

STATE OF MINNESOTA

TAX COURT

COUNTY OF HENNEPIN

REGULAR DIVISION

Danmark Properties, LLC,

Petitioner,

vs.

County of Hennepin,

Respondent.

**ORDER GRANTING COUNTY'S
MOTION TO DISMISS**

File No. 27-CV-16-06485

Filed: October 24, 2017

This matter came before the Honorable Tamar Gronvall, Judge of the Minnesota Tax Court, on respondent Hennepin County's motion to dismiss.

Ryan T. Conners, Attorney at Law, represents petitioner Danmark Properties, LLC.

Chris T. Tolbert, Assistant County Attorney, represents respondent Hennepin County.

Hennepin County moves to dismiss this property tax case on the ground that petitioner Danmark Properties, LLC, failed to timely disclose income and expense information as required by Minn. Stat. § 278.05, subd. 6(a) (2016). We grant the County's motion.

The court, upon all the files, records, and proceedings herein, now makes the following:

ORDER

Respondent Hennepin County's motion to dismiss is granted.

IT IS SO ORDERED. THIS IS A FINAL ORDER. LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT,



Tamar Gronvall, Judge
MINNESOTA TAX COURT

Dated: October 24, 2017

MEMORANDUM

I. BACKGROUND

Petitioner Danmark Properties, LLC (“Danmark”), timely filed a property tax petition contesting the January 2, 2015 assessment for taxes payable in 2016.¹ Danmark’s petition pertains to 35 properties located in Hennepin County: 32 located in the City of Minneapolis; 2 in the City of Brooklyn Center; and 1 in the City of Brooklyn Park.² The subject properties are residential rental properties, and were thus income-producing as of January 2, 2015.³

On June 30, 2017, the County filed its motion to dismiss, alleging that Danmark failed to timely provide complete income and expense information for the subject properties as required by law.⁴ See Minn. Stat. § 278.05, subd. 6(a) (2016) (providing that one contesting the valuation of

¹ Affidavit of Denise Lingwall (June 29, 2017) (“Lingwall Aff.”) ¶¶ 3-4; Resp’t’s Mem. Supp. Mot. Dismiss 1 (filed June 30, 2017).

² Lingwall Aff. ¶ 2; Affidavit of Joshua Hoogland (June 29, 2017) (“Hoogland Aff.”) ¶ 3; Affidavit of Marvin M. Anderson (June 29, 2017) (“Anderson Aff.”) ¶ 2.

³ Lingwall Aff. ¶ 4; Hoogland Aff. ¶ 5; Anderson Aff. ¶ 4.

⁴ Resp’t’s Not. Mot. & Mot. Dismiss (filed June 30, 2017).

an income-producing property must provide the county assessor with income and expense information about the subject property by August 1 of the year in which the tax is payable); *id.*, subd. 6(b) (2016) (providing that failure to timely provide the enumerated information requires dismissal). In support of its motion, the County submitted the affidavits of Denise Lingwall, Residential Supervisor in the City of Minneapolis' Assessor's Office; Joshua Hoogland, Residential Appraisal Manager in the Hennepin County Assessor's Office; and Marvin M. Anderson, Assessor for the City of Brooklyn Park.⁵ Each attests that the County sent Danmark's counsel a courtesy letter on June 24, 2016, noting Danmark's obligation to provide income and expense information for each income-producing property by August 1, 2016.⁶ Each witness also attests that Danmark submitted nothing by the August 1, 2016 deadline.⁷ On March 6, 2017, Danmark's counsel sent an email to Ms. Lingwall with attached documents including: a spreadsheet listing Danmark properties, tenant names, monthly rents, and lease start and end dates; Danmark's 2015 tax return; and "[a]n information sheet describing 2016 cash flows."⁸

Danmark opposed the motion,⁹ submitting the affidavit of Daniel L. Gelb, the sole owner and chief manager of Danmark, a single-member Minnesota limited liability company.¹⁰ Mr. Gelb is "solely responsible for all decision making of" Danmark and has "sole authority over all of

⁵ Lingwall Aff. ¶ 1; Hoogland Aff. ¶ 1; Anderson Aff. ¶ 1.

⁶ Lingwall Aff. ¶ 5; Hoogland Aff. ¶¶ 6-7, Attach. A (letter from the County); Anderson Aff. ¶ 5.

⁷ Lingwall Aff. ¶ 6; Hoogland Aff. ¶ 7; Anderson Aff. ¶ 6.

⁸ Lingwall Aff. ¶ 7, Attach. (E-mail from Ryan Conners, Attorney at Law, to Denise Lingwall, City of Minneapolis' Assessor's Office, et al. (March 6, 2017)).

⁹ Pet'r's Mem. Opp'n Mot. Dismiss (filed July 17, 2017).

¹⁰ Affidavit of Daniel L. Gelb (filed July 14, 2017) ("Gelb Aff.") ¶ 2.

[Danmark's] business operations.”¹¹ Mr. Gelb states that on February 27, 2017, his attorney asked him to provide income and expense information for the properties subject to the tax petition.¹² According to Mr. Gelb, on March 6, 2017, Danmark provided to the county “all available Income and Expense Information in Petitioner’s possession or control, including tax returns and rent rolls, for the properties subject to the petition.”¹³ Mr. Gelb also attests that prior to February 27, 2016,¹⁴ he (and Danmark) were not aware of or informed of any requirement to provide income and expense information for the subject properties.¹⁵

We heard the County’s motion on July 28, 2017.

II. GOVERNING LAW

Minnesota Statutes § 278.05, subd. 6(a) (the “Mandatory Disclosure Rule” or “Rule,” formerly the “60-Day Rule”) is a mandatory disclosure provision that applies to “income-producing property.” The Rule provides, in pertinent part:

In cases where the petitioner contests the valuation of income-producing property, the following information must be provided to the county assessor no later than August 1 of the taxes payable year:

- (1) a year-end financial statement for the year prior to the assessment date;
- (2) a year-end financial statement for the year of the assessment date;
- (3) a rent roll on or near the assessment date listing the tenant name, lease start and end dates, base rent, square footage leased and vacant space;

¹¹ Gelb Aff. ¶ 2.

¹² Gelb Aff. ¶ 3.

¹³ Gelb Aff. ¶ 8.

¹⁴ In paragraph three of his affidavit, Mr. Gelb refers to February 27, 2017, as the date his attorney asked him to provide information, but in paragraphs four through seven, he states that he (and Danmark) were not aware of these requirements “prior to February 27, 2016.” The Court will assume that February 2016 is a typographical error and that he instead meant February 2017 in paragraphs four through seven.

¹⁵ Gelb Aff. ¶¶ 4-7.

(4) identification of all lease agreements not disclosed on a rent roll in the response to clause (3), listing the tenant name, lease start and end dates, base rent, and square footage leased;

(5) net rentable square footage of the building or buildings; and

(6) anticipated income and expenses in the form of a proposed budget for the year subsequent to the year of the assessment date.

Minn. Stat. § 278.05, subd. 6(a). The Rule ensures that a taxing authority receives all information a petitioner actually possesses relevant to application of the income approach to valuing real property. *See, e.g., Irongate Enters., Inc. v. Cty. of St. Louis*, 736 N.W.2d 326, 330-31 (Minn. 2007). When the Rule applies, it requires broad disclosure. *See, e.g., 78th St. OwnerCo, LLC v. Cty. of Hennepin*, 813 N.W.2d 409, 413 (Minn. 2012) (holding that the Rule requires a petitioner to “disclose all information to which it has access so that a county can conduct a thorough and accurate assessment”).

Failure to timely furnish the specified information mandates dismissal of the petition *unless* “(1) the failure to provide it was due to the unavailability of the information at the time that the information was due, or (2) the petitioner was not aware of or informed of the requirement to provide the information.” Minn. Stat. § 278.05, subd. 6(b). If the petitioner proves that he was not aware or informed of the requirements, he has an additional 30 days after becoming aware or informed to provide the required information, “otherwise the petition shall be dismissed.” *Id.* A petitioner’s duty to disclose information covered by the Rule is strictly enforced. *78th St. OwnerCo*, 813 N.W.2d at 417. Failure to disclose under the Rule requires dismissal, *Kmart Corp. v. Cty. of Becker*, 639 N.W.2d 856, 861 (Minn. 2002), even if that failure causes no prejudice to the county, *BFW Co. v. Cty. of Ramsey*, 566 N.W.2d 702, 706 n.6 (Minn. 1997).

III. ANALYSIS

As a preliminary matter, there is no dispute that as of the January 2, 2015 assessment date, the subject properties were income-producing within the meaning of the Mandatory Disclosure

Rule. Danmark rented the 35 residential properties.¹⁶ “Property that generates rental income for its owner is considered to be income-producing.” *Kmart*, 639 N.W.2d at 859 n.1.

Danmark submitted no evidence to contradict the County’s affidavits indicating that Danmark failed to provide the required income and expense information by the August 1, 2016 deadline. Although Danmark provided some income and expense information on March 6, 2017—over seven months after the deadline—even this information was incomplete.¹⁷ For example, Danmark acknowledges that its March 2017 submission did not include “year[-]end financial statements, anticipated income and expenses/proposed budget, and other information described in Minn. Stat. [§] 278.05”¹⁸ See Minn. Stat. § 278.05, subd. 6(a)(1)-(2) (requiring “year-end financial statement[s]” for the year prior to the assessment date and the year of the assessment date); *id.*, subd. 6(a)(6) (requiring “anticipated income and expenses in the form of a proposed budget for the year subsequent to the year of the assessment date”). Thus, in addition to violating the statutory deadline, Danmark failed to provide at least three of the six categories of information that the Rule requires.¹⁹ Indeed, at the July 2017 hearing on the County’s motion, Danmark conceded that it had not provided the required information in a timely fashion and had not provided complete information.

Danmark does not qualify for either of the exceptions to dismissal under Minn. Stat. § 278.05, subd. 6(b). One exception is based on lack of knowledge. Minn. Stat. § 278.05, subd. 6(b)(2). Although Mr. Gelb attests that he (and Danmark) were not aware of or informed of

¹⁶ Lingwall Aff. ¶¶ 4, 6; Hoogland Aff. ¶¶ 3, 5; Anderson Aff. ¶¶ 2, 4.

¹⁷ Lingwall Aff. ¶ 7, Attach.

¹⁸ Lingwall Aff., Attach.

¹⁹ See Lingwall Aff., Attach.

the Mandatory Disclosure Rule until February 27, 2017,²⁰ the County's June 24, 2016 courtesy letter to Danmark's counsel provided sufficient notice of the Rule's requirements.²¹ *Cf. Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 92 (1990) ("Under our system of representative litigation, each party is deemed bound by the acts of his lawyer-agent and is considered to have notice of all facts, notice of which can be charged upon the attorney." (internal quotation marks and citations omitted)); *Wagher v. Guy's Foods, Inc.*, 768 F. Supp. 321, 323-24 (D. Kan. 1991) (noting the "well-established rule that notice to an attorney is imputed to the client" (citing *Irwin*, 498 U.S. 89 at 92)); *see also First Res. Bank v. Cty. of Washington*, No. 82-CV-13-1835, 2013 WL 5969886, at *3 (Minn. T.C. Oct. 29, 2013) (holding Subdivision 6(b)(2)'s exception to the Rule's reporting requirements did not apply because the county's letter to petitioner provided sufficient notice of the Rule's requirements); *Kalinoff v. Cty. of Washington*, No. 82-CV-09-2841, 2010 WL 248788, at *1 (Minn. T.C. Jan. 13, 2010) (same).²²

The other exception is based on the unavailability of information. Minn. Stat. § 278.05, subd. 6(b)(1). Mr. Gelb's statement that in March 2017 Danmark provided all available income and expense information in its "possession or control" is insufficient to invoke this exception.²³ That statement does not establish that even the incomplete information Danmark submitted in

²⁰ Gelb Aff. ¶¶ 4-7.

²¹ Hoogland Aff., Attach. (letter "to remind you of certain obligations for petitioners of income-producing property under Minnesota Statute [§] 278.05, Subd. 6" and indicating that "you must provide the information . . . no later than August 1, 2016").

²² Danmark relies on *Citizens State Bank of Shakopee v. County of Scott*, No. 2004-09057, 2005 WL 626611 (Minn. T.C. Mar. 1, 2005), to argue for an exception. Pet'r's Mem. Opp'n Mot. Dismiss 4-5. *Citizens State Bank* is inapposite, however, because a reminder letter was not sent in that case. *See Citizens State Bank of Shakopee*, 2005 WL 626611, at *1-2 & n.2 (noting that "many counties have adopted the practice of sending all income-producing property tax petitioners a letter informing them of the requirement" and that such a practice was "prudent" "[i]n order to obviate ambiguity as to whether or not a taxpayer has knowledge of the 60 Day Rule").

²³ Gelb Aff. ¶ 8.

March 2017 was not available before August 1, 2016, when the Rule required its disclosure.²⁴

Thus, dismissal of Danmark's petition is required. *See Kmart*, 639 N.W. 2d at 861.

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²⁴ Even if Danmark had become aware of the requirements for the first time on February 27, 2017, it still failed to provide all necessary information within 30 days (March 29, 2017), as required by the Rule. *See* Minn. Stat. § 278.05, subd. 6(b).