THE COMMONWEALTH OF MASSACHUSETTS
Appellate Tax Board
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Docket No. F334484

373-383 WEST ST. NOMINEE REALTY TRUST
Appellant.

BOARD OF ASSESSORS OF
THE TOWN OF HOPEDALE
Appellee.

DECISION WITH FINDINGS

The appellee's Motion to Dismiss ("Motion") is allowed and the appeal is dismissed for lack of jurisdiction.

The appellant timely filed abatement application with the assessors on January 23, 2017. The assessors denied the abatement application on Monday, April 24, 2017 and mailed notice of the denial to the appellant on the same day in accordance with G.L. c. 59, § 63. Accordingly, appellant had three months, or until Monday, July 24, 2017, to file its appeal with the Board under G.L. c. 59, §§ 64 and 65. However, its appeal was mailed to the Board in an envelope postmarked July 27, 2017, which the Board received on July 31, 2017; both dates are beyond the three-month statutory deadline.

Both G.L. c. 58A, § 7 and G.L. c. 59, § 64 provide that:

> If any petition . . . is, after the period allowed for filing appeals with the board, delivered by United States mail, or by such alternative private delivery service as the board may by rule permit, to the board, the date of the United States postmark, or other substantiating mark permitted by rule of the board, affixed on the envelope or other appropriate wrapper in which such petition is mailed or delivered shall be deemed to be the date of delivery . . . As used in this section "United States postmark" shall mean only a postmark made by the United States post office.

The appellant argues that the "multiple markings" on the envelope in which its petition was mailed make the "service date ambiguous" and that, therefore, the Board should infer that the petition was timely mailed on July 21, 2017. No such inference is warranted.

There is only one United States postmark on the envelope and it clearly and legibly shows that the envelope was postmarked on July 27, 2017. The other "marking" on the envelope is from a Pitney Bowes postage machine, indicating that postage was put on the envelope on July 21, 2017. Under G.L. c. 58A, § 7 and G.L. c. 59, § 64, it is the United States postmark that is deemed to be the date of delivery to the Board.

Even in those instances where an approved alternative delivery service is used to deliver a petition to the Board, "only a substantiating mark produced or affixed by the delivery service, and not by the party relying on the mark, will be treated as the postmark for purposes of the postmark rule." *See* 831 CMR 1.13. A Pitney Bowes postage mark is not a mark produced or affixed by a delivery service and therefore cannot be a postmark for purposes of the postmark rule.

Finally, the Board will only "infer" a date of mailing where the postmark or other approved substantiating mark is illegible. *See* 831 CMR 1.13 ("In the event that a postmark or other authorized substantiating mark is illegible, the Board may make such inferences concerning the date of mailing or delivery to an alternative delivery service as are consistent with the purposes of the foregoing statutes and rule." The postmark is clearly legible and therefore no inference is warranted. Moreover, even if an inference were warranted, it is much more reasonable to infer that a petition mailed on the date of the postmark, Thursday, July 27, 2017, from Providence would be delivered to the Board on Monday, July 31, 2017 than it would be to infer that it was mailed on Friday, July 21, 2017, some ten days prior to its delivery.

Accordingly, for all of the foregoing reasons, the Board finds and rules that the petition was mailed on the date of its United States postmark, July 27, 2017 and it was therefore mailed beyond the three-month period provided in G.L. c. 59, § 64.

The Board has only that jurisdiction conferred on it by statute. ***Stilson v. Assessors of Gloucester***, 385 Mass. 724, 732 (1982). "Since the remedy of abatement is created by statute, the board lacks jurisdiction over the subject matter of proceedings that are commenced at a later time or prosecuted in a different manner from that prescribed by statute." ***Nature Church v. Assessors of Belchertown***, 384 Mass. 811, 812 (1981) (citing ***Suffolk Law School***, 295 Mass. at 495 (1936). Adherence to the statutory prerequisites is essential "to prosecution of appeal from refusals to abate taxes." ***New Bedford Gas & Edison Light Co. v. Assessors of Dartmouth***, 368 Mass. 745, 747 (1975). ***Old Colony R. Co. v. Assessors of Quincy***, 305 Mass. 509, 511-12 (1940).

Like the assessors, the Board also cannot waive jurisdictional requirements. ***Id.*** Accordingly, the time limit provided for filing the petition is jurisdictional and a failure to comply with it must result in dismissal of the appeal. ***Doherty v. Assessors of Northborough,*** Mass. ATB Findings of Fact and Reports 1990-372, 373 (citing ***Cheney v. Inhabitants of Dover***, 205 Mass. 501 (1910); ***Assessors of Boston v. Suffolk Law School***, 295 Mass. 489 (1936)); *see also* ***Berkshire Gas Co. v. Assessors of Williamstown***, 361 Mass. 873 (1972).

The appellant's failure to file its appeal within 3 months of the April 24, 2017 denial of its abatement application deprives the Board of jurisdiction over this appeal. Accordingly, the appeal is dismissed for lack of jurisdiction and the decision is for the appellee.

APPELLATE TAX BOARD

_____ Chairman

_____ Commissioner

_____ Commissioner

_____ Commissioner

_____ Commissioner

Attest: _____
Clerk of the Board

Date: OCT 2 7 2017
(Seal)

NOTICE: Either party to these proceedings may appeal this decision to the Massachusetts Appeals Court by filing a Notice of Appeal with this Board in accordance with the Massachusetts Rules of Appellate Procedure. Pursuant to G.L. c. 58A, § 13, no further findings of fact or report will be issued by the Board.