

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTIONS
DHM - KEN-11/30/2000

MEDICAL MANAGEMENT OF
NEW ENGLAND, INC.,

Petitioner

v.

DOCKET NO. AP-00-69

STATE TAX ASSESSOR,

Respondent

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MEDAPHIS PHYSICIAN SERVICES
CORP.,

Petitioner

v.

DOCKET NO. AP-00-70

STATE TAX ASSESSOR,

Respondent

ORDER

This matter is before the court on identical motions for relief from judgment or order and for amendment of petition for review brought in both above-entitled cases. In March of 1999, the Maine Revenue Service issued an assessment of sales and use tax, interest, and penalties against the petitioners. In April of 1999, the petitioners filed petitions for reconsideration of the assessment. The Maine Revenue Service provided responses, including reduction of assessments, in July of 2000. Thereafter, there occurred a series of telephone conversations between the

office of the clerk of the Superior Court for Kennebec County and representatives of the petitioners through its independent accounting firm. One or more conversations also took place with the taxpayer advocate from the Maine Revenue Service, an attorney. In both cases, petitioners sought to determine whether or not an M.R. Civ. P. 80C petition for review was allowed to be filed by a corporation pro se. In each instance, petitioners' representatives were advised that such could be done under Maine law. Of course, this information was in error.

Upon filing of the petitions, the clerk advised the representative that the petitions had been improperly signed by an attorney not licensed to practice in Maine. Petitioners then responded that the signature was made by a person acting as officer of the corporation and not as an attorney. Ultimately, the petitions were brought to the attention of the presiding justice who instructed the clerk not to accept the petitions as they were not submitted by an attorney licensed to practice in Maine and as such, were filed in violation of our Unauthorized Practice of Law Statute, 4 M.R.S.A. § 807. Petitioners now seek Rule 60(b) relief alleging excusable neglect founded upon the faulty legal advice given by the Clerk of Court and the taxpayer advocate.

M.R. Civ. P. 60(b) reads:

On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; . . . (6) any other reason justifying relief from the operation of the judgment.

The use of the rule is of no avail since no final judgment, order, or proceeding has taken place in this case. As a matter of law, there has been no filing acceptable by the clerk. Said another way, the receipt by the clerk of the improper petitions was a nullity and of no effect as the clerk had no authority to accept them. Since the clerk could not have accepted the petitions, there is no matter before the court within its jurisdiction.

The State argues that the court has no jurisdiction to extend the filing deadline for such a petition. The court agrees with the petitioners that it is not being asked to extend the deadline simply to accept a filing improperly made.

Even if the court were to accept petitioners' argument that it has equitable powers to accept the filing, the court is not satisfied that this amounts to excusable neglect. A business corporation generating taxes of the magnitude at issue in this case and represented by an accounting firm as large and reputable as exists in this case and, further, with an attorney as one of its officers, has no excuse in not relying upon sound legal advice or simple research to determine the precise state of Maine law. It is axiomatic that persons should not rely on legal advice provided by personnel in the clerk's office. It is somewhat less understandable why an attorney with the Maine Revenue Service would not be aware of the status of the law. Nevertheless, in a matter of this magnitude, it would set a dangerous precedent to suggest that ignorance of the Maine law by persons in a position to rely upon sound legal counsel should provide an excuse for neglect. Accordingly, both as a matter of law and of equity, this court is satisfied that it has no matter properly before it.

For reasons stated above, the entry will be:

Petitioners' motions for relief from judgment are DENIED.

Dated: November 30, 2000

A handwritten signature in black ink, appearing to read 'Donald H. Marden', written over a horizontal line.

Donald H. Marden
Justice, Superior Court

Date Filed 10/10/00 Kennebec Docket No. AP00-69
County

Action Petition for Review
80C

Medical Management of NewEngland, Inc. vs. State Tax Assessor

Plaintiff's Attorney

Sarah H. Beard, Esq. (Copies to)
One Monument Square
Portland, Maine 04101
- Ann St. Peter-Griffith, Esq.

Defendant's Attorney

Stanley Piecuch, AAG.
Andrew Ketterer, AG
6 State House Station
Augusta, Maine 04333-0006

Date of
Entry

DEC 11 2000

10/12/00

Amended Petition for Review and De Novo Determination, filed. s/Beard, Esq.
(filed 10/10/00) (attached exhibits A,B)
Motion for Relief from Judgment or Order and for Amendment of Petition for Review, filed. s/Beard, Esq.
Memorandum of Law, filed. s/Beard, Esq.
Affidavit of Shon E. Holyfield, filed. s/Shon E. Holyfield
Proposed Order Granting Motion for Relief and Amendment of Petition for Review, filed.
Request for Hearing, filed. s/Beard, Esq.

10/27/00

Assessor's Memorandum of Law in Opposition to Petitioner's Motion for Relief from Judgment or Order and for Amendment of Petition for Review, filed. s/Piecuch, AAG.

11/3/00

Entry of Appearance, filed. s/St. Peter-Griffith, Esq.
Petitioner's Reply Memorandum in Support of Petitioner's Motion for Relief from Judgment or Order and for Amendment of Petition for Review, s/St. Peter-Griffith, Esq.

11/13/00

Notice of setting of hearing on motion for relief on 11/22/00 at 8:30 a.m. sent to attys of record.

11/22/00

Hearing had on Motion for Relief with Hon. Justice Donald Marden, presiding. Tape #548 Index 1612-2499.
Sarah Beard, Esq. for the Plaintiff. Stanley Piecuch, AAG
Oral arguments made to the court.
Court to take matter under advisement. Court to issue Order.

11/30/00

ORDER, Marden, J.
Petitioners' motions for relief from judgment are DENIED.
Copies mailed to attys of record.
Copies mailed to Deborah Firestone, Garbrecht Library and Goss.

11/30

Date Filed 10/10/00 Kennebec Docket No. AP00-70
County

Action Petition for Review
80C

Medaphis Physician Services Corp.

vs.

State Tax Assessor

Plaintiff's Attorney

Sarah H. Beard, Esq. (Copies to)
One Monument Square
Portland, Maine 04101
-Ann St. Peter-Griffith, Esq.

Defendant's Attorney Stanley Piecuch, AAG.

~~Andrew Kettenen, AG~~
6 State House Station
Augusta, Maine 04333-0006

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Entry

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Request for Hearing, filed. s/Beard, Esq.

10/27/00

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lief from Judgment or Order and for Amendment of Petition for Review,
filed. s/Piecuch, AAG.

11/3/00

Entry of Appearance, filed. s/St.Peter-Griffith, Esq.
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