

CV07-4008134S : SUPERIOR COURT
CONNECTICUT POST LIMITED
PARTNERSHIP : JUDICIAL DISTRICT OF
VS. : ANSONIA/MILFORD AT DERBY
CITY OF MILFORD : FEBRUARY 27, 2008

RULING ON MOTION #101,
MOTION TO DISMISS FIRST COUNT

The issue in this motion is whether an appeal to the Board of Assessment Appeals was timely received by the Board. The plaintiff claims that its putting in the mail by the date set for filing appeals complied with the requirement that the application be filed by a certain date.

The defendant moves to dismiss count one of the complaint claiming that the court lacks jurisdiction as the plaintiff by failing to properly file his appeal to the Board of Assessment Appeals had not exhausted his administrative remedy.

It is the claim of the defendant that the application sent by mail and received by the defendant on March 22 was not in accord with the statutes, Section 12-11(a) and 12-112 C.G.S. requiring the applicant to file by March 20. The Board of Assessment Appeals as noted above rejected the appeal as not being timely filed.

COPY OF MEMO SENT
2-29 DATE 2008 TO ALL
COUNSEL OF RECORD
AND PRO SE PARTIES
ALL PARTIES PRESENT

RECEIVED

MAR - 1 2008

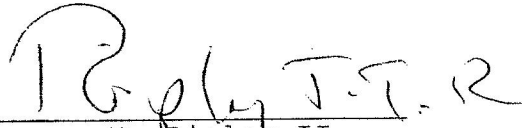
OFFICE OF THE
CITY ATTORNEY

JUDICIAL DISTRICT OF
ANSONIA/MILFORD AT DERBY
VALENTIA
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This court concludes that the provision in the statute which provides that the appeal to the Board of Assessment Appeals be filed by a date certain requires that the appeal be in the office (underlining mine) of the Board of Assessment Appeals and not simply put in the mail by March 20. In Piscitello v. Boscarello, 113 Conn. 128, 131 the court held that "Generally in the absence of the provisions to the contrary, fulfillment of a filing requirement is not accomplished upon mailing but "requires actual delivery." Where the right of appeal is established by statute, the statute is deemed mandatory and the appealing party must comply strictly with the terms thereof. See also Vernon Village Inc. et al v. Leslie Carothers, Commissioner of Environmental Protection et al, 217 Conn. 130, 142.

Accordingly, the court finds that the plaintiff did not properly exhaust its administrative remedy and renders the first count of the complaint subject to dismissal for subject matter jurisdiction.

The motion to dismiss the first count is granted.


George W. Ripley II
Judge Trial Referee