New Hampshire Justices Undo Dismissal of Tax Abatement Appeals

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By

JENNIFER MCLOUGHLIN
Contact Author

A New Hampshire administrative board must take another look at whether the lack of property owners' personal signatures and certifications on their tax abatement applications is fatal to their respective appeals.

In *Appeal of Keith R. Mader 2000 Revocable Trust*, the New Hampshire Supreme Court on June 5 vacated the decision of the Board of Tax and Land Appeals (BTLA) dismissing the petitioners' appeals of the denials of their property tax abatement applications. The court remanded the matter for the BTLA to further consider whether the lack of the petitioners' personal signatures and certifications on their applications was "due to reasonable cause and not willful neglect," as based on the justices' interpretation of that phrase under New Hampshire Administrative Rules, Tax 203.02(d).

The petitioners own property at a condominium development in the town of Bartlett and, with a single exception, are located out of state. In February 2018 the principal of the condominium developer contacted an attorney, Randall F. Cooper, to request legal representation given a significant increase in real estate taxes for property owners. In an email, Cooper expressed his willingness to represent the property owners but advised that he was soon leaving for vacation and would not return until a few days before the March 1 deadline for submitting the abatement applications to Bartlett. However, Cooper assured that he would be able to timely submit the applications.

While Cooper was on vacation, the petitioners agreed to the terms of the representation agreement that Cooper had provided to the principal of the condominium developer. Cooper upon his return prepared the abatement applications, which were submitted to Bartlett "on or about February 27," according to the opinion. The petitioners did not sign or certify their respective applications, but rather Cooper signed on their behalf.

"As to each application, Cooper certified that there was a good faith basis for the application and that the facts as stated in the application were true to the best of his knowledge," according to the court.

Following the town's denial of the abatement applications — which was not based on the lack of the petitioners' signatures and certifications — the petitioners appealed to the BTLA, which sought proof that the petitioners signed the applications in compliance with Tax 203.02. The petitioners filed a motion seeking an exception from the signature and certification requirement, claiming that the omissions of their signatures and certifications "were 'due to reasonable cause and not willful neglect.'"

Ultimately, the BTLA denied the motion and dismissed the appeals, finding that the petitioners "failed to comply with Tax 203.02's signature and certification requirement, and further found that the petitioners had failed to demonstrate that these failures were 'due to reasonable cause and not willful neglect,'" according to the opinion.

"As to the latter finding, the BTLA stated that 'the record presented indicates [that Cooper] made a conscious decision not to obtain the Taxpayers' signatures and certifications prior to filing,' and that his 'anticipated vacation plans do not constitute reasonable cause,'" the court added, noting that the BTLA denied the petitioners' motion for rehearing.

Administrative Rule Review

Tax 203.02 reflects several requirements for municipal abatement applications, such as the requirement that an application must include "the taxpayer's signature . . . certifying that the application has a good faith basis and the facts stated are true." Further, Tax 203.02(d) provides in part that "an attorney or agent shall not sign the abatement application for the taxpayer," and "the lack of the taxpayer's signature and certification shall preclude an RSA 76:16-a appeal to the board unless it was due to reasonable cause and not willful neglect."

While the rule provides that an attorney cannot substitute his or her signature for a taxpayer's signature, the lack of a taxpayer's signature and certification on a municipal abatement application does not preclude a BTLA appeal over a denial of the application "if the omission is 'due to reasonable cause and not willful neglect,'" the supreme court explained.

Analyzing the "reasonable cause and not willful neglect exception," the court highlighted several federal authorities involving "materially identical language" to the standard under Tax 203.02(d) and found that those authorities were persuasive.

"Reasonable cause and not willful neglect" refers "not simply to whether the taxpayer acted voluntarily in the sense of acting consciously, but also to whether the filer's reason for so acting was objectively reasonable under the circumstances," according to the opinion, quoting the federal Second Circuit's 1997 decision in *Gerald B. Lefcourt PC v. United States*. The court further drew support from New Hampshire sources, including case law, an interpretive rule related to the tax abatement scheme, and the BTLA's regulations.

"For all of these reasons, we construe Tax 203.02(d)'s reasonable cause and not willful neglect exception as permitting abatement appeals to the BTLA despite the lack of a taxpayer's signature and certification on the application at issue if the taxpayer can show that, despite exercising ordinary business care and prudence, it was not reasonably possible to submit the application with the taxpayer's signature and certification, and can further show that he or she was not recklessly indifferent to the signature and certification requirement in preparing the application," according to the opinion.

Reviewing the BTLA's decision, the supreme court observed that the board did not explain how it construed the "reasonable cause and not willful neglect standard" under Tax 203.02(d). However, "that the BTLA offered Cooper's 'conscious decision' to omit the petitioners' signatures as a justification for dismissing their appeals suggests that the BTLA construed the standard to focus, at least in part, on whether the omissions were intentional," according to the court, which declined to construe the standard in the same manner.

Given that the BTLA did not have the benefit of the supreme court's interpretation of Tax 203.02(d) in the present opinion, and "because the primary issue presented by the petitioners' motion was whether the lack of their signatures and certifications 'was due to reasonable cause and not willful neglect' under Tax 203.02(d)," the court vacated the BTLA's decision and remanded the case for further consideration of the issue.