



THE COMMONWEALTH OF MASSACHUSETTS

Appellate Tax Board

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Docket No. X307167

KASL, LLC
Appellant.

**BOARD OF ASSESSORS OF
THE TOWN OF BARNSTABLE**
Appellee.

DECISION WITH FINDINGS

The Decision is for the appellant. Abatement is granted in the amount of \$2,500, representing the total penalties assessed under G.L. c. 59, § 38D on the 10 subject properties.

These appeals concern the appellant's challenge to the assessors' imposition of a \$250 penalty on each of the 10 subject parcels office condominiums for an alleged failure to respond to the assessors' request for income and expense information for commercially classified real property for fiscal year 2016 under § 38D. Appellant does not challenge the real estate tax assessed on the subject properties. Rather appellant contests only the § 38D penalties imposed, asserting he never received any § 38D requests for fiscal year 2016. The assessors state that they mailed out all fiscal year 2016 § 38D requests on or about March 20, 2015 including the 10 subject parcels, did not receive a response from appellant, and therefore argue imposition of the \$250 per parcel penalty provided in § 38D was proper.

In pertinent part, § 38D provides as follows:

A board of assessors may request the owner or lessee of any real property to make a written return under oath within sixty days containing such information as may reasonably be required by it to determine the actual fair cash valuation of such property. Failure of the owner or lessee to comply with such request within sixty days after it has been made shall bar him from statutory appeal under this chapter, ***unless such owner or lessee was unable to comply with such request for reasons beyond his control.*** . . .

If an owner or lessee of Class three, commercial or Class four, industrial property fails to submit the information within the time and in the form prescribed, the owner or lessee shall be assessed an additional penalty for the next ensuing tax year in the amount of \$250." [emphasis added]

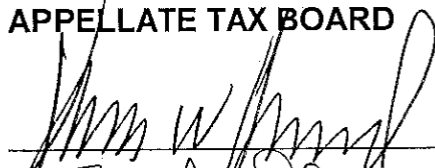
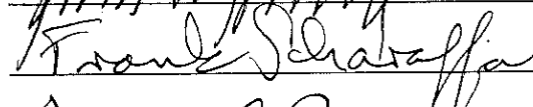
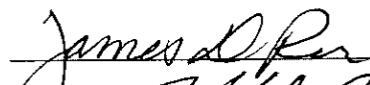
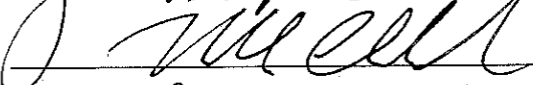
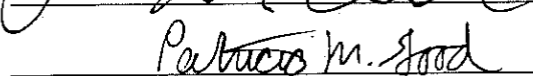
Accordingly, § 38D authorizes assessors to request information that is reasonably required to determine the fair cash value of property to be assessed, and to impose a penalty on taxpayers who fail to provide such information. However, where an owner or lessee is unable to comply with such request for reasons beyond his control, no penalty shall be imposed. See, e.g., **Marketplace Center II Limited v. Assessors of Boston**, Mass. ATB Findings of Fact and Reports 2000-258, 276-77, aff'd, 54 Mass. App. Ct. 1101, 1107 (2002); **Forty-Four – 46 Winter Street, LLC v. Assessors of Boston**, Mass. ATB Findings of Fact and Reports 2005-656, 661; and **Herman Banquer Trust v. Assessors of Boston**, Mass. ATB Findings of Fact and Reports 2005-664, 671.


At the hearing of these appeals, the assessor testified that 1600 § 38D requests for fiscal year 2016, including the 10 subject properties, were mailed out by the assessor's office on or about March 20, 2015. In previous years, of these roughly same 1600 § 38D requests, the assessors received responses from less than 800, including approximately 600 partial responses requiring further information, and including only 200 fully complete responses usable for assessment purposes. The appellant's § 38D fiscal year 2015 written responses for the same 10 subject parcels were offered into evidence by the assessor, who deemed said responses to be full and complete. Having received appellant's fiscal year 2015 § 38D responses, but not his fiscal year 2016 § 38D responses, the assessor failed to send out a second or final request. Instead and without further inquiry, the assessors imposed the \$250 fine per parcel when no response from appellant was received. On the other hand, appellant testified that he never received any § 38D requests for fiscal year 2016 and introduced evidence of mis-deliveries in his neighborhood due to road lengthening causing re-numbering of some homes. Appellant stated he has been "cooperative" with the assessors since his recent purchase of the subject properties, a characterization confirmed by the assessor.

The Board finds that appellant's conduct with the assessors is "cooperative" as both parties testified and as evidenced by appellant's full and complete § 38D responses for the previous fiscal year 2015. Said complete § 38D responses were in the small minority of responses received by the assessors for fiscal year 2015, given that they were fully complete and hence usable by the assessors in formulating fiscal year 2015 assessments under the income approach to value. Thus, given appellant's previous conduct of compliance, the Board credits appellant's testimony that he never received the assessor's § 38D requests for fiscal year 2016 mailed out to him at his same residential address. The Board also credits appellant's evidence of mis-delivered packages by the USPS in his neighborhood. One of the Board's primary functions is to evaluate the credibility of a witness' testimony. See, e.g., **Cumington School of the Arts, Inc. v. Assessors of Cumington**, 373 Mass. 597, 605 (1977) ("The credibility of witnesses, the weight of the evidence, and inferences to be drawn from the evidence are matters for the board."); **Bayer Corp. v. Commissioner of Revenue**, 436 Mass. 302, 308 (2002) ("[W]e have consistently ruled that the assessment of the credibility of witnesses is a matter for the board.") (citing **Kennametal, Inc. v. Commissioner of Revenue**, 426 Mass. 39, 43 n. 6 (1997)).

Accordingly, because appellant here was unable to comply with said § 38D requests for reasons beyond his control due to the non-delivery of the mailed § 38D requests, the decision is for the appellant and an abatement is granted in the amount of \$2,500.

APPELLATE TAX BOARD


Chairman

Commissioner

Commissioner

Commissioner

Commissioner

Attest: 
Clerk of the Board

Date: DEC 19 2016
(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.