
TAX - NEW YORK

DP Fuller Family LP v. City of Canandaigua

Supreme Court, Appellate Division, Fourth Department, New York - July 8, 2022 - N.Y.S.3d - 2022 WL 2574326 - 2022 N.Y. Slip Op. 04497

Taxpayer, the owner of commercial property that was located within nonparty city school district, petitioned for review of taxing authorities' real property tax assessments for three different years.

The Supreme Court granted defendants' motion to dismiss and dismissed the petitions. Taxpayer appealed.

The Supreme Court, Appellate Division, held that:

- Taxing authorities had standing to seek dismissal of petitions for taxpayer's failure to comply with notice requirements;
- Motions to dismiss for taxpayer's failure to comply with notice requirements complied with amended scheduling order, and timing of motions was well within range of when such motions were routinely brought and entertained;
- Fact that taxpayer failed to adhere to notice requirements, proceeded with obtaining an appraisal anyway, and later faced appropriate motions to dismiss for failure to comply with notice requirements did not support denial of motions; and
- Taxpayer failed to establish good cause to excuse its failure to comply with notice requirements.

Taxpayer failed to establish good cause to excuse its failure to comply with requirement to provide notice of tax certiorari proceeding to school district and treasurer, even if taxpayer made a good faith effort to comply but simply made a mistake, and regardless of absence of prejudice to school district.

Mistake or omission of taxpayer's attorney, including a factual mistake during an attempt to provide notice of tax certiorari proceeding to school district or treasurer, does not constitute good cause shown so as to excuse a taxpayer's failure to comply with notice requirement.

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