NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE TAX COURT COMMITTEE ON OPINIONS
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JESSE WOLOSKY,	:	**TAX COURT OF NEW JERSEY**
	:	**DOCKET NOs.: 008267-2016**
	:	**009548-2017**
Plaintiff,	:	**010326-2018**
	:	
v.	:	
	:	**Approved for Publication In the New Jersey Tax Court Reports**
FREDON TWP. and MICHAEL & PENNY HOLENSTEIN,	:	
	:	
Defendant.	:	
	:	

Decided: December 18, 2019

Walter M. Luers for plaintiff, Jesse Wolosky (Walter M. Luers, LLC, attorneys).

Tara Ann St. Angelo for defendants, Michael and Penny Holenstein (Gebhardt & Kiefer, P.C., attorneys).[1]

William E. Hinkes for defendant, Fredon Twp. (Hollander, Strelzik, Pasculli, Hinkes, Wojcik, Gacquin, Vandenberg & Hontz, L.L.C., attorneys).

John R. Lloyd for the *Amicus Curiae,* Association of Municipal Assessors of New Jersey (Chiesa Shahinian & Giantomasi, P.C., attorneys)

BIANCO, J.T.C.

This opinion shall constitute the court's decision regarding the imposition of sanctions for frivolous suit available under N.J.S.A. 2A:15-59.1 and R. 1:4-8, sought by the defendants herein following trial against plaintiff Jesse Wolosky ("Mr. Wolosky").

[1] The firm was retained by Green Township as special counsel in the present matter, to represent defendant Penny Holenstein in her capacity as Municipal Tax Assessor to the township.

PROCEDURAL HISTORY

As a resident of Sussex County, Mr. Wolosky (initially proceeding as a self-represented party) sought to increase the 2016 tax year assessment on Block 2103, Lot 9.01, commonly known as 15 Duke of Gloucester Street in defendant, Fredon Township ("Fredon"), which property is the single-family residence of defendants Michael and Penny Holenstein (collectively "the Holensteins"). Fredon assessed the Holensteins' residence at $544,400 in 2009 and 2010, $506,300 in 2011, and $437,600 in 2012 through 2016. On March 30, 2016, Mr. Wolosky filed a petition of appeal with the Sussex County Board of Taxation ("the County Board") challenging the assessment on the Holensteins' property. At all times, Fredon has defended the assessment placed upon the Holensteins' property. The County Board dismissed the appeal without prejudice, citing a perceived conflict presented by the fact that defendant, Penny Holenstein (individually "Mrs. Holenstein") serves as Municipal Tax Assessor to the Townships of Green, Byram, and Stillwater, within Sussex County.[2]

On May 12, 2016, Mr. Wolosky timely appealed to the Tax Court again seeking to increase the assessment on the Holensteins' single-family residence pursuant to N.J.S.A. 54:3-21(a)(1). On June 2, 2016, the Holensteins served what is commonly known as a "safe harbor" letter[3] requesting that Mr. Wolosky withdraw his appeal for being frivolous in nature, claiming that it was filed for an improper purpose. No similar "safe harbor" letter was filed by Fredon.

On July 6, 2016, the Holensteins and Fredon moved for summary judgment to dismiss the complaint as meritless, for attorney's fees, and for a finding that the complaint was frivolous under R. 1:4-8. Alternatively, the Holensteins and Fredon sought an order limiting discovery. After

[2] Mrs. Holenstein also serves as Municipal Tax Assessor to Liberty Township in Warren County.
[3] See R. 1:4-8(b)(1) and the Applicable Law section *infra*.

receiving these motions, Mr. Wolosky hired attorney Matthew Petracca. On September 2, 2016, the court denied the motion to dismiss as premature, finding that there were issues of material fact with respect to Mr. Wolosky's proofs, and that the R. 1:4-8 relief sought was a post-judgment remedy. In denying the motion to dismiss, the court gave Mr. Wolosky an opportunity to hire an expert appraiser and attempt to overcome the presumption of validity. The court did caution Mr. Wolosky, however, that if it was ultimately determined that his claimed lacked a legal basis, the court may be required to consider whether the case was brought in bad faith from the start. The Holensteins' and Fredon's alternative motion to limit discovery was granted by the court.[4] Following the court's ruling on these motions, Mr. Wolosky had the option to proceed to trial and attempt to prove his claim against the Holensteins, or withdraw his case.

Mr. Wolosky proceeded to a trial on December 9, 2016, seeking to challenge and raise the assessment on the Holensteins' single-family residence. After the close of Mr. Wolosky's proofs, the Holensteins and Fredon moved to dismiss the complaint based upon a lack of evidence under R. 4:37-2(b). The court granted the motion to dismiss the complaint based on Mr. Wolosky's failure "to present sufficient competent evidence to overcome the presumption of correctness."[5]

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[4] On October 28, 2016, the court denied Mr. Wolosky's subsequent motion to secure a copy of a January 2015 mortgage appraisal report prepared for the Holensteins' lender for the purpose of refinancing their single-family residence. While the report appeared to be timely, the court found same to be irrelevant. The court reasoned that the objective of the tax appeal was to determine the true value in the fee simple. A mortgage interest is but one part of a "complete bundle of rights" that comprise the fee simple interest. See discussion in The Appraisal of Real Estate 111-12 (13th ed. 2008). Furthermore, the parties had already exchanged their respective appraisal reports prior to argument on the motion. The Appellate Division affirmed the court's denial of Mr. Wolosky's motion to secure a copy of the mortgage appraisal. Wolosky v. Fredon Twp., No. A-1980-16T1 (App. Div. July 24, 2018).

[5] At trial, Mr. Wolosky presented expert Matthew Nemeth as his only witness. The parties stipulated to his qualifications as a New Jersey certified residential real estate appraiser, and the court accepted him as an expert. Mr. Nemeth utilized a sales comparison approach and concluded to "a reasonable degree of certainty" that the value of the subject property was $535,000. To

In terms of substance, the court also found that Mr. Wolosky's claim seeking to raise the assessment of the Holensteins' single-family residence defied logic. The original assessment on the single-family residence was $437,600, which in this particular case also represents Fredon's Tax Assessor's opinion of the true value of said property given that the average ratio of assessed value to true value in Fredon for the 2016 tax year was 102.42 percent (say 100 percent). Mr. Wolosky's expert concluded a true value of $535,000 (nearly $100,000 more) based, in part,[6] upon what he claimed to be a discrepancy of 378 square feet, between his measurements of the residence, and the smaller measurements contained on Fredon's Tax Assessor's property record card. The expert asked the court to accept that an alleged 378 square foot difference in the size of the Holensteins' residence[7] somehow amounted to a nearly $100,000 increase in the value of the residence. The court found that such a conclusion was neither sustainable nor credible.

After conclusion of the trial and dismissal of Mr. Wolosky's case on December 9, 2016, the court then determined to stay any proceedings with regard to frivolous suit sanctions until

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acquire data regarding comparable sales, Nemeth relied on the websites of the New Jersey Association of Tax Boards, New Jersey Property Fax, and the Garden State Multiple Listing Service (MLS). He did not confirm any data with the buyer, seller, broker or attorney involved in the transactions he utilized as comparable sales. He also did not access the deeds, sale documents, or property record cards for any of the comparable properties, nor did he physically inspect any of the comparable properties. The court found the "origins and accuracy" of the information and sources used by Mr. Nemeth were "unknown and unreliable," and further noted, "While an expert may utilize hearsay, [he or she] cannot solely rely upon it." See also, N.J.S.A. 2A:83-1. Furthermore, Mr. Nemeth provided no market data to support the adjustments he made to the comparable sales. Accordingly, the expert's testimony was found to constitute a net opinion because he failed to identify the factual bases for his conclusions or demonstrate that both the factual bases and methodology are reliable.

[6] The expert also pointed to differences in location, lot size, finished attic, and garage slots as affecting value. However, the court found that the difference in lot size between the Holensteins' property and the expert's alleged comparable properties was negligible and would not affect value; and all the adjustments he made for all specified items were unsupported.

[7] The expert used a unique measuring method not universally embraced or utilized by assessors/appraisers. This may account for his larger square foot measurement for the Holensteins' single-family residence than appears in the property record card.

either Mr. Wolosky's time period to file an appeal had been exhausted or the Appellate Division rendered a final decision. Thereafter, Mr. Wolosky appealed the tax court's decision to the Appellate Division. Following dismissal of Mr. Wolosky's case, but prior to the Appellate Division's ruling, Mr. Wolosky filed additional appeals seeking to raise the assessment on the Holensteins' single family residence for the 2017 and 2018 tax years. Mr. Wolosky filed these appeals as a self-represented party. In response, the Holensteins sent additional "safe harbor" letters to Mr. Wolosky on July 6, 2017 and April 16, 2018, respectively. As with the initial appeal, Fredon filed no "safe harbor" letters on these subsequent appeals.

On July 24, 2018, the Appellate Division affirmed the tax court's dismissal of the matter in an unpublished decision.[8] No further appeal was taken.

In a case management conference held on September 19, 2018, the court set a deadline of October 19, 2018 for motions to be filed seeking sanctions and fees for a frivolous suit. Motions for sanctions and fees, under R. 1:4-8 and N.J.S.A. 2A:15-59.1 were filed by the Holensteins and Fredon within the court's established time-frame.

In his response, Mr. Wolosky challenged the timeliness of the motions claiming that the court exceeded its authority in extending the time-frame for filing the motions. Then, by letter dated November 13, 2018, Mr. Wolosky withdrew the pending 2017 and 2018 appeals.[9]

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[8] The Appellate Division found that the record supported the Tax Court's rejection of the appraisal expert's testimony. Wolosky v. Fredon Twp., No. A-1980-16T1 (App. Div. July 24, 2018).

[9] These appeals, however, were withdrawn more than twenty-eight days after receiving the Holensteins' "safe harbor" letters and after the motions for sanctions and attorney's fees were filed. See R. 1:4-8(b) and the Applicable Law section *infra*.

On January 25, 2019,[10] the court decided in a bench opinion that the motions for sanctions and fees were timely filed by the Holensteins and Fredon given that (1) the twenty-day time limitation in R. 1:4-8(b)(2) was tolled when the court ordered a separate hearing and a stay of proceeding for the issue of sanctions on December 9, 2016 and; (2) even if the court's order was a judicial error, the parties should not be barred from making an application because of an error committed by the court. In addition, the court found that its decision did not defeat the purpose of the time limitations in raising frivolous litigation sanctions.[11]

Mr. Wolosky moved for leave to appeal to the Appellate Division, which motion was denied.[12] A hearing was held on August 12, 2019 to determine whether relief to Fredon and the Holensteins for frivolous suit was warranted under N.J.S.A. 2A:15-59.1 and R. 1:4-8.[13]

FACTS

During the frivolous suit hearing, three witnesses testified for the defendants: defendant Michael Holenstein (individually "Mr. Holenstein"); defendant Mrs. Holenstein; and Cindy

[10] Mr. Luers appeared as co-counsel with Mr. Petracca on behalf of Mr. Wolosky. In his papers, Mr. Wolosky also requested that the court recuse itself because of a perceived bias against Mr. Wolosky. The court determined that there was no basis for recusal, noting that Mr. Wolosky in fact prevailed on the initial motion to dismiss his case. Furthermore, this court has consistently upheld the individual rights of taxpayers. See e.g., Fields v. Princeton University, 28 N.J. Tax 574 (Tax 2015); Fields v. Trustees of Princeton, 29 N.J. Tax 284 (Tax 2016).

[11] The Supreme Court of New Jersey "fashioned timeframes for bringing frivolous behavior to the attention of the offending party, counsel, or pro se litigant, so that the behavior could be corrected promptly and litigation costs kept to a minimum, thereby preserving judicial, lawyers', and litigants' resources." Toll Bros., Inc. v. Twp. of W. Windsor, 190 N.J. 61, 71 (2007). In the present matter, the parties were aware that the court reserved decision on the issue of sanctions until Mr. Wolosky's claim against the Holensteins became "completely untenable." Belfer v. Merling, 322 N.J. Super. 124, 145 (App. Div. 1999). Therefore, the court's decision to allow Fredon and the Holensteins to file motion for sanctions did not render any unfair surprise or prejudice to Mr. Wolosky.

[12] AM-000402-18T3, M-005429-18, April 25, 2019.

[13] Mr. Luers was substituted as counsel for Mr. Petracca on June 7, 2019.

Church, Deputy Clerk of Byram Township.[14] Mr. Wolosky was the only plaintiff's witness to testify.[15] These testimonies along with supporting certified transcripts and admitted evidence serve as the basis for the court's factual conclusions as stated below. Attorney John Lloyd was also present at the hearing on behalf of the Association of Municipal Assessors of New Jersey (the "AMANJ"), appearing as *amicus curiae*.[16]

In 2013, Mr. Wolosky appealed the assessment of his property at 32 Hillside Terrace in Green Township (designated as Block 60, Lot 8) to the County Board. In her capacity as Municipal Tax Assessor to Green Township, Mrs. Holenstein negotiated a settlement of that appeal with Mr. Wolosky. They agreed to lower Mr. Wolosky's assessment to $8,100. In March 2015, Mr. Wolosky again appealed the same property's assessment to the County Board. During negotiations with Mrs. Holenstein on that appeal, Mr. Wolosky asked for the assessment to be reduced to $1,000, and Mrs. Holenstein countered with $1,500. Mr. Wolosky rejected that offer and instead asked for a reduction to $700, which Mrs. Holenstein refused.

On May 11, 2015, Mr. Wolosky filed an Open Public Records Act ("OPRA") request in Green Township for copies of the following items: Mrs. Holenstein's resume, Mrs. Holenstein's employment application, Mrs. Holenstein's Certified Tax Assessor Certificate, proof of Mrs. Holenstein's continuing education courses dating back to years 2012-2015, the vendor activity list for the Municipal Assessor dating back to January 1, 2010, Mrs. Holenstein's 2014 payroll

[14] Thomas Molica appeared on behalf of Ms. Church (Thomas F. Collins, Jr., Municipal Attorney, Byram Township, Vogel, Chait, Collins and Schneider, P.C., attorneys).
[15] Deposition testimony from Mr. Wolosky's former counsel, Mr. Petracca, was admitted in evidence, without objection, in lieu of a formal appearance given that Mr. Petracca had moved out-of-state at the time of the hearing.
[16] The Director of the Division of Taxation declined to participate, although invited to do so by the court.

information, and Mrs. Holenstein's employment agreement with Green Township. Mr. Wolosky also submitted an OPRA request for similar information from Byram Township on May 26, 2015.

Unable to reach a settlement with Mrs. Holenstein, on June 24, 2015, Mr. Wolosky brought his appeal before the County Board. On the record before the County Board, Mr. Wolosky divulged the settlement negotiations that transpired between himself and Mrs. Holenstein, expressing his dissatisfaction. Mr. Wolosky did not bring any evidence of comparable sales or opinions of value to support his requested reduction to $700, but brought examples of three other neighboring properties in Green Township, and compared their assessments to each other to show, what he believed to prove, that one of the properties was under assessed. The County Board affirmed Green Township's assessment[17] because Mr. Wolosky failed to provide sufficient evidence to disprove it. The County Board also noted that there was not enough information about the three properties that Mr. Wolosky introduced for them to be considered.

The three properties Mr. Wolosky brought before the County Board were wholly unrelated to his own property assessment. There was a 2.83 acre parcel assessed at $128,300; another was a 2.85 acre parcel assessed at $128,500; and finally there was a 2.90 acre parcel assessed at $122,600. Mr. Wolosky brought them before the County Board to show that the largest parcel, by acreage, was assessed at the lowest amount. This property belonged to Richard A. Stein ("Mr. Stein"), who at that time was Green Township's Municipal Attorney, and was also present at the hearing. Mr. Wolosky went on to suggest "[y]ou know, I think there is a conflict that he, he [Mr. Stein] lives in Green . . . ." The President of the County Board attempted to halt these accusations by telling Mr. Wolosky that the County Board was not questioning anyone's intent, and reminded

[17] Mr. Wolosky appealed the County Board decision to the Tax Court where he eventually settled with Mrs. Holenstein at an assessment amount of $900.

Mr. Wolosky that he was there to argue his own assessment and not others'. Mr. Wolosky responded that he was, in fact, questioning intent. He then turned to Mr. Stein and stated,

> I'll be here next year to file a tax appeal for you [i.e. Mr. Stein] . . . I'm going to be a petitioner on your property next year . . . Wait and see. It's a guarantee. Any person in the county can file a petition for anybody. So, I'll see you next year on your property . . . and on [Mrs. Holenstein's] property.
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> [Transcript of the County Board hearing, June 24, 2015]

Defendant Mr. Holenstein was also present at this hearing. In his testimony, Mr. Holenstein recounted that Mr. Wolosky subsequently left the County Board hearing room and went into an adjacent office to speak to a County Board employee. Mr. Holenstein overheard Mr. Wolosky express an intent to "open up a file" to file tax appeals on Mr. Stein's and the Holensteins' properties to "cause them agita."[18] Mr. Holenstein went on to testify that Mr. Wolosky also discussed and compared Mrs. Holenstein's salary with the County Board employee's salary in an inflammatory fashion.

On July 15, 2015, Mr. Wolosky appeared at the Byram Township municipal building. There, he spoke with Deputy Clerk Cindy Church, who recorded their conversation in a memo dated that same day. Mr. Wolosky inquired about Mrs. Holenstein's office hours in the municipal building as tax assessor. Ms. Church informed Mr. Wolosky that Mrs. Holenstein worked on

[18] Mr. Wolosky denied using the term "agita," but did not deny the substance of the conversation heard by Mr. Holenstein. "'Agita,' which first appeared in American English in the early 1980s, comes from a dialectical pronunciation of the Italian word *acido,* meaning "heartburn" or "acid," from Latin *acidus.* ("Agita" is also occasionally used in English with the meaning "heartburn.") For a while the word's usage was limited to New York City and surrounding regions, but the word became more widespread in the mid-90s." https://www.merriam-webster.com/dictionary/agita (last visited Dec. 18, 2019).

Tuesdays. According to Ms. Church's testimony and the memo record of their conversation, Mr. Wolosky responded,

> Really? She is only here on Tuesdays? And she makes $56,000 for that, just one day? . . . well she also works in Green Township one day in which she makes $28,000 and Stillwater in which she makes $50,000. Well good for her. You probably wonder why I know this, well, she made things difficult for me in Green Township, and so now I am going to make things difficult for her.

On March 30, 2016, Mr. Wolosky timely appealed[19] the assessment on the Holensteins' single-family residence to the County Board.[20] The following day, Mr. Wolosky filed an OPRA request with Stillwater Township requesting a copy of Mrs. Holenstein's 2015 payroll information. On May 3, 2016, the County Board waived the hearing and dismissed the case without prejudice citing a perceived conflict because Mrs. Holenstein was an assessor in Sussex County. In a news article dated that same day, the New Jersey Herald published an interview with Mr. Wolosky about his appeal. In the article, Mr. Wolosky discussed his dispute with the Holensteins and is quoted as saying, "[i]f you have a tax assessor, police officer, school superintendent, council member, or other public official who did you wrong, don't seek revenge. Instead, do a little research to see if they're paying their fair share of property taxes and if they're not, help them out." When questioned at trial, Mr. Wolosky did not deny having made that statement.

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[19] Mr. Wolosky also filed a 2016 appeal of the assessment on Mr. Stein's property to the County Board, which assessment was affirmed. He then appealed the County Board's decision to the Tax Court which he subsequently withdrew.

[20] Mr. Wolosky provided no proof of value upon filing this appeal with the County Board. His sole evidence of value was a list of sale prices and assessments of other properties within Fredon which he compiled himself. See Greenwald v. Bor. of Metuchen, 1 N.J.Tax 228, 235 (1980) (finding that a list of assessments on comparable properties was insufficient to sustain a claim of discrimination.); and see Slater v. Holmdel Twp., 20 N.J.Tax 8, 18-20 (2002) (finding that an unadjusted list of comparable sales did not constitute evidence of value.)

On June 6, 2016, Mr. Wolosky appeared before the Byram Township Committee to relay his belief that Mrs. Holenstein was being overpaid as the Municipal Tax Assessor there. Mr. Wolosky also asked if the Committee wanted him to find a cheaper assessor for Byram Township. A transcript of the meeting indicates that at least one Committee member acknowledged Mr. Wolosky "[has] some disagreements with [Mrs. Holenstein]."

APPLICABLE LAW

A. Frivolous Litigation Standard

There are two legal sources aimed at regulating frivolous litigation in New Jersey. First, R. 1:4-8 sets the standards for when a party may move for sanctions against an opposing attorney or self-represented party. The rule states in relevant part:

> **(a)** Effect of Signing, Filing or Advocating a Paper. The signature of an attorney or pro se party constitutes a certificate that the signatory has read the pleading, written motion or other paper. By signing, filing or advocating a pleading, written motion, or other paper, an attorney or pro se party certifies that to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
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> **(1)** the paper is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
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> **(2)** the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
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> **(3)** the factual allegations have evidentiary support or, as to specifically identified allegations, they are either likely to have evidentiary support or they will be withdrawn or corrected if reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support; and . . .
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> [R. 1:4-8(a)]

R. 1:4-8(b)(1) states in pertinent part that:

> No such motion shall be filed unless it includes a certification that the applicant served written notice and demand pursuant to R. 1:5-2 to the attorney or pro se party who signed or filed the paper objected to. The certification shall have annexed a copy of that notice and demand, which shall (i) state that the paper is believed to violate the provisions of this rule, (ii) set forth the basis for that belief with specificity, (iii) include a demand that the paper be withdrawn, and (iv) give notice, except as otherwise provided herein, that an application for sanctions will be made within a reasonable time thereafter if the offending paper is not withdrawn within 28 days of service of the written demand.
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> [Ibid.]

Second, N.J.S.A. 2A:15-59.1 ("The Frivolous Litigation Statute") governs frivolous litigation for parties not covered under R. 1:4-8. The statute is designed to accomplish two goals: "On the one hand, the statute serves a punitive purpose, seeking to deter frivolous litigation. . . . On the other hand, the statute serves a compensatory purpose, seeking to reimburse the party that has been victimized by the party bringing the frivolous litigation . . . and compensate the party that has been victimized by the party bringing the frivolous litigation." Toll Bros., Inc. v. Twp. of W. Windsor, 190 N.J. 61, 67 (2007). A court has discretion to award reasonable litigation and attorney fees to a prevailing party "if the judge finds at any time during the proceedings or upon judgment that a complaint, counterclaim, cross-claim or defense of the non-prevailing person was frivolous." N.J.S.A. 2A:15-59.1. In relevant part, the statute establishes that:

> a.
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> …
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> (2) When a public entity is required or authorized by law to provide for the defense of a present or former employee, the public entity may be awarded all reasonable litigation costs and reasonable attorney fees if the individual for whom the defense was provided is the prevailing party in a civil action, and if there is a judicial determination at any time during the proceedings or upon judgment that a complaint, counterclaim, cross-claim, or defense of the nonprevailing party was frivolous.

> **b.** In order to find that a complaint, counterclaim, cross-claim or defense of the nonprevailing party was frivolous, the judge shall find on the basis of the pleadings, discovery, or the evidence presented that either:
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> **(1)** The complaint, counterclaim, cross-claim or defense was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
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> **(2)** The nonprevailing party knew, or should have known, that the complaint, counterclaim, cross-claim or defense was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.
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> [N.J.S.A. 2A:15-59.1]

The court must strictly interpret the frivolous litigation statute and Rule 1:4-8 against the applicant seeking attorney's fees and/or sanctions. See LoBiondo v. Schwartz, 199 N.J. 62, 99 (2009) (discussing R. 1:4-8); DeBrango, 328 N.J. Super. at 226 (citing McKeown-Brand, 132 N.J. at 561-62) (discussing N.J.S.A. 2A:15-59.1). A strict interpretation recognizes "the principle that citizens should have ready access to . . . the judiciary." Belfer v. Merling, 322 N.J. Super. 124, 144 (App. Div. 1999) (citing Rosenblum v. Borough of Closter, 285 N.J. Super. 230, 239 (App. Div. 1995)). The court should only award sanctions for frivolous litigation in exceptional cases. See Iannone v. McHale, 245 N.J. Super. 17, 28 (App. Div. 1990).

"When a prevailing defendant's allegation is based on the absence of 'a reasonable basis in law or equity' for the plaintiff's claim and the plaintiff is represented by an attorney, an award cannot be sustained if the 'plaintiff did not act in bad faith in asserting' or pursuing the claim." Ferolito v. Park Hill Ass'n, 408 N.J. Super. 401, 408 (App. Div. 2009) (quoting McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 549 (1993)). A party, represented by counsel, who loses on summary judgment is not automatically subject to sanctions. Ibid. "The attorney's failings . . . may not be imputed to the client," however, "reliance on the advice of counsel will not

insulate a party who acts in bad faith." McKeown-Brand, 132 N.J. at 563. The burden is on the prevailing party to prove that the non-prevailing party acted in bad faith. Id. at 559.

In McKeown-Brand, the Supreme Court of New Jersey held that plaintiff's lack of legal basis to support her claim was not enough to warrant sanctions. Id. at 563. There, plaintiff was an employee of defendant, and sued defendant under breach of contract and promissory estoppel grounds after her employment was terminated. Id. at 550. The employee handbook contained a disclaimer that conclusively precluded both claims. Id. at 551. The defendant moved for summary judgment and for sanctions against plaintiff because her complaint lacked a "reasonable basis in law or equity" per N.J.S.A. 2A:15-59.1. Ibid. The Court reversed the lower court's award of sanctions and attorney fees, holding that plaintiff acted in good faith reliance on the advice of her attorney. Id. at 563. Specifically, the Court found that "[p]laintiff's conduct bespeaks an honest attempt to press a perceived, if ill-founded, claim. She disclosed the relevant facts to her attorney and in good faith relied on the attorney's advice. Although misguided, plaintiff did not act in bad faith." Ibid.

In Ferolito, the Appellate Division expounded on the bad faith requirement for frivolous litigation. Id. at 401. There, plaintiff filed a complaint against a housing association and several other named defendants because defendants denied plaintiff's request to install a satellite dish system in the condominium. Id. at 404. The initial trial court found that the complaint was filed prematurely, and granted summary judgment in favor of defendants. Id. at 405. Defendants subsequently moved for sanctions against plaintiff, and the trial court awarded same. Id. at 406. The award was appealed, remanded, and appealed again. Ibid. On the final appeal, the court held that defendants were precluded from receiving a sanctions award because they failed to send a safe harbor letter to plaintiff. Id. at 410. The court also noted that, in addition to defendants' procedural

defect, neither the original trial judge, nor the trial judge who heard the case on remand, considered whether plaintiff acted in bad faith. Id. at 411. The court found that plaintiff relied on his attorney's advice, was "motivated by a goal of great importance to him," and did not act with "any hostility or [sic] toward the board." Ibid. Such a finding of bad faith was required because "'a client who relies in good faith on the advice of counsel cannot be found to have known that his or her claim or defense was baseless.'" Ibid. (quoting McKeown-Brand, 132 N.J. at 558). Thus, the court reversed the sanctions award.

An unmerited complaint is therefore not enough to warrant sanctions against a non-prevailing party under N.J.S.A. 2A:15-59.1, if pursued in good faith reliance on that party's attorney.

The Legislature has not defined "bad faith" as used in N.J.S.A. 2A:15-59.1. "An act in bad faith is an act by one person or entity that affects another, failing to accord a reasonable duty of care toward the other, unjustifiably harming the other's interests by an act of a quality or form that would not occur if the person or entity had acted with good faith." Stephen Michael Shepherd, The Wolters Kluwer Bouvier Law Dictionary Desk Edition, 2012. Other New Jersey courts have noted sister state definitions that "'[b]ad faith is not simply bad judgment or negligence, rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity. It is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with furtive design or ill will.'" Borzillo v. Borzillo, 259 N.J. Super. 286, 292 (Chancery Div. 1992) (citations omitted) (internal quotations omitted). While the court is not bound by these definitions, case law and the absence of a statutory definition support the view that the court is required to make a determination of whether bad faith exists on a case-by-case basis.

The statutory language and relevant case law make clear that a claim lacking a legal basis, coupled with a finding of bad faith, may warrant sanctions against a non-prevailing party.

B. <u>The Open Pubic Records Act, N.J.S.A. 47:1A-1 to -17</u>

Generally, the Open Public Records Act, N.J.S.A. 47:1A-1 to -17 ("OPRA") provides that:

> [G]overnment records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access accorded by P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, shall be construed in favor of the public's right of access;
>
> [N.J.S.A. 47:1A-1]

And,

> Although OPRA specifically references "citizens of this State," (N.J.S.A. 47:1A-1) the Attorney General's Office advises that OPRA does not prohibit access to residents of other states. Also, requestors may file OPRA requests anonymously without providing any personal contact information, even though space for that information appears on the form; thus anonymous requests are permitted.
>
> [A Citizen's Guide to the Open Public Records Act, available at https://www.nj.gov/grc/public/docs/Citizen%27s%20Guide%20to%20OPRA%20(July%202011).pdf, p. 6, (last visited Dec. 18, 2019).]

A public record consists of

> ". . . any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on* file . . . or *that has been received* in the course of his or its official business. . . ." N.J.S.A. 47:1A-1.1 (Emphasis added).
>
> Generally stated, a "government record" means any record that has been made, maintained, or kept on file in the course of official business, or that has been received in the course of official business.

> OPRA covers more than just paper records. Under OPRA, a "government record" includes printed records, tape recordings, microfilm, electronically stored records (including e-mails and data sets stored in a database), books, maps, photographs, etc. All government records are subject to public access unless specifically exempt under OPRA or any other law.
>
> [A Citizen's Guide to the Open Public Records Act, available at https://www.nj.gov/grc/public/docs/Citizen%27s%20Guide%20to%20OPRA%20(July%202011).pdf, (last visited Dec. 18, 2019).]

C. Third-Party Taxpayer's Right to Appeal

This court observed in Fields v. Princeton University, 28 N.J. Tax 574, 587 (Tax 2015) that,

> Subsection (a)(1) of N.J.S.A. 54:3-21 provides in pertinent part that
>
> [A] taxpayer . . . feeling discriminated against by the assessed valuation of other property in the county . . . may [by the statutory date] appeal to the county board of taxation . . . [or] . . . directly with the Tax Court [depending upon] the assessed valuation of the property subject to the appeal . . .
>
> [Ibid.]

ANALYSIS

The issue presented here weighs the extent to which an individual may exercise his rights under law, against the obligation of a public official to perform her duties without fear, intimidation, or coercion.

A. Mr. Wolosky's tax appeal against the Holensteins was frivolous

Our courts are designed to provide litigants with the opportunity for justice, not vengeance.

> Justice—as logically, legally, and ethically defined—isn't really about "getting even" or experiencing a spiteful joy in retaliation. Instead, it's about righting a wrong that most members of society (as opposed to simply the alleged victim) would agree is morally culpable. And the presumably unbiased (i.e., *un*emotional) moral rightness of such justice is based on cultural or community standards

> of fairness and equity. Whereas revenge has a certain selfish quality to it, "cool" justice is selfless in that it relies on non-self-interested, established law.
>
> [Leon F Seltzer Ph.D., Don't Confuse Revenge with Justice: Five Key Differences: Revenge can masquerade as justice, but it frequently ends up perverting it. (Feb 06, 2014) https://www.psychologytoday.com/us/blog/evolution-the-self/201402/don-t-confuse-revenge-justice-five-key-differences, (last visited Dec. 18, 2019).]

The totality of the evidence leads the court to the conclusion that Mr. Wolosky's appeal to raise the local property tax assessment on the Holensteins' single-family residence was a frivolous suit; a premeditated act of vengeance against Mrs. Holenstein for not giving him what he wanted in the settlement of his own property tax appeal. Mr. Wolosky styles himself as an "activist" looking out for the public good;[21] a kind of modern-day Robin Hood defending the rights of the public against the abuses of government. It is clear to the court, however, that in the present matter, Mr. Wolosky invoked his rights as a taxpayer, and manipulated our system of justice under the guise of public activism, for his own selfish and vengeful interests. The court does not reach this conclusion lightly, however, the evidence of Mr. Wolosky's premeditation and malice in filing this suit was overwhelming, and Mr. Wolosky's testimony regarding alternative motivations was simply not credible.

1. Mr. Wolosky's statements

There are primarily three statements attributed to Mr. Wolosky that support the court's findings. First, Mr. Wolosky's statement on the record before the County Board on June 24, 2015 directed at Mr. Stein, that

[21] Mr. Wolosky emphasized prior cases that he brought against government officials for impropriety to demonstrate his citizen activism. The court limited this testimony because it was unclear what relevance that evidence had to the instant appeal.

> I'll be here next year to file a tax appeal for you . . . I'm going to be a petitioner on your property next year . . . Wait and see. It's a guarantee. Any person in the county can file a petition for anybody. So I'll see you next year on your property . . . and on [Mrs. Holenstein's] property.
>
> [Transcript of the County Board hearing, June 24, 2015]

Following the County Board's denial of his appeal, Mr. Wolosky launched his tirade against the Holensteins.

It is worthy of note for context that, contemporaneously with his negotiations with Mrs. Holenstein on the appeal of his own assessment but prior to the County Board hearing, Mr. Wolosky made OPRA requests to Green and Byram Townships concerning Mrs. Holenstein's positions there as Municipal Tax Assessor, and to Green Township alone concerning the prior year's tax appeal settlement agreements. According to Mrs. Holenstein's testimony, Mr. Wolosky offered to withdraw the OPRA request for Green Township's tax settlement agreements if she settled his property tax appeal with him. This, she stated, made her feel uncomfortable.[22] While Mr. Wolosky had every right to make OPRA requests under N.J.S.A. 47:1A-1 to -11 relating to a public official in her public capacity, and to seek public tax settlement information, the timing of these requests, given Mr. Wolosky's negotiating stance with Mrs. Holenstein, is spurious, and supports a finding of intent to intimidate, rather than a legitimate right to know.

Second, on July 15, 2015, consistent with his prior threat against Mrs. Holenstein recorded at the County Board hearing, Mr. Wolosky stated to Ms. Church "she [Mrs. Holenstein] made things difficult for me in Green Township, and so now I am going to make things difficult for her." Ms. Church is a disinterested party in the present litigation. She made an immediate record of her

[22] Mr. Wolosky didn't deny the conversation with Mrs. Holenstein, but did deny using the OPRA request as leverage in his negotiations with her. His attorney posited a hypothetical alternative interpretation as to what Mr. Wolosky could have intended had he offered to withdraw this particular OPRA request.

conversation with Mr. Wolosky, more than eight months before the present litigation was instituted. She could not have possibly known on the date she spoke with Mr. Wolosky and made her record of the conversation that he was not merely blowing off steam and would actually act on his threat. These factors tend to make her testimony about, and her record of the conversation with, Mr. Wolosky credible. Mr. Wolosky's denial of the same, however, is clearly self-serving.

Mr. Wolosky, in fact, appealed the local property tax assessment on the Holensteins' single-family residence on March 30, 2016, just as he had previously threatened to do. According to Mr. Wolosky, this was the first time that he ever filed a third-party tax appeal, claiming he wanted to "test the system." Mr. Wolosky testified that he sought to raise the Holensteins' local property tax assessment because he believed their current assessment was lower than it should have been due to Mrs. Holenstein's position as a Municipal Tax Assessor. The court, however, does not find this testimony to be credible, and instead discerns that Mr. Wolosky was motivated by revenge against Mrs. Holenstein rather than a good faith belief that her property was under assessed.

Mr. Wolosky's third and final statement clearly contradicts his testimony. In a May 3, 2016 New Jersey Herald news article, Mr. Wolosky is quoted as saying "[i]f you have a tax assessor, police officer, school superintendent, council member, or other public official who did you wrong, don't seek revenge. Instead, do a little research to see if they're paying their fair share of property taxes and if they're not, help them out." While not denying that he made the statement, Mr. Wolosky attempted to focus the court's attention on the part of the quote where he stated "don't seek revenge." Yet it's his own words that reveal his true motivation: "[i]f you have a tax assessor . . . <u>who did you wrong</u> . . . see if they're paying their fair share of property taxes and if they're not, help them out." (Emphasis added). Somehow, Mr. Wolosky perceives that not

providing proper support for his desired reduction of the local property assessment on his property equates to Mrs. Holenstein doing him "wrong." Rather, the court finds that Mrs. Holenstein did her job as Municipal Tax Assessor for Green Township. Moreover, while Mr. Wolosky wants to focus solely on the portion of his quote where he states "don't seek revenge," he asks the court to ignore the very next sentence of the quote which is, in essence, a call for revenge.

2. Mr. Wolosky's actions

It's not only that Mr. Wolosky's words are telling, but, more importantly, his actions[23] are as well. Besides making OPRA requests in a failed attempt to coerce Mrs. Holenstein into an unwarranted settlement on his own property tax appeal, questioning her work hours with Ms. Church, and going forward with the appeal of the Holenstein's property assessment consistent with his threats, he made other inquiries into Mrs. Holenstein's various positions as Municipal Tax Assessor. Mr. Wolosky was overheard discussing Mrs. Holenstein's salary with a County Board Official after he lost his tax appeal before the County Board. He also appeared before the Byram Township Committee to relay his belief that Mrs. Holenstein was being overpaid as the Municipal Tax Assessor there. Mr. Wolosky testified that he had conversations with Byram Township employees dating back to 2014 concerning a possible shared services program for tax assessors to lower costs. Clearly, Mr. Wolosky was within his legal rights to make such inquiries of a public official in her public capacity, and speak out at public meetings of governing bodies. Again, the court does not take issue with Mr. Wolosky's right to do so, but rather, it's the timing of his actions and the context under which he was exercising them that calls Mr. Wolosky's actions into question

[23] In the context of frivolous litigation, "[i]t is not plaintiff's belief that should be considered, but plaintiff's action considered on an objective basis." Khoudary v. Salem County Bd. of Social Services, 260 N.J. Super. 79, 88 (App. Div. 1992).

and scrutiny. The court finds that Mr. Wolosky's actions, in relation to his negotiations with, and subsequent appeal against the Holensteins, casts serious doubt about the credibility of his testimony with regard to his motivations.

3. Bad faith

If all of Mr. Wolosky's words and actions in this matter don't add up to "bad faith" as contemplated under N.J.S.A. 2A:15-59.1, then this court is at a loss as to what would. To borrow an expression, "If it looks like a duck, swims like a duck, and quacks like a duck, then it probably is a duck."[24] The court finds that Mr. Wolosky at all times acted in bad faith.[25] Accordingly, institution of his tax appeal against the Holensteins was undertaken in bad faith and frivolous.

In reaching this conclusion, the court is not persuaded that Mr. Wolosky should avoid sanctions for frivolous suit because he may have relied upon the advice of counsel and an expert appraiser.[26] Even assuming such reliance, *arguendo*, the court finds that our Supreme Court's

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[24] "Indiana poet James Whitcomb Riley (1849–1916) may have coined the phrase when he wrote: When I see a bird that walks like a duck and swims like a duck and quacks like a duck, I call that bird a duck." https://en.wikipedia.org/wiki/Duck_test (last visited Dec. 18, 2019). The *Duck Test* has since become part of our jurisprudence, having been cited in numerous cases. See e.g., Lake v Neal, 585 F. 3d 1059 (2009), ("The *Duck Test* holds that if it walks like a duck, swims like a duck, and quacks like a duck, it's a duck."); and see People ex rel. Lockyer v. Pac. Gaming Techs., (2000), 82 Cal. App. 4th 699, 700 (". . . if it looks like a duck, walks like a duck, and sounds like a duck, it is a duck.") (citations omitted).

[25] Compare, with Throckmorton v. Twp. of Egg Harbor, 267 N.J. Super. 14, 19-23 (App. Div. 1993) (where the Appellate Division reversed a sanctions award because the tax court failed to find that plaintiff commenced or continued his complaint in bad faith). In the present matter, the court is satisfied that this ruling will not have a chilling effect on future tax appeals due to taxpayers' fear of not overcoming the presumption of validity. The unique circumstances of this third-party tax appeal should only serve to deter vengeful litigation, rather than good faith appeals.

[26] Despite Mr. Petracca's deposition testimony, it is not clear to the court to what extent, if any, Mr. Wolosky may have relied on the advice of counsel and the expert appraiser. An email chain in evidence suggests Mr. Wolosky had input and provided some data for the preparation of the expert appraisal report. Furthermore, Mr. Wolosky filed the 2017 and 2018 appeals as a self-

caution in McKeown-Brand is directly applicable here: ". . . reliance on the advice of counsel will not insulate a party who acts in bad faith. . . ." McKeown-Brand, 132 N.J. at 563. Mr. Wolosky's suit against the Holensteins is not frivolous for the simple reason that he failed to meet the requisite burden of proof at trial. Rather, it is frivolous because it was initiated in bad faith and should never have been brought in the first place.[27] By doing so, Mr. Wolosky's words and actions clearly demonstrate bad faith from the very onset of this case, and lead the court to conclude that he was motivated solely by a desire for vengeance throughout the litigation. The court finds no evidence that Mr. Wolosky made any determination whether there was an actual good faith basis to file this appeal.[28] In fact, the court noted in its amplification letter to the Appellate Division after dismissing the case that, substantively, Mr. Wolosky's premise in seeking to raise the local property tax assessment on the Holensteins' single-family residence defied logic.

B. Green Township is entitled to reimbursement of legal fees expended for defending Mrs. Holenstein in her official capacity

1. Authorization

Reimbursement is permissible "[w]hen a public entity is required or authorized by law to provide for the defense of a present or former employee." N.J.S.A. 2A:15-59.1(a)(2). Green Township hired Ms. St. Angelo's law firm to defend Mrs. Holenstein against Mr. Wolosky's retaliatory action against her pursuant to Township Ordinance 2-57.3 which states: "The Township

represented party. On November 13, 2018, Mr. Wolosky himself withdrew the 2017 and 2018 appeals against the Holensteins.

[27] Initially acting as a self-represented litigant, Mr. Wolosky continued to escalate the suit even after obtaining legal counsel.

[28] Mr. Wolosky's repeated declarations of his intent to appeal the assessment of Mrs. Holenstein's residence, as well as his statements that he would cause her "agita" and "make things difficult for her" were all made months before the 2016 assessment was placed on the Holenstein's property. Combined with the court finding no credibility in Mr. Wolosky's statements or explanations to the contrary, the evidence makes clear that "[t]he complaint . . . was commenced . . . in bad faith, solely for the purpose of harassment . . . ." N.J.S.A. 2A:15-59.1(b)(1).

shall provide for the defense of any action brought against a public employee on account of any act or omission in the scope of his employment, and this obligation shall extend to any cross action, counterclaim or cross complaint against such employee." Accordingly, because this action was brought against Mrs. Holenstein as a result of the performance of her duties and within the scope of her employment (i.e., in retaliation for her refusal to reduce the local property tax assessment on Mr. Wolosky's property in Green Township), and Township Ordinance 2-57.3 authorized Green Township to provide for Mrs. Holenstein's defense, Green Township is eligible for reimbursement as a public entity under N.J.S.A. 2A:15-59.1(a)(2).

2. Safe Harbor Letters

Each of the Holensteins' safe harbor letters satisfies the requirements imposed under R. 1:4-8(c). The rule requires a safe harbor letter to "(i) state that the paper is believed to violate the provisions of this rule, (ii) set forth the basis for that belief with specificity, (iii) include a demand that the paper be withdrawn, and (iv) give notice, except as otherwise provided herein, that an application for sanctions will be made within a reasonable time thereafter if the offending paper is not withdrawn within 28 days of service of the written demand." Ibid.

The first safe harbor letter is dated June 2, 2016. This letter states that the Holensteins believed Mr. Wolosky's complaint was frivolous, and specifically references the County Board meeting on June 24, 2015 as a basis for why Mr. Wolosky's complaint was frivolously filed. The letter demanded that Mr. Wolosky withdraw the 2016 appeal, and advised him of the consequences for failure to do so within twenty-eight days. The court finds that this letter satisfies the safe harbor requirements under R. 1:4-8(c).

The second safe harbor letter is dated June 6, 2017, in response to Mr. Wolosky's 2017 appeal filed against the Holensteins. This letter states that the Holensteins believed Mr. Wolosky's

complaint was frivolous when filed, referencing the County Board hearing on June 24, 2015, along with the fact that Mr. Wolosky's 2016 appeal was rejected by this court for failure to provide evidence of cogent value. Like the first safe harbor letter, this letter also demanded that Mr. Wolosky withdraw his complaint within twenty-eight days, and explained the consequences for failure to do so. The letter also reiterated that the Holensteins intended to pursue reimbursement for the 2016 complaint. The court finds that this letter satisfies the safe harbor requirements under R. 1:4-8(c).

The third safe harbor letter is dated April 16, 2018, and was sent to Mr. Wolosky after he filed the 2018 local property tax appeal of the Holensteins' single-family residence. This letter states that the Holensteins believed Mr. Wolosky's complaint was frivolous when filed, and references the County Board hearing on June 24, 2015, the fact that Mr. Wolosky failed to provide cogent evidence of value in the 2016 appeal, and "statements made to the media and other third parties." This letter demanded that Mr. Wolosky withdraw his complaint within twenty-eight days and explained the consequences for failure to do so. Finally, the letter reaffirmed the Holensteins' intent to pursue reimbursement for fees incurred defending against the 2016 and 2017 local property tax appeals as well. The court finds that this letter also satisfies the safe harbor requirements under R. 1:4-8(c).

3. Reasonableness

The starting point for determining an award of attorney's fees is calculating the "lodestar" amount. Rendine v. Pantzer, 141 N.J. 292, 324 (1995). The "lodestar" is "the hours spent on the case multiplied by the attorneys reasonable hourly rate of compensation." Ibid. Trial courts should examine this calculation carefully to make sure that the amounts are reasonable, considering factors such as the customary fee charged in similar contexts and the "time and labor required."

Id. at 319, 344; See also, RPC 1.5(a). The court is further guided by the purposes of R. 1:4-8 and N.J.S.A. 2A:15-59.1 which objectives are to compensate the prevailing party and deter future frivolous litigation. Toll Bros., Inc., 190 N.J. at 72.

Attorney fees that have accrued since a frivolous claim enters into a case may be considered in determining a fee award. ASHI-GTO Associates v. Irvington Pediatrics, P.A., 414 N.J. Super. 351, 363-64 (App. Div. 2010). As explained in greater detail hereinabove, Mr. Wolosky's complaints against the Holensteins for the 2016, 2017, and 2018 tax years were motivated by bad faith and frivolity when filed. Therefore, attorney fees incurred after those local property tax appeals were filed are properly included in the award.

Ms. St. Angelo has provided a detailed statement of billable hours with work descriptions. In this statement are hours spent responding to OPRA requests, drafting safe harbor letters, communicating with Fredon Township's attorney, defending motions, and other tasks directly related to Mr. Wolosky's complaints against the Holensteins. The fees that were incurred while defending Mrs. Holenstein against Mr. Wolosky's 2017 and 2018 complaints are also properly included. Although Mr. Wolosky eventually withdrew these appeals, he did so more than twenty-eight days after receiving the safe harbor letters requesting that he do so. These appeals were frivolous when filed. Therefore, legal fees incurred by the Holensteins to defend against them are properly included in the award. The Holensteins are also entitled to counsel fees incurred while defending their case in the Appellate Division, pursuant to the plain language of N.J.S.A. 2A:15-59.1 which states that a prevailing party "may be awarded all reasonable litigation costs and reasonable attorney fees." Ibid.; See also, Khoudary v. Salem County Bd. of Social Services, 281 N.J. Super. 571, 576 (App. Div. 1995).

The court finds no evidence that the Holensteins have inflated their costs. The billable time amounted to 268.8 hours at $175 per hour, totaling $50,190. Additional costs and paralegal fees amounted to $4,368.10. The Holensteins' total request is for $52,983.10. Ms. St. Angelo is a municipal attorney who is in good standing and has been practicing law in New Jersey for over a decade. The court finds the $175 per hour charged here to be a reasonable rate.[29]

A review of the billing statement shows that $12,302.50 was incurred in preparation for the Holensteins' motion to dismiss in 2016 which also included a motion for limited discovery as alternative relief. Mr. Wolosky successfully defended against dismissal, but the Holensteins were granted an order limiting discovery. The defendants were not entitled to summary judgment, so the court will deduct $6,151.25[30] from the total request of $52,983.10 to represent that portion of the motion to dismiss on which Mr. Wolosky prevailed. The court will also deduct the $1,242.50[31] in fees incurred while responding to and redacting confidential information from Mr. Wolosky's OPRA requests. While the court finds Mr. Wolosky's OPRA requests to be spurious, he had the right to the public information sought by these requests, and Mrs. Holenstein was obligated to respond irrespective of the surrounding litigation. The court finds that the balance of the fees are reasonable, and concludes that $45,589.35 is an appropriate award for attorney fees.

4. Mr. Wolosky is ordered to pay Green Township $45,589.35

The Holensteins seek no personal sanctions nor reimbursement in any way arising out of the frivolous suits filed against them by Mr. Wolosky. Green Township provided legal defense to

[29] Based on a 2017 report, New Jersey attorneys charge an average hourly rate of $272. See NJ Hourly Rates Near the Top Nationwide, Report Finds, New Jersey Law Journal (October 11, 2017).
[30] Since the Holenstein's only prevailed on half of their motion, the court split the $12,302.50 fee in half to $6,151.25.
[31] The court finds that 7.1 hours (at $175/hour) were spent on OPRA related work.

Mrs. Holenstein given that these matters arose out of her dealings with Mr. Wolosky in her official capacity as Green Township's Municipal Tax Assessor. Mr. Wolosky was dissatisfied with the results of his local property tax appeal on his property in Green Township, so he instituted suit, in bad faith, seeking to raise the local property tax assessment on Mrs. Holenstein's residence in neighboring Fredon as an act of vengeance. The court is satisfied that, as required under R. 1:4-8(b)(1), the Holensteins properly "served written notice and demand pursuant to R. 1:5-2," on Mr. Wolosky by letter of June 2, 2016, commonly referred to as the "safe harbor letter." From that point forward, Mr. Wolosky was on notice that the Holensteins may proceed with sanctions for frivolous suit if he continued in his litigation.

Mr. Wolosky was afforded numerous opportunities to drop these matters and limit his exposure to possible sanctions, yet he persisted. In fact, Mr. Wolosky continued to pursue these matters in the Appellate Division, and with additional motion practice. Even after Mr. Wolosky's initial case against the Holensteins was dismissed by the court, he filed additional appeals against the Holensteins for subsequent tax years that he eventually withdrew.

Having determined above, that: (1) Mr. Wolosky's suits against the Holensteins were frivolous, (2) Mr. Wolosky, at all times, proceeded in bad faith, (3) the Holensteins complied with the requisite notice and other requirements under R. 1:4-8 and N.J.S.A. 2A:15-59.1, and (4) Mr. Wolosky did not withdraw the initial case, and failed to withdraw the 2017 and 2018 appeals within twenty-eight days of receiving safe harbor letters, the court finds that Green Township is entitled to compensation in the amount of $45,589.35 in counsel fees and costs for its defense of Mrs. Holenstein in these matters.[32]

[32] This award is not limited by N.J.S.A. 54:51A-22. That statute, as part of the State Uniform Tax Procedure Law, applies to controversies between a taxpayer and the State of New Jersey. See,

C. Fredon is barred from reimbursement of the cost of litigation under R. 1:4-8.

Mr. Wolosky claims that Fredon should not be entitled to reimbursement for attorney's fees pursuant to R. 1:4-8 since Fredon's attorney failed to serve a single written notice and demand, (i.e. "safe harbor" letter) upon Mr. Wolosky. Fredon argued, however, that because the purpose of the "safe harbor" letter is "to give a prompt warning to those engaged in frivolous litigation activity," Toll Bros., Inc., 190 N.J. at 72, that purpose was met through the Holensteins' "safe harbor" letter of June 2, 2016. According to Fredon, its failure to serve a "safe harbor" letter on Mr. Wolosky is not fatal to the application of sanctions for frivolous suit.

The court is not persuaded. Generally, applications for sanctions for frivolous suit must comply with R. 1:4-8. However, before dismissing an application for sanctions due to the applicant's failure to serve a "safe harbor" letter, the court must make an assessment as to "whether it [was] practicable under all the circumstances to require strict adherence to the requirements of R. 1:4-8." Toll Bros., Inc., 190 N.J. at 72.

The court is not satisfied that Fredon was absolved of its responsibility to comply with R. 1:4-8(b) simply because the Holensteins' counsel sent safe harbor letters to Mr. Wolosky. Fredon only references N.J.S.A. 2A:15-59.1 and not the court rules in its application for sanctions for frivolous suit. However, it is long settled that motions for sanctions brought under N.J.S.A. 2A:15-59.1 are also bound by the "safe harbor" letter requirement, pursuant to R. 1:4-8(f). See Toll Bros., Inc., 190 N.J. at 69.

N.J.S.A. 54:48-4. Here, under N.J.S.A. 54:3-21, Mr. Wolosky appealed the local property tax assessments set by a municipality, Fredon Township, not the state. The limitations found in N.J.S.A. 54:51A-22 have not been made applicable to N.J.S.A. 54:3-21 third-party tax appeals.

Furthermore, Fredon has not offered any explanation as to why it failed to comply, whether it was impractical to comply, or why Fredon should otherwise be excused from complying, with the R. 1:4-8(b) "safe harbor" letter requirements. The Holensteins are similarly situated to Fredon in this litigation, and yet the Holensteins were able to comply with the "safe harbor" letter requirements. This rebuts any inference that it was impractical for Fredon to comply with the court rule, and there is no genuine factual dispute as to the practicality of compliance. Fredon's failure to follow the prescribed procedure means that its application does not fulfill the purpose of R. 1:4-8 which was intended to deter attorneys and self-represented parties from continuing to engage in frivolous litigation and needlessly burdening the court system. Id. at 71-72. Accordingly, Fredon's application for reimbursement of $7,488 in attorney fees and costs is denied.[33] See Toll Bros., Inc., 190 N.J. at 73 (concluding that "[i]f the court determines that compliance was practicable from the time ordinarily required under the Rule, relief may be denied in its entirety").

CONCLUSION

Public officials must be confident in their ability to perform their public functions without fear of reprisal. Mrs. Holenstein's actions here should be commended, and serve as an example for all tax assessors and other public officials. She did not disregard her duties or oath in the face of Mr. Wolosky's harassment, threats, and intimidation. While this court has been steadfast in supporting a taxpayer's right to appeal the local property tax assessment or exemption of another property in the same county, the abuse of that right and the judicial process cannot and must not be sustained.

[33] Mr. Wolosky requested counsel fees under R. 1:4-8(b)(2) for defending against Fredon Township's motion for sanctions. The court finds such an award to be inappropriate here because Fredon Township's motion for sanctions was merited, but unsuccessful solely due to a procedural defect.

For the reasons set forth hereinabove, the court concludes that the complaints filed by Mr. Wolosky to raise the 2016, 2017, and 2018 local property tax assessments on the Holensteins' single-family residence were frivolous within the meaning of R. 1:4-8 and N.J.S.A. 2A:15-59.1, and that at all times Mr. Wolosky acted in bad faith. Accordingly, counsel fees and costs in the amount of $45,589.35 are hereby awarded to reimburse Green Township for its defense of Mrs. Holenstein in her official capacity as Municipal Tax Assessor. Fredon's application for reimbursement of fees and costs in the amount of $7,488, however, must be denied due to Fredon's failure to meet the procedural requirements of R. 1:4-8.

The court's Order in accordance with this opinion shall be issued separately.