property Identification” had column-wise pre-printed items. The first column listed “Owner; Apartments known as; Address of Property,” while the second column listed “Lot(s).” Stamped in the blank area in the first column but not exactly lined up or aligned with the pre-printed information was:

BLOCK- 55 LOT- 2.02  
LOCATION- 75 EASTON AVE  
QUAL - CLASS – 4C  
THE EASTON, LLC  
6 SHOREVIEW RD  
PORT WASHINGTON, NY 11050

The mailing was returned to the assessor’s office on June 20, 2016 with the post office’s stamp “Return to Sender, Refused, Unable to Forward.” Handwritten on the envelope was the word “Refused.”

Thereafter, the assessor certified, his office sent the same cover letter with attachments to plaintiff by first-class mail. A copy of the envelope attached to the assessor’s certification showed plaintiff’s street address (6 Shoreview Rd), the assessor’s office’s return address, and the metered

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<sup>1</sup> The Chapter 91 request’s cover letter attached to the City’s motion showed a date of June 30, 2017.

first-class postage stamp with a mailing date of August 8, 2016. The same was not returned to the assessor's office as either refused or undeliverable.

Plaintiff opposed the motion on grounds the Chapter 91 request was unclear as to whether the financial information for being sought for 2015 or 2016, and further "whether or not the response [was] due within 45 days of June 2017." Plaintiff also claimed that the I&E Statement was wrong because it showed the Subject's street address as "6 Shoreview Rd." Plaintiff further maintained that there was no indication that the assessor had "personal knowledge" of the first-class mailing, thus, there was "no competent evidence" in this regard.

The City then filed an amended certification of its assessor who stated that due to clerical oversight he had attached the wrong cover letter, but that he had sent a cover letter dated June 1, 2016, which was mailed the same day by certified mail. The assessor additionally certified that he sends Chapter 91 requests to obtain and review information essential to estimate the "market value" of properties such as the Subject, does so in a timely manner so he has "ample time to utilize the information" and set the assessments for the "following Tax Year," and does not send Chapter 91 requests simply to "block[] the future appeals of taxpayers."

### **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." If the owner fails or refuses to respond to a Chapter 91 request, it loses the right to challenge the valuation and assessment on the "income-producing property." Ibid. The property owner's appeal is then limited to a hearing as to whether the assessment was reasonable in light of the available data and methodology used by the assessor. See Ocean Pines, supra, 112 N.J. at 11. "The whole premise of chapter 91 is that the taxpayer is in control of the income information;

using the income information is a good, if not the best, measure of value; and if the taxpayer withholds that information, the municipality has no other choice but to set the assessment without the benefit of income information of the subject property.” Carriage Four Associates v. Township of Teaneck, 13 N.J. Tax 172, 177 (Tax 1993).

The statute does not provide any exceptions to, or exemptions from, the response requirement. Rather, it only allows for an extension of time to provide the response. See N.J.S.A. 54:4-34 (“The county board of taxation may impose such terms and conditions for furnishing the requested information where it appears that the owner, for good cause shown, could not furnish the information within the required period of time.”). However, under few circumstances, precedent has permitted escaping the consequences of a non-response, *i.e.*, an appeal being limited to a reasonableness hearing., such as, for instance, where the property is owner-occupied, *i.e.*, not income-producing or where the assessor failed to comply with the specific statutory requirements.

The most recent pronouncement by the Appellate Division in Waterside Villas Holdings, LLC v. Township of Monroe, 434 N.J. Super. 275 (App. Div.), certif. denied, 217 N.J. 589 (2014) reiterated these narrow exceptions or reasons justifying non-response. However, and more significantly, the court rejected excuses for non-response due to alleged confusion or mistake without the taxpayer’s attempt to obtain some clarification in this regard. There, the taxpayer claimed its non-response was because the Chapter 91 request “was not clear and unequivocal,” in that it had to guess the time period for which the assessor sought the I&E information, and further since the reproduced Chapter 91 statute contained typographical errors. The court unequivocally rejected the notion that a property owner faced with what it views as an ambiguous request from an assessor may simply ignore the request and avoid the appeal-preclusion provision of Chapter 91. It held:

However, where the taxpayer receives a Chapter 91 request that it deems improper in some fashion, it may not simply ignore its statutory obligation to respond. Rather, the taxpayer must take action to challenge the request within the forty-five day statutory time limit, and to put the municipality on notice of its contention. In any event, the taxpayer cannot just sit by and do nothing until the assessment is finalized, as this taxpayer did, and thereafter seek to appeal the assessment by plenary review. Such conduct results in “unnecessary expense, time and effort in litigation.”

[Id. at 283 (citations and quotations omitted).]

The court cautioned that,

Refusals on the part of taxpayers to cooperate with local property assessors cannot be tolerated by this court. Legitimate requests for information by assessors to prepare assessments are actions which should be encouraged by this court. Taxpayers frequently complain of local property tax assessors and their work. Here the taxpayer had an opportunity to supply to the assessor information pertinent to the assessor’s work. It failed and refused to do so without any explanation, and its attitude in failing to even respond to the assessor’s legitimate statutory request is inexcusable.

[Id. at 284 (citations and quotations omitted).]

The court noted that the taxpayer has an affirmative duty to “do something” if it believed the Chapter 91 request to be questionable, and such assertion must be done “before the assessment is imposed.” Ibid. (quotation omitted). Thus, “plaintiff’s failure to respond in any fashion to the assessor’s request precluded plaintiff from asserting a ‘good cause’ claim.” Ibid. (citations and quotation omitted).<sup>2</sup> The court however, recognized that a non-response may be justified if the “the request is so egregiously ambiguous in its identification of the property or in the instruction to the taxpayer that due process principles are offended.” Id. at 284-85, n.3 (citation omitted). The court cautioned, however, that “[w]e expect that such a case would be rare.” Ibid.

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<sup>2</sup> The trial court rulings prior to Waterside, supra, and relied upon by plaintiff, also echoed the requirement for a response. Thus, in Cassini v. City of Orange, 16 N.J. Tax 438, 453 (Tax 1997), the court cautioned: “[t]his is not to say that property owners should ignore the Chapter 91 requests, even where they are improper.” Further, unlike here, the taxpayer in ML Plainsboro Ltd. Partnership v. Township of Plainsboro, 16 N.J. Tax 250, 254 (App. Div.), certif. denied, 149 N.J. 408 (1997), sent a timely response that its properties were “not income producing.”

Here, the cover letter explained that the information was being sought for the “past year,” and also indicated the annual period as being a calendar year. Nor is the due date of the response vague since the cover letter explicates the same as being within 45 days from the date of receipt. If plaintiff found any of the cover letter’s explanations as ambiguous, it should have contacted the assessor instead of waiting to make this assertion after filing its complaint, and then in response to the City’s motion.

Additionally, that the stamped information on Part I of the I&E form did not line up or align perfectly with the pre-printed information as to “Owner” or “Address of Property,” does not render the request ambiguous or the Subject’s pre-printed identification erroneous. The I&E Form fully identified Subject with its block and lot number and the street address. Plaintiff was identified as the property owner, below which its address was listed. Moreover, the cover letter which mirrored the Subject’s identification with its block and lot number and location, separately addressed the letter to plaintiff with plaintiff’s street address. Thus, there can be no confusion that the Chapter 91 request incorrectly listed plaintiff’s street address as the Subject’s street address.

In sum, the court does not find the instant Chapter 91 request as containing an ambiguity which is “so egregious[] . . . that due process principles are offended.”

Finally, the court finds that the first-class mail which the assessor’s office used to re-send the Chapter 91 request and the attachments thereto, was properly mailed to the correct address with sufficient postage. Plaintiff provided nothing to contradict the information, such as for instance, that the mailing address was incorrect, or that plaintiff had previously notified the assessor of another mailing address to be used in future communications, or that there was incorrect postage and the like. Indeed, plaintiff did not even attempt to deny receipt of the first-class mail.

Given the Appellate Division's unequivocal holding that a property owner must "do something" in response to an assessor's information request "before the assessment is imposed to avoid the statutory bar to appeal embodied in N.J.S.A. 54:4-34," Waterside Villas, supra, 434 N.J. Super. at 284, the City's motion must be granted in light of this court's finding that the Chapter 91 request was not egregiously ambiguous so as to offend due process notions.

**CONCLUSION**

For the aforementioned reasons, the City's motion is granted in part since plaintiff is entitled to a reasonable hearing pursuant to Ocean Pines, supra. An Order reflecting this opinion will be simultaneously entered.

Very Truly Yours  
  
Mala Sundar, J.T.C.