

Department of Environmental Management
Administrative Adjudication Division
State of Rhode Island
Re: OBF, LLC
Denial of Farm Application
AAD No. 09-001/AGA
March 1, 2011

DECISION AND ORDER

FACTS AND TRAVEL

On October 2, 2009, OBF, LLC and its principal, Craig S. Hibbad, filed a request with the Rhode Island Department of Environmental Management (DEM), Division of Agriculture for an immediate declaration pursuant to the Fresh Water Wetlands statute (RIGL 2-1-22 (J)) that it be classified as a "Farmer". Along with its request, it submitted Mr. Craig S. Hibbad's "restated" IRS Schedule F's for the years 2005; 2006; 2007 and 2008; Profit and Loss statements dated through September 9, 2009 along with a Certificate of Tax Exemption. (Plaintiff's Exhibit 1- Full) On October 13, 2009, the Division of Agriculture responded and denied the request. (Plaintiff's Exhibit 2- Full) This appeal followed on October, 28, 2009. A hearing was held on September 27 and 28, 2010.

It should be noted that a stenographer was present at the hearing and transcribed the proceedings. The parties advised the clerk of the Administrative Adjudication Division that neither of them would be providing a transcript to the hearing officer due to financial constraints. Thus, this decision is being written without the benefit of a transcript.

OBF, LLC operates a farm at 25 Simmons Road, Little Compton, Rhode Island. Mr. Hibbad testified that his parents were farmers and he has farmed since his childhood. Other witnesses presented by appellant OBF, LLC and Mr. Hibbad support this fact. Mr. Williams Stamp is the President of the Rhode Island Farm Bureau. He stated that Mr. Hibbad, in his opinion, has "farmer status". Mr. Lee Gardiner is a previous Director of the Rhode Island Farm Bureau. He also stated that Mr. Hibbad has all the trappings of a farmer, namely, farm equipment, barns, livestock etc. Mr. Gardiner admitted he is not a full time farmer. Lastly, Mr. Alfred Bettencourt who is the Chairman of the Rhode Island Farm Bureau signed minutes of a meeting dated September 3, 2009 in which the council voted that Mr. Hibbad met the criteria of RIGL 2-1-22 (J) and that he is a farmer carrying out normal farming activities. (Plaintiffs Exhibit 18- Full) Mr. Bettencourt admitted on cross examination that he did not see or review Mr. Hibbad's application for farmer status.

The main issue in this case revolves around the criteria in Rhode Island General Laws 2-1-22 (J) and whether the Appellant OBF, LLC and Mr. Hibbad should be classified as a "farmer". RIGL 2-1-22 (J) reads as follows:

(J) For the purpose of this section, a "farmer" is an individual, partnership or corporation who operates a farm and has filed a 1040 F U.S Internal Revenue Form with the Internal Revenue Service, has a state farm tax number and has earned ten thousand dollars (\$10,000) gross income on farm products in each of the proceeding four (4) years.

Evidence admitted at the hearing demonstrates the following:

1. Appellant OBF, LLC is a Rhode Island Limited Liability Company and Mr. Hibbad is an individual pursuant to RIGL 2-1-22 (J).
2. Mr. Hibbad operates a farm. Testimony from Mr. Gardiner; Mr. Bettencourt and Mr. Stamp as well as from Mr. Hibbad established that Mr. Hibbad has farmed since he was a child; his parents were farmers, he uses farm equipment, has barns and raises livestock, grows hay and feed corn for his animals. This evidence was not refuted.

3. Mr. Hibbad introduced a Certificate of Exemption (farm equipment) from the Rhode Island Division of Taxation. (Plaintiff's Exhibit 3- Full).

Lastly, the statute also requires that the applicant "has filed a 1040 F US Internal Revenue form with the Internal Revenue Service and has earned ten thousand dollars (\$10,000) gross income on farm products in each of the proceeding four (4) years".

The Appellant's counsel filed "restated IRS Schedule F's for Craig S. Hibbad" with his letter of October 2, 2009 requesting farmer status. These purported Schedule F's, as submitted to the Division of Agriculture for the years 2005, 2006, 2007, 2008, and 2009 consisted of the Schedule F page only. These pages were not signed or dated. Counsel also submitted a Profit and Loss statement for Otterbrook farm from January through September 2009. It is clear that the Division of Agriculture relied on these documents exclusively when it denied OBF'S request for farmers status.

The evidence submitted by the Appellant at the hearing did not clarify nor solidify the Appellant's position that it had filed the 1040 F US Internal Revenue Forms with the Internal Revenue Service as of October 9, 2009.

The "2005" documents submitted at the hearing were; 1040 X Amended US Tax Return for 2005 signed and dated 11/5/09 by Craig S. Hibbad and Marlene M. Bouffard (preparer); Form 1040 for 2005 signed by Mr. Craig S. Hibbad and Ms. Marlene M. Bouffard (preparer); dated 4/15/06; Schedule A (form 1040) Itemized Deductions; Schedule F (form 1040) Profit or Loss from Farming; Form 4562 Depreciation and Amortization; Form 8880-Credit for Qualified Retirement Savings Contributions. (Plaintiff's Exhibit 4-Full).

The "2007" documents submitted during discovery and the hearing were; Form 1040 X Amended US Tax Return for 2007 signed by Craig S. Hibbad and Marlene M. Bouffard (preparer) and dated 11/5/09; Form 1040 for 2007 signed by Mr. Hibbad and Ms. Bouffard (preparer) on 8/14/08; Schedule F (form 1040) Profit or Loss from farming; Form 4562 Depreciation and Amortization. (Plaintiff's Exhibit 6- Full).

Ms. Bouffard, the preparer of the returns, was not offered as a witness.

Mr. Hibbad offered scant testimony about the documents but did acknowledge that he did not submit his revised Tax Returns for 2005 and 2007 with the IRS until November 2009. On redirect examination, Mr. Hibbad did demonstrate that he generated gross income in excess of Ten thousand (\$10,000) dollars through farming activities and that the numbers on the Profit and Loss statements submitted were the same as those on it's tax returns. Thus, from all outward appearances, Mr. Hibbad is a farmer and actively works the farm, produces income from farming activities and has a Rhode Island state tax exempt certificate for farming equipment.

Thus, the thorny issue in this case is a technical one. Did the Appellant have a 1040 F US Internal Revenue form filed with the Internal Revenue Service at the time he filed his request for farmer status on October 9, 2009? After weighing all the evidence, I conclude that the Appellant did not satisfy this mandatory requirement.

Appellant argues that the mere filing of a 1040 F Form, even if it shows no income, satisfies the statute. Such an argument is contrary to another mandatory requirement of the statute which requires gross income in excess of ten thousand (\$10,000) dollars. Additionally, Appellant presented no evidence that the "restated" 1040 F forms for 2005 and 2007 submitted to the Division of Agriculture were even filed with the Internal Revenue Service. Therefore, Appellant's additional argument that an amended Tax Return relates back to the date the original was filed is erroneous.

When the language of a statute is clear and unambiguous, the statute must be interpreted literally and the words of the statute must be given their plain and ordinary meaning. *Accent Store Design v. Marathon house*, the 674 A. 2d 1233, 1226 (R.I 1996). The statute in question requires that all of the requirements be satisfied in order to be granted farmer status per section (J). The Appellant's "Intention" to file a Form 1040 F does not satisfy the statute. His admission at the hearing that he did not file his Amended 2005 and 2007 Tax Returns until November 5, 2009

explains why he submitted “restated” Tax Returns for 2005 and 2007 to the Division of Agriculture on October 2, 2009 that were unsigned and undated. No plausible explanation for these discrepancies were offered by OBF, LLC or Mr. Hibbad at the hearing.

Findings of Fact

1. OBF, LLC is a Rhode Island Limited Liability Company and Mr. Craig S. Hibbad is an individual and a principal of the company.
2. On October 2, 2009 OBF, LLC and Craig S. Hibbad filed a request with the Department of Environmental Management Division of Agriculture, for “Farmer” status pursuant to RIGL 2-1-22 (J).
3. On October 13, 2009 the division of Agriculture denied OBF, LLC and Mr. Hibbad's request for “farmer” status pursuant to RIGL 2-1-22 (J).
4. OBF, LLC and Mr. Craig S. Hibbad operate a farm at 25 Simmons Road, Little Compton, Rhode Island.
5. All of the witnesses presented by Mr. Hibbad, namely, Mr. Williams Stamp, Mr. Lee Gardiner and Mr. Alfred Bettencourt Testified that Mr. Hibbad is a farmer and has been for some time.
6. Mr. Alfred Bettencourt, Executive Director of the Rhode Island Farm Bureau, testified that, in his opinion as the chairman of Farm Bureau that Mr. Hibbad and OBF, LLC met the criteria of RIGL 2-1-22 (J).
7. Mr. Alfred Bettencourt admitted on cross examination that he did not see or review Mr. Hibbad's application.
8. Mr. Hibbad obtained a Certificate of Exemption from the Rhode Island Division of Taxation for farm equipment.
9. Appellant's amended 2005 and 2007 Form 1040 F (Profit or Loss from Farming) reports gross income for the years 2005 and 2007 in excess of Ten Thousand (\$10,000) dollars.
10. Mr. Hibbad submitted “restated” Internal Revenue Services 1040 schedule F Forms including the years 2005 and 2007 with his request for farmer status on October 9, 2009.
11. The restated Internal Revenue Service 1040 Schedule F Forms submitted on October 9, 2009 to the Division of Agriculture including years 2005 and 2007 were not signed or dated.
12. The Schedule F Forms submitted at the hearing for 2005 and 2007 were dated November 9, 2009 and signed by Mr. Hibbad and Ms. Marlene M. Bouffard (preparer).
13. Mr. Hibbad admitted that he did not submit his Amended Schedule 1040 F Tax Returns to the Internal Revenue Service for 2005 and 2007 until November 9, 2009.
14. The Division of Agriculture did not have in its possession Amended Schedule 1040 F Tax Returns at the time of its denial of OBF, LLC's application.

Conclusions of Law

After due consideration of the documentary and testimonial evidence of record and based upon the findings of fact as set forth herein, I conclude the following as a matter of Law:

1. Appellant operates a farm within the meaning of RIGL 2-1-22 (J).
2. Appellant has a State Farm Tax Number from the Rhode Island Division of Taxation as required by RIGL 2-1-22 (J).
3. Appellant, at the time he requested farmer status on October 9, 2009, did not have on file amended 1040 F US Internal Revenue Forms with the Internal Revenue Service for the years 2005 and 2007 as required by RIGL 2-1-22 (J).
4. The requirements of RIGL 2-1-22 (J) are mandatory and all of the criteria must be satisfied all in order to meet the statutory definition of “Farmer”.
5. Appellant has failed to prove by a preponderance of the evidence that it satisfied all the criteria of RIGL 2-1-22 (J).

Wherefore, based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby:

ORDERED

1. The denial of Appellant's request for farmer status by the Division of Agriculture on October 13, 2009 is sustained and upheld. The appellants appeal is hereby denied and dismissed.
2. The Division of Agriculture's motion for Judgment as a Matter of Law is denied.

Entered as an Administrative Order this _____ day of March 2011

David M. Spinella
Hearing Officer