

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4182-08T3

OCEAN SENIORS, L.L.C.,

Plaintiff-Appellant,

v.

OCEAN TOWNSHIP, A Municipal
Corporation of the State
of New Jersey,

Defendant-Respondent.

Submitted January 25, 2010 – Decided February 19, 2010

Before Judges Lisa and Baxter.

On appeal from the Tax Court of New Jersey,
Docket No. 008549-2006.

Shiriak & Timins, attorneys for appellant
(Ben D. Shiriak and Raymond S. Zierak, of
counsel and on the brief).

McKenna, DuPont, Higgins & Stone, P.C.,
attorneys for respondent (Edward G.
Washburne, on the brief).

PER CURIAM

Plaintiff, Ocean Seniors, L.L.C., appeals from the March 27, 2009 order of the Tax Court dismissing its complaint which sought review of its 2006 tax assessment. The basis for the dismissal was that the filing of the complaint was untimely. Plaintiff argues that the tax assessor's certification and bulk

mailing postage statement were insufficient to support a presumption of mailing by the assessor and receipt by plaintiff of plaintiff's 2006 tax assessment. We reject this argument and affirm.

Assessors are required to mail to each taxpayer prior to February 1 of each year a notice of assessment. N.J.S.A. 54:4-38.1. A taxpayer feeling aggrieved by the assessment may file a complaint challenging it on or before April 1 or forty-five days from the date of the bulk mailing of the notification of assessment, whichever is later. N.J.S.A. 54:3-21. In this case, the bulk mailing was completed on January 27, 2006. Therefore, plaintiff's complaint was required to be filed by April 1, 2006. Plaintiff did not file its complaint until September 22, 2006.

When defendant, Ocean Township, moved for dismissal based upon untimely filing, it supported its application with a certification from the assessor, which included the following relevant provisions:

4. The Monmouth County Board of Taxation performed the bulk mailing of the tax cards to all taxpayers in the Township of Ocean on January 27, 2006. Attached and marked as Exhibit "A" is the Postage Statement showing the mailing date of the bulk mailing on behalf of the Township of Ocean.

5. The plaintiff's tax card was not returned to me at the Township of Ocean as undeliverable, the property was not sold during the tax year and there were no requests for address changes during the time period of the bulk mailing of the notification cards.

In opposition to the motion, plaintiff did not assert that it never received the assessor's notice. It merely argued that the assessor failed to prove compliance with the notification statute. The Tax Court judge rejected plaintiff's argument. We agree.

The assessor's certification was sufficient to establish a presumption of receipt by plaintiff of the mailing. See SSI Med. Servs., Inc. v. State Dep't of Human Servs., 146 N.J. 614, 621-25 (1996); Davis & Assocs., L.L.C. v. Stafford Township, 18 N.J. Tax 621 (Tax 2000). The assessor certified that the bulk mailing went to all taxpayers, which would include plaintiff. The assessor further certified that the property had not been sold during the tax year and no requests had been made for address changes. Therefore, it is fair to conclude that the mailing was properly addressed. The assessor further certified that plaintiff's mailing was not returned as undeliverable. Finally, the bulk mailing receipt corroborated that the postal authorities mailed all notices, including that to plaintiff on January 27, 2006.

These unrefuted facts, especially when considered in conjunction with the absence of any contention by plaintiff that it did not receive the mailing, were sufficient to establish a presumption of mailing and delivery. Plaintiff produced nothing that would tend to overcome the presumption. We accordingly find no error in the dismissal of plaintiff's complaint as untimely.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



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