

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1601

CA 10-01625

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, AND SCONIERS, JJ.

IN THE MATTER OF FINGER LAKES RACING
ASSOCIATION, INC. AND CANANDAIGUA
ENTERPRISES CORPORATION,
PETITIONERS-RESPONDENTS,

V

MEMORANDUM AND ORDER

TOWN OF FARMINGTON AND ITS ASSESSOR AND
BOARD OF ASSESSMENT REVIEW,
RESPONDENTS-APPELLANTS.

BOYLAN, BROWN, CODE, VIGDOR & WILSON, LLP, ROCHESTER (SHEILA M.
CHALIFOUX OF COUNSEL), FOR RESPONDENTS-APPELLANTS.

HISCOCK & BARCLAY, LLP, BUFFALO (MARK R. MCNAMARA OF COUNSEL), FOR
PETITIONERS-RESPONDENTS.

Appeal from an order of the Supreme Court, Ontario County
(Kenneth R. Fisher, J.), entered April 8, 2010 in a proceeding
pursuant to RPTL article 7. The order denied the motion of
respondents to dismiss the petition.

It is hereby ORDERED that the order so appealed from is
unanimously affirmed without costs.

Memorandum: Petitioners commenced this proceeding seeking review
of their real property tax assessments pursuant to RPTL article 7
after respondent Town of Farmington's Board of Assessment Review
(Board) dismissed their complaints seeking to reduce the assessments
on their properties. The Board dismissed the complaints upon
determining that the failure of petitioners to comply with the Board's
legitimate and reasonable requests for business income information was
willful. Supreme Court denied respondents' motion to dismiss the
petition. We affirm.

A board of assessment review "may require the person whose real
property is assessed . . . to appear before the board and be examined
concerning such complaint, and to produce any papers relating to such
assessment. If the person . . . shall willfully neglect or refuse to
[do so,] such person shall not be entitled to any reduction of the
assessment subject to the complaint" (RPTL 525 [2] [a]). A petition
challenging an assessment should not be dismissed, however, "absent
proof that noncompliance was occasioned by a desire to frustrate
administrative review" (*Matter of Fifth Ave. Off. Ctr. Co. v City of*

Mount Vernon, 89 NY2d 735, 742).

The determination of the Board that petitioners willfully failed to comply with its legitimate and reasonable requests for the information in question in order to frustrate administrative review is not supported by the record (see *Matter of Doubleday & Co. v Board of Assessors of Vil. of Garden City*, 202 AD2d 424, 425, lv dismissed 83 NY2d 906; cf. *Matter of Gelber Enters., LLC v Williams*, 41 AD3d 1207, 1208). Although the information sought was "relevant, proper, and tailored to the matter in dispute" (*Matter of Sass v Town of Brookhaven*, 73 AD3d 785, 788), we nevertheless conclude under the circumstances of this case that there is no evidence of a desire by petitioners to frustrate administrative review. Rather, we conclude on the record before us that petitioners were merely attempting to comply with the Board's request for the information while at the same time protecting the confidentiality of the requested information (see *Matter of Curtis/Palmer Hydroelectric Co. v Town of Corinth*, 306 AD2d 794, 796). Although petitioners initially refused to provide the requested information on the ground that it was not relevant, they thereafter agreed to provide the information if the Board members signed a confidentiality agreement. Upon learning that the Board members refused to sign the confidentiality agreement, petitioners revised the confidentiality agreement by removing the language of the agreement to which the Board had objected, and they provided various alternatives to the Board in order to provide the information sought while protecting its confidentiality, and thus there is no evidence of the requisite willfulness.

Entered: December 30, 2010

Patricia L. Morgan
Clerk of the Court