

NOT FOR PUBLICATION WITHOUT APPROVAL OF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

TAX COURT OF NEW JERSEY



Mala Sundar
JUDGE

R.J. Hughes Justice Complex
P.O. Box 975
25 Market Street
Trenton, New Jersey 08625
Telephone (609) 943-4761
TeleFax: (609) 984-0805
taxcourttrenton2@judiciary.state.nj.us

March 2, 2017

James L. Esposito, Esq.
Spiotti & Esposito, P.C.
271 US Highway 46, Suite F105-106
Fairfield, New Jersey 07704-2471

Sandra Belli, Esq.
DiFrancesco Bateman et al.
15 Mountain Boulevard
Warren, New Jersey 07059

Re: Golden Eagle Foundation, Inc. v. Borough of Highland Park
Docket No. 010507-2016

Dear Counsel:

This letter constitutes the court's opinion after plenary hearing in this matter. The court had stayed defendant's motion to dismiss plaintiff's complaint for failure to respond to a Chapter 91 request. This was so the court could determine whether plaintiff had good cause not to provide the income and expense ("I&E") information pertaining to the above captioned property ("Subject") for calendar year 2014, at which time Subject was owned by another entity, Fantastic Realty Co., Inc., although the principal of both the successor and predecessor entities was the same individual, Katherine Lai.

A plenary hearing was held on February 23, 2017. Plaintiff's sole witness was Ms. Lai. Defendant ("Borough") proffered its assessor.

The facts are recited in the court's previous opinion and are summarized here. The Subject is income-producing. On November 2, 2015, the Borough's assessor sent a Chapter 91 request by

*

certified mail. The request was addressed to plaintiff at its correct street address and correctly identified the Subject. On November 6, 2015, Ms. Lai faxed back the assessor's cover letter noting: "Sorry, we did not own this property on 1/1/14 to 12/31/14 yet!" Neither the assessor nor Ms. Lai thereafter followed up in this regard. Separately, however, both were engaged in plaintiff's application for a tax exemption for the Subject.

Ms. Lai confirmed during the plenary hearing that the Subject has always been income-producing (since 2001). She also affirmed that the Subject changed ownership a few times (Fantastic Realty to Ms. Lai; Ms. Lai to Fantastic Realty; Fantastic Realty to plaintiff), at a consideration of \$10 each time. She stated that she signed all the sale deeds and handled all the financial and business aspects for both entities. She confirmed that she is a licensed real estate broker who had negotiated and signed the lease of a portion of the premises on July 2, 2012. She was also the individual who was involved in and signed the renewal of that lease for a five-year term from August 1, 2014 to July 31, 2019. Ms. Lai testified that the lease was not amended to reflect an ownership change, however, "by law" plaintiff had to assume the lease, thus, starting February 2015, the tenant made the rent checks payable to plaintiff.

Ms. Lai stated that during discovery of the 2016 tax appeal, and in response to the standard interrogatories, she, at the behest of counsel, filled out all the relevant I&E information (albeit on the Chapter 91 request form) for the calendar year 2014, and signed that form. She agreed that she had access to, and had available, the required financial information in this regard at all times including when the Chapter 91 request was originally received.

Ms. Lai testified that she is familiar with Chapter 91 requests and has properly responded to them in the past on behalf of Fantastic Realty. However, she stated she has never received a Chapter 91 request pertaining to a time period when the owner was a different entity, and that she

was utterly surprised to receive the Chapter 91 request here at issue. She stated that she presumed her response to the assessor that plaintiff was not owner of the Subject during 2014 was sufficient, and that if the assessor needed more information in this regard, he should have followed up with her. She claimed that had the assessor followed up, she would have unhesitatingly provided any information.

ANALYSIS

In its previous opinion, the court had noted that precedent regarding Chapter 91 requests vis-à-vis predecessor and successor owners had all involved the dismissal of complaints of the successor owners due to the non-responses to the Chapter 91 requests sent to the predecessors. See Ocean Pines, Ltd. v. Borough of Point Pleasant, 112 N.J. 1, 4, 9 (1988) (non-response from the successor on grounds it was a “recent purchaser,” merited dismissal of the complaint); ADP of New Jersey, Inc. v. Township of Parsippany-Troy Hills, 14 N.J. Tax 372, 377-78 (Tax 1994) (“If the owner fails to respond, the sanction of loss of the right to contest the assessment for the ensuing year . . . applies to the owner and all those who stand in the shoes of the owner [including] . . . subsequent purchasers.”); cf. Waterside Villas Holdings, L.L.C. v. Township of Monroe, 434 N.J. Super. 275, 278 (App. Div. 2014) (if an owner feels that the Chapter 91 request is “not . . . legitimate, in whole or in part,” then it “must do something to assert that contention before the assessment is imposed to avoid the statutory bar to appeal”) (quoting Ocean Pines, *supra*, 112 N.J. at 9).

Here, the assessor properly sent the November 2015 Chapter 91 request to plaintiff, which was the Subject’s owner at that time. The principal of the prior and current owner responded that plaintiff was not owner of the Subject during 2014. Thus, the facts here do not squarely fall within

the above precedent in that there was a timely, factually correct response to a proper Chapter 91 request, albeit without the requested I&E information.

In a scenario as herein, Ocean Pines, supra, provides guidance. That case lays out a “two step analytical framework.” TMC Properties v. Borough of Wharton, 15 N.J. Tax 455, 463 (Tax 1996). First the court determines “whether the taxpayer made a sufficient ‘response’ to the assessor’s request within” 45 days. Ibid. Second, the court determines whether the “failure to furnish, or delay in furnishing, the requested information resulted from ‘good cause.’” Ibid. In so doing, the court must remain cognizant of the statute’s purpose to aid assessors in efficiently setting assessments. Ibid. A sufficient response is one that timely communicates to the assessor “in reasonable detail, a plausible basis for the taxpayer’s inability to furnish the requested information within such time period.” Ibid.

Here, a notification of non-ownership as response to a Chapter 91 request may be “plausible,”¹ however, the court is unpersuaded that notification, without more, suffices as a full and meaningful response to a Chapter 91 request. Taken to its end, it would allow a notice-type response by the predecessor or successor to the effect that the Chapter 91 request should be addressed to the other party, with the predecessor contending it is not the addressee of the Chapter 91 request, and the successor contending it was not owner for the year the I&E information is sought. Such response-shifting amongst owners with each maintaining that it has no obligation to comply with a Chapter 91 request, defeats the statutory purpose that the assessor be provided the I&E information of the Subject so he or she can set an appropriate assessment on the same. This is precisely why the court in TMC, supra, also required that the “plausible basis” for the inability

¹ The term “plausible” has a “range of definitions,” dictionary-wise (to mean “superficially fair, reasonable, or valuable but often specious . . . , or . . . appearing worthy of belief”), in the “common legal parlance” (to mean, among others, “not yet fully formed”) or according to judicial discretion, with no definition in the Black’s Law Dictionary. See generally Brandon L. Garrett, Applause for the Plausible, 162 U. Pa. L. Rev. Online 221 (2014).

to provide the I&E information be detailed in a reasonable fashion. The court can then assess whether such a detailed inability constituted good cause for the property owner to be unable to provide any, or only some of the, I&E information within the 45-day time period.

The court is thus unpersuaded by plaintiff's argument that the assessor should have called plaintiff for more information, and that requiring plaintiff to follow-up goes above and beyond the language and purpose of the Chapter 91 statute. The court holds that plaintiff's notification of non-ownership during 2014 is insufficient since it was bereft of any explanation why this fact prevented it from supplying the requested I&E information.

"In order for good cause to be shown, a taxpayer must demonstrate that it could not answer the assessor's request within the statutory time limit." TMC, supra, 15 N.J. Tax at 457; see also 1717 Realty Assocs., L.L.C. v. Borough of Fair Lawn, 201 N.J. 275, 276 n.2 (2010) (the statute's good cause exception is "a safety valve for those taxpayers who, in good faith, are unable to respond to a Chapter 91 request in a timely manner") (citing Ocean Pines, supra). Thus, taxpayer's good faith and ability to provide the information are critical factors to the good cause analysis.


The court agrees with the Borough that under the facts of this case where the I&E information was readily available, and indeed, in Ms. Lai's control, no good cause existed for failure to provide any I&E information. There was nothing to show that there were circumstances which prevented her from providing the I&E information within the 45-day time limit. She could have easily provided in 2015 what she provided as answers to interrogatories in 2016, viz., the completed November 2, 2015, Chapter 91 request which she signed as the predecessor's president, replacing the owner name with "should be for Fantastic Realty Co., Inc. only." There were no changes to the 2014 renewed lease agreement, thus, the I&E information derived from this lease never changed from 2014 to 2015.

Ms. Lai's sole reason for not initially responding to the request was her alleged confusion as to why the request was addressed to plaintiff. Given Ms. Lai's familiarity with real estate dealings, Chapter 91 requests pertaining to the Subject, and her personal involvement in the financial dealings of/for the Subject, the court does not find credible her claims of confusion.

Under the facts of this case, the court finds that no good cause existed for plaintiff's failure to furnish the requested I&E information, even if it was not the title owner of the Subject in 2014. The ability to produce the requested information was never contingent on the named recipient or who received the request. As demonstrated, either Golden Eagle or Fantastic Realty could have provided the information at that time. For either owner, the request would have been sent to the same address, where the same principal would have responded to it with the same income information (largely rent from a continuing tenancy) available to her. The fact that the addressee was the successor owner does not excuse the failure to provide available information. Without explaining adequate reasons to withhold this information, plaintiff has no recourse against the motion to dismiss, except for a reasonableness hearing.

CONCLUSION

For the foregoing reasons, the complaint is dismissed (subject to a reasonableness hearing) for failure to provide available information to a proper Chapter 91 request without good cause.

Very Truly Yours

Mala Sundar, J.T.C.