TAX COURT OF NEW JERSEY

Joshua D. Novin
Judge

153 Halsey Street, 10th Floor
P.O. Box 47025
Newark, New Jersey 07101
Tel: (973) 645-4280 Fax: (973) 645-4283

NOT FOR PUBLICATION WITHOUT THE APPROVAL
OF THE TAX COURT COMMITTEE ON OPINIONS

September 8, 2016

Michael James Guerriero, Esq.
Day Pitney, LLP
One Jefferson Road
Parsippany, New Jersey 07054

Scott G. Collins, Esq.
Riker Danzig Scherer Hyland Perretti, LLP
Headquarters Plaza
One Speedwell Avenue
Morristown, New Jersey 07962

Martin Allen, Esq.
DiFrancesco, Bateman, Coley, Yospin,
Kunzman, Davis, Lehrer & Flaum, P.C.
15 Mountain Boulevard
Warren, New Jersey 07059

Re: Alcatel-Lucent USA, Inc. v. Township of Berkeley Heights
Docket Nos. 004598-2014, 007688-2014, 003166-2015, 006661-2015

Dear Counsel:

This letter constitutes the court's opinion on defendant's motions to dismiss plaintiff's Complaints due to plaintiff's alleged "false or fraudulent account" and as a result of plaintiff's failure to respond to a request for income and expense information pursuant to N.J.S.A. 54:4-34. For the reasons explained more fully below, defendant's motions to dismiss plaintiff's 2015 Tax Appeal Complaint and 2015 Farmland Assessment Complaint are granted, subject to a reasonableness hearing. The court reserves decision on defendant's motions to dismiss plaintiff's

2014 Tax Appeal Complaint and 2014 Farmland Assessment Complaint pending the outcome of a hearing on the false or fraudulent composition of plaintiff's June 13, 2013 response to defendant's June 1, 2013 request for income and expense information under N.J.S.A. 54:4-34.

I. Findings of Fact and Procedural History

The court makes the following findings of fact based on the submissions of the parties, pursuant to R. 1:7-4(a).

On June 29, 2001, Lucent Technologies, Inc. ("Lucent"), conveyed title to the property located at 600 - 700 Mountain Avenue, in the Township of Berkeley Heights, County of Union and State of New Jersey, identified on the Township of Berkeley Heights tax map as Block 3701, Lot 1 (the "subject property"), to LTI NJ Finance LLC ("LTI"). LTI was a single member special purpose limited liability company in which Lucent was the sole member. Title to the subject property was conveyed by Lucent to LTI in order to facilitate mortgage loan financing. Simultaneous with the conveyance of the subject property, LTI entered into a twenty year "transfer/leaseback" agreement with Lucent whereby Lucent was to be treated as the "beneficial owner" (the "Lease").

In November 2006 Lucent merged with French company Alcatel, creating plaintiff, Alcatel-Lucent USA, Inc. ("plaintiff"). As a condition of the merger, the United States government required plaintiff to establish a wholly-owned subsidiary, LGS Innovations LLC ("LGS Innovations"), to hold and perform services under certain United States government contracts and to maintain sensitive assets. LGS Innovations was a wholly owned subsidiary of plaintiff until April 2014, when it was sold.

The subject property consists of 153.4 acres of real property, containing approximately 1,500,000 square feet of improvements, comprising buildings and various other structures. The

subject property is plaintiff's United States headquarters housing administrative offices and research and development operations.

On September 9, 2013, the Lease between LTI and plaintiff was terminated whereupon LTI was merged into plaintiff.

A. 2013 Chapter 91 Request

On June 1, 2013, defendant's tax assessor mailed, by certified mail return receipt requested, to "the property owner of record. . . a Chapter 91 request for income and expenses" (the "2013 Chapter 91 Request"). Annexed to defendant's tax assessor's Certification in support of the motion is a copy of what purports to be the 2013 Chapter 91 Request on township letterhead, bearing a date of June 1, 2013, containing the tax assessor's name, address, telephone and fax numbers, and the tax assessor's signature. Absent from the June 1, 2013 letter is the taxpayer's name, property address and the street address or block and lot designation of the property for which such income and expense information was being sought. The letter contains a reference line stating "RE: Block_____, Lot_____". The 2013 Chapter 91 Request states, in pertinent part:

> Dear Property Owner:
>
> You are respectfully requested to submit to this office the current income and expense data for the property identified on the attached forms. You may submit a copy of the actual leases, rent rolls, and expense ledger, or use the attached forms in order to provide necessary information.
>
> . . .The information requested must be submitted to this office within 45 days from the date of this letter. In the event that you do not furnish this information within the prescribed time period, you may be precluded from filing any tax appeal challenging the assessment of this property.

> If you have any questions regarding this request, or need clarification relating to the requested information, please contact this office.

Accompanying the 2013 Chapter 91 Request was a reproduction of N.J.S.A. 54:4-34, a form captioned "Annual Statement of Business Income and Expenses Commercial Properties," a form captioned "Instructions for Completion of Schedule A" and a rental schedule form captioned "Schedule A". Although the 2013 Chapter 91 Request sought "the current income and expense data," the letter did not identify the date parameters for which information was being sought.

Moreover, defendant's initial moving papers did not furnish the court with evidence that: (a) the 2013 Chapter 91 Request identified the property for which income and expense information was being sought; (b) to whom the 2013 Chapter 91 Request was addressed and mailed; and (3) plaintiff received the 2013 Chapter 91 Request.

Accordingly, upon conclusion of oral argument the court afforded plaintiff and defendant the opportunity to prepare additional submissions addressing issues raised during oral argument. Both plaintiff and defendant submitted additional letter briefs and certifications to the court. Defendant submitted a Supplemental Certification of its tax assessor stating that "[o]ur computerized system printed two identical labels for the Cover Letter and the Certified Return Receipt both of which I used in the Chapter 91 request sent to the Taxpayer." Defendant's tax assessor certified that one of the computerized labels was "affixed. . . at the top of the Cover Letter" and the "second identical label [was affixed] to the Certified Return Receipt." Defendant's tax assessor admittedly did "not keep a copy of the original [Chapter 91] Cover Letter sent to the Taxpayer showing the label as the original is mailed out to [the] Taxpayer. . ." However, annexed to defendant's tax assessor's Supplemental Certification is an undated, signed, certified mail return receipt, bearing a label addressed to:

Block: 3701 Lot: 1 4A
Property Location: 600 Mountain Avenue
Berkeley Heights, NJ
Alcatel-Lucent USA/ATN. Corp. Counsel
600 Mountain Ave-Real Est
Murray Hill, NJ 07974

On June 13, 2013, Lewis M. Lefkowitz, plaintiff's corporate counsel, issued a two page written response to defendant's tax assessor stating, in part:

> I am writing in response to the letter from you to Alcatel-Lucent USA Inc. . . . dated June 1, 2013, requesting certain information regarding Block 3701, Lot 1. . . from the 'Property Owner' pursuant to N.J.S.A. 54:4-34.
>
> . . . the Property was conveyed by quitclaim deed dated June 29, 2001 from Alcatel-Lucent to LTI NJ Finance LLC and long term ground leased back to Alcatel-Lucent from LTI by lease from LTI also dated June 29, 2001. Under that Lease, Alcatel-Lucent is treated as the beneficial owner having all the rights (other than title) and obligations (including payment of real estate taxes) of an owner. LTI is a single member limited liability company, whose sole member and 100% owner is Alcatel-Lucent. . . We therefore consider the property to be owner-occupied.
>
> The Property is not income producing real estate as that term is commonly understood, although very small portions of the Property, totaling less [than] 1% of the building square footage, are occupied by Sychip, OFS Fitel, Wipro, and Garden Savings Federal Credit Union. Please note that Affinity Federal Credit Union vacated the Property effective December 31, 2011 and now only maintains an ATM on site for which it pays $300 monthly to Alcatel-Lucent . . . Although the payments by those occupants are insignificant, and irrelevant and immaterial in valuing the property, a schedule of those payments entitled MURRAY HILL, NJ 2012 RENTAL INCOME is attached.
>
> Two wireless carriers pay monthly fees pursuant to license agreements to maintain cell sites on a[n] Alcatel-Lucent tower on the Property . . . Their payments are also reflected in the attached MURRAY HILL, NJ 2012 RENTAL INCOME.

Annexed to Mr. Lefkowitz's June 13, 2013 letter was a document captioned "Alcatel-Lucent USA Inc. Murray Hill, NJ 2012 Rental Income" ("2012 Rental Income Report"), and a separate

document captioned "Alcatel-Lucent 600 Mountain Avenue Murray Hill, NJ 2012 Operating Expense" ("2012 Operating Expense Report"). The 2012 Operating Expense Report itemizes 20 separate categories of expenses incurred by plaintiff for the subject property on a month-to-month basis, together with an annual reconciliation. The 2012 Rental Income Report reflects the gross "Rental Income" received by plaintiff on an annual basis from six "Subtenant[s]" (emphasis added).

It is undisputed that plaintiff received defendant's 2013 Chapter 91 Request. It is further undisputed that defendant's tax assessor received Lewis M. Lefkowitz's June 13, 2013 letter and the attachments referenced therein.

Shortly thereafter, on July 24, 2013, LTI submitted to defendant's tax assessor an Application for Farmland Assessment, Woodland Data Form and detailed Forest Management Plan, seeking farmland tax assessment for the 2014 tax year on a portion of the subject property being utilized for the production of tree and forest products for sale ("2014 Farmland Assessment Application").

By notice dated August 19, 2013, defendant's tax assessor denied plaintiff's 2014 Farmland Assessment Application asserting that "agricultural use is not dominant use" ("2014 Farmland Assessment Denial Notice"). The 2014 Farmland Assessment Denial Notice stated, in part, that:

> [a]n aggrieved taxpayer had the right to appeal an adverse ruling to the county board of taxation on or before April 1 of the tax year. If you contemplate such appeal, it is suggested that you act immediately to obtain from the Union County Board of Taxation. . . . information regarding the proper procedure to be followed and the time in which to file the appeal.

Accordingly, defendant's tax assessor placed a tax assessment on the subject property for the 2014 tax year, as follows:

Land	$31,350,000
Improvements	$54,715,000
Total	$86,065,000

On March 13, 2014, plaintiff timely filed a Complaint with the Tax Court challenging the 2014 tax year assessment on the subject property ("2014 Tax Appeal Complaint").

On March 28, 2014, plaintiff timely filed a Complaint with the Tax Court challenging the 2014 Farmland Assessment Denial Notice for the subject property ("2014 Farmland Assessment Complaint").

B. 2014 Chapter 91 Request

On June 1, 2014, defendant's tax assessor mailed, by certified mail return receipt requested, to "the property owner of record. . . a Chapter 91 request for income and expenses" (the "2014 Chapter 91 Request"). Annexed to defendant's tax assessor's Certification in support of the motion is a copy of what purports to be the 2014 Chapter 91 Request on township letterhead, bearing a date of June 1, 2014, containing the tax assessor's name, address, telephone and fax numbers, and the tax assessor's signature. Once again, absent from the June 1, 2014 letter is the taxpayer's name, property address and the street address or block and lot designation of the property for which such income and expense information was being sought. The letter contains a reference line stating "RE: Block_____, Lot_____". The 2013 Chapter 91 Request states, in pertinent part:

> Dear Property Owner:
>
> You are respectfully requested to submit to this office income and expense data on the enclosed forms. You may submit a copy of the actual leases, rent rolls, and expense ledger; or use the enclosed forms in order to provide the requested information.
>
> …The information requested **must be submitted to this office within 45 days** from the date of this letter. In the event that you do not furnish this information within the prescribed time period, you

> may be precluded from filing a tax appeal challenging the assessment of this property.
>
> If you have any questions regarding this request, or need clarification relating to the information sought, please contact this office.

Accompanying the 2014 Chapter 91 Request was a reproduction of N.J.S.A. 54:4-34, a form captioned "Annual Statement of Business Income and Expenses Commercial Properties," a form captioned "Instructions for Completion of Schedule A" and a rental schedule form captioned "Schedule A". Although the 2014 Chapter 91 Request sought "the current income and expense data," the letter did not identify the date parameters for which information was being sought.

Annexed to defendant's motions seeking dismissal of plaintiff's 2015 Tax Appeal Complaint and 2015 Farmland Assessment Complaint (as such terms are defined herein), is an undated, signed, certified mail return receipt, bearing a label addressed to:

> Block: 3701 Lot: 1 4A
> Property Location: 600 Mountain Avenue
> Berkeley Heights, NJ
> Alcatel-Lucent USA/ATN. Corp. Counsel
> 600 Mountain Ave-Real Est
> Murray Hill, NJ 07974

Following oral argument, defendant furnished the court with a Supplemental Certification from its tax assessor which states that "[o]ur computerized system printed two identical labels for the Cover Letter and the Certified Return Receipt both of which I used in the Chapter 91 request sent to the Taxpayer." One of those computerized labels was "affixed. . . at the top of the Cover Letter" and the "second identical label [was affixed] to the Certified Return Receipt." Again, defendant's tax assessor admits that he does "not keep a copy of the original [Chapter 91] Cover Letter sent to the Taxpayer showing the label as the original is mailed out to [the] Taxpayer. . ."

It is undisputed that the 2014 Chapter 91 Request was received by plaintiff. It is further undisputed that plaintiff did not furnish any response to the 2014 Chapter 91 Request, nor did it notify defendant of any difficulties encountered in responding to the 2014 Chapter 91 Request.

Thereafter, on July 24, 2014, LTI submitted to defendant's tax assessor an Application for Farmland Assessment, Woodland Data Form and detailed Forest Management Plan, seeking farmland tax assessment for the 2015 tax year on a portion of the subject property being utilized for the production of tree and forest products for sale (the "2015 Farmland Assessment Application").

By notice dated August 11, 2014, defendant's tax assessor denied plaintiff's 2015 Farmland Assessment Application for the subject property asserting that "agricultural use is not dominant use" ("2015 Farmland Assessment Denial Notice"). The 2015 Farmland Assessment Denial Notice stated, in part, that:

> [a]n aggrieved taxpayer had the right to appeal an adverse ruling to the county board of taxation on or before April 1 of the tax year. If you contemplate such appeal, it is suggested that you act immediately to obtain from the Union County Board of Taxation. . . information regarding the proper procedure to be followed and the time in which to file the appeal.

Accordingly, defendant's tax assessor placed an assessment on the subject property for the 2015 tax year, as follows:

Land	$31,350,000
Improvements	$54,715,000
Total	$86,065,000

On March 17, 2015, plaintiff timely filed a Complaint with the Tax Court challenging the 2015 tax year assessment on the subject property ("2015 Tax Appeal Complaint").

On March 31, 2015, plaintiff timely filed a Complaint with the Tax Court challenging the 2015 Farmland Assessment Denial Notice for the subject property ("2015 Farmland Assessment Complaint").

C. Defendant's Motions to Dismiss

Defendant has filed four motions which seek dismissal of plaintiff's: (i) 2014 Tax Appeal Complaint; (ii) 2014 Farmland Assessment Complaint; (iii) 2015 Tax Appeal Complaint; and (iv) 2015 Farmland Assessment Complaint. The court consolidates defendant's motions in the above-matters for purposes of this opinion only.

Defendant charges that plaintiff's 2014 Tax Appeal Complaint and 2014 Farmland Assessment Complaint must be dismissed because Lewis M. Lefkowitz's June 13, 2013 letter and its attachments constituted a "false or fraudulent account" in response to the 2013 Chapter 91 Request under N.J.S.A. 54:4-34. More specifically, defendant asserts that "[d]uring the course of discovery it became apparent that the subject property is not owner occupied and that the subject property's 2012 rental income was substantially higher than the one provided in the Chapter 91 response." Defendant emphasizes that in response to discovery requests, plaintiff disclosed that its 2012 rental income was "$1,153,994.77 and not $960,639.23 as stated in their Chapter 91 response." The discrepancy apparently resulted from plaintiff's failure to include on the 2012 Rental Income Report, license fees paid plaintiff by its wholly owned subsidiary, LGS Innovations.

In addition, defendant maintains Mr. Lefkowitz mischaracterized the subject property as "owner-occupied," when "it is clear" from defendant's "review of the leases provided in discovery" that "the subject property is income producing." Thus, defendant argues plaintiff's June 13, 2013 response to the 2013 Chapter 91 Request was a "false or fraudulent account" thereby

precluding plaintiff from pursuing the 2014 Tax Appeal Complaint and 2014 Farmland Assessment Complaint, subject only to a reasonableness hearing.

Defendant further asserts in its motions that plaintiff's 2015 Tax Appeal Complaint and 2015 Farmland Assessment Complaint must be dismissed because plaintiff failed to respond in any fashion to the 2014 Chapter 91 Request. Defendant maintains plaintiff is precluded from advancing the causes of action raised in the 2015 Tax Appeal Complaint and 2015 Farmland Assessment Complaint as a result of its failure to respond to the 2014 Chapter 91 Request, subject only to a reasonableness hearing.

In opposition to defendant's motions, plaintiff raises six principal arguments: (i) the June 13, 2013 letter was an expression of Lewis M. Lefkowitz's opinions, based on his investigation of the use of the subject property, and therefore, does not render the response false or fraudulent; and (ii) at the time plaintiff furnished defendant with the 2012 Rental Income Report, LGS Innovations was a wholly owned subsidiary of plaintiff, and the payments from LGS Innovations to plaintiff represented licensing fees and not rent; (iii) plaintiff's omission of the license fee income from LGS Innovations on the 2012 Rental Income Report was inadvertent and not intentional, and therefore the "required [fraudulent] intent to deceive the Assessor" was not present; and (iv) the subject property is not "income-producing" consequently, plaintiff "was under no obligation to respond at all" to defendant's Chapter 91 requests; (v) defendant's 2014 Chapter 91 Request was vague and ambiguous and therefore, relieved plaintiff of the burden of responding to the request; and (vi) N.J. Const. Article VIII, Sec. I. Para. 1(b), and the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq., provide a structural framework for eligibility of land for farmland assessment qualification. Hence, plaintiff argues that the appeal preclusion provisions under

Chapter 91 are inapplicable to the challenges lodged to the 2014 Farmland Assessment Denial Notice and the 2015 Farmland Assessment Denial Notice.

II. Conclusions of Law

N.J.S.A. 54:4-34 is an elective system, granting municipal tax assessors access to financial information from taxpayers of income-producing property to assist them in fixing the local property tax assessments. Tower Center Associates v. Township of East Brunswick, 286 N.J. Super. 433 (App. Div. 1996). In effect, N.J.S.A. 54:4-34 provides a mechanism for tax assessors to evaluate a property's economic records in order to arrive at a fair tax assessment, thereby potentially "avoid[ing] unnecessary expense, time and effort" which may result in any ensuing tax appeal litigation. Ocean Pines, Ltd. v. Point Pleasant Borough, 112 N.J. 1, 7 (1988) (quoting Terrace View Gardens v. Township of Dover, 5 N.J. Tax 469, 474-75 (Tax 1982), aff'd o.b., 5 N.J. Tax 475 (App. Div.), certif. denied, 94 N.J. 559 (1983)). See also Lucent Technologies, Inc. v. Township of Berkeley Heights, 405 N.J. Super. 257, 263 (App. Div. 2009), rev'd in part, aff'd in part, 201 N.J. 237 (2010); SKG Realty Corp. v. Township of Wall, 8 N.J. Tax 209, 211 (App. Div. 1985); Cassini v. City of Orange, 16 N.J. Tax 438, 444 (Tax 1997). N.J.S.A. 54:4-34 exemplifies the public policy interests in "having assessors formulate assessments by using information from the 'best available source,' the property owner." Tower Center Associates, supra, 286 N.J. Super. at 438 (quoting Terrace View Gardens, supra, 5 N.J. Tax at 472).

N.J.S.A. 54:4-34 provides:

> Every owner of real property of the taxing district shall, on written request of the assessor, made by certified mail, render a full and true account of his name and real property and the income therefrom, in the case of income-producing property, and produce his title papers, and he may be examined on oath by the assessor, and if he shall fail or refuse to respond to the written request of the assessor within 45 days of such request, or to testify on oath when required, or shall render a false or fraudulent account, the assessor shall value his

> property at such amount as he may, from any information in his possession or available to him, reasonably determine to be the full and fair value thereof. No appeal shall be heard from the assessor's valuation and assessment with respect to income-producing property where the owner has failed or refused to respond to such written request for information within 45 days . . . or shall have rendered a false or fraudulent account . . . In making such written request for information pursuant to this section the assessor shall enclose therewith a copy of this section.
>
> [N.J.S.A. 54:4-34.]

In 1979 our Legislature amended N.J.S.A. 54:4-34 to address what was perceived as "shortcomings" and more precisely, concerns that property owners were "not subject to any penalty for not disclosing property income information." Lucent Technologies, Inc., supra, 201 N.J. at 246 (quoting Senate Revenue, Finance and Appropriations Committee, Statement to Senate Bill No. 309 (January 26, 1978)). The amendment, L. 1979, c. 91, commonly referred to as "Chapter 91," included "language imposing the obligation [on a property owner] to respond within forty-five days" to a request for income and expense information, or face an appeal-preclusion limitation. Id. at 247. In enacting Chapter 91 our Legislature sought to "outlaw[] appeals by non-responding [property] owners [and] to encourage compliance with the accounting requirement." SKG Realty Corp., supra, 8 N.J. Tax at 211.

As a result of the harsh appeal-preclusion limitations afforded under Chapter 91, our courts have strictly construed municipal tax assessors obligations under N.J.S.A. 54:4-34, to: (1) enclose a copy of the statutory text with the request for income and expense information; (2) forward the request, by certified mail, to the real property owner; and (3) explain in clear and straightforward terms the consequences of failing to comply with the request, to wit, prohibiting the taxpayer's local property tax assessment appeal. Thus, when presented with a motion to dismiss a taxpayer's complaint under Chapter 91, the court must conduct two threshold inquiries: (a) is the property

"income-producing" within the intendment of N.J.S.A. 54:4-34, for which a timely response is required; and (b) does the assessor's request comport with the critical statutory requirements under N.J.S.A. 54:4-34.

A. Income-Producing Property

In conducting the first step of this inquiry, the court must gauge whether the property is income-producing. See H.J. Bailey Co. v. Neptune Twp., 399 N.J. Super. 381 (App. Div. 2008). The phrase income-producing property has been "construed as a term of art in accordance with the understanding commonly ascribed to it by the business, investment, and real estate community. . . income-producing property is generally limited to property producing rental income." Great Adventure, Inc., supra, 10 N.J. Tax at 232. It is "commonly understood to refer solely to property which generates rental income." ML Plainsboro Ltd. Partnership, supra, 16 N.J. Tax at 259 (App. Div. 1997). In general, the business, investment, and real estate communities view the phrase "income-producing property" synonymously with the practice of purchasing and developing and/or managing real property as a means to "produce monetary income" to the property owner through a practice of renting, letting or leasing. Appraisal Institute, The Dictionary of Real Estate Appraisal 99 (5th ed. 2010). It is the anticipated stream of revenue generated from the rental, lease, custody or occupancy of the property which renders a property income-producing. Great Adventure, Inc., supra, 10 N.J. Tax at 232-33.

Here, plaintiff maintains that during the 2012 calendar year and for the period from January through May 2013, plaintiff occupied approximately 99% of the subject property. However, because plaintiff "does not market the Property for lease" and "does not solicit third party occupants or tenants," plaintiff claims the "Leases were not entered into to generate income" and therefore, were only "de minimus" in nature. However, those are not the indices by which the

court measures whether a property is, or is not, income-producing. In general, the distinction drawn by the courts in defining "income-producing" property is framed by "whether the fee paid to the owner of land by tenants or patrons is for the continuous and exclusive use of a specific portion of the land and building, in the traditional sense of a tenancy, or [is] for the brief right to enter the land and buildings with others on a non-exclusive basis . . ." Southland Corp. v. Township of Dover, 21 N.J. Tax 573, 589 (Tax 2004). When payment is made to a property owner in consideration for which the occupant enjoys exclusive use, enjoyment or possession of all or a distinct portion of property, free from the property owner's discretion to unilaterally revoke those rights, our courts have concluded the property is "income-producing" under Chapter 91. Ibid. See also Rolling Hills of Hunterdon LP v. Clinton Township, 15 N.J. Tax 364 (Tax 1995). Conversely, when a property owner receives payment in exchange for a general, non-exclusive right of access to the property, our courts have found the property not income-producing. Great Adventure, Inc., supra, 10 N.J. Tax at 233-34.

Admittedly, plaintiff received what its Managing Corporate Counsel has characterized as "monthly basic rent" of $70,735.88 from OFS Fitel, LLC for the period through January 31, 2014, thereby permitting it to exclusively occupy in excess of 17,683 square feet of the buildings on the subject property. Moreover, the 2012 Rental Income Statement supplied by Mr. Lefkowitz in response to the 2013 Chapter 91 Request identified the other occupants of the building as "Subtenant[s]." In fact, plaintiff's counsel acknowledges in its brief to the court that the "only 'income' received is from certain license and lease agreement[s] for less than 1% of the Property and for which Plaintiff received inconsequential license fees and rent" (emphasis added). Plaintiff posits that "the small amount of income from leasing less than 1% of the space is not probative of value of the Property" (emphasis added). However, these statements fundamentally undermine

plaintiff's argument that the subject property is not income-producing. Despite plaintiff's assertions that these agreements are merely "business accommodation[s]" to service providers, plaintiff has nonetheless entered into "lease agreement[s]" and received "monthly basic rent" from "Subtenant[s]" for their exclusive possession, use and enjoyment of portions of the subject property. Stated differently, a fixed stream of revenue is being generated from the rental, lease, or occupancy of portions of the subject property which renders it income-producing.[1] Thus, the court concludes that the subject property was "income-producing" for the 2012 and 2013 tax years, under the intendment of Chapter 91, requiring plaintiff's timely response to defendant's 2013 Chapter 91 Request and 2014 Chapter 91 Request. See Ocean Pines, Ltd., supra, 112 N.J. at 8; Waterside Villas Holdings, LLC v. Monroe Twp., 434 N.J. Super. 275 (App. Div. 2014); Tower Center Associates, supra, 286 N.J. Super. 433.

B. N.J.S.A. 54:4-34

Interpretation by our courts of N.J.S.A. 54:4-34 has taken two distinct paths. One line of cases has examined the obligations of the taxpayer, absent a showing of "good cause," to take some action in response to a Chapter 91 request for information. Ocean Pines, Ltd., supra, 112 N.J. at 8. See also Terrace View Gardens, supra, 5 N.J. Tax 469; Waterside Villas Holdings, LLC, supra, 434 N.J. Super. 275; Tower Center Associates, supra, 286 N.J. Super. 433; Morey v. Borough of Wildwood Crest, 18 N.J. Tax 335, 340 (App. Div. 1999), certif. denied, 163 N.J. 80 (2000). The other view scrutinizes the responsibility of the tax assessor to provide unambiguous

[1] The court recognizes that a distinction exists under law between a leasehold interest and lesser interests in land including licenses, easements and rights-of-way, which are often distinguished based on possessory elements. See Thiokol Chem. Corp. v. Morris Cty. Bd. of Tax, 41 N.J. 405 (1964); Andyston Township v. Angerman, 134 N.J. Super. 448 (App. Div. 1975); Van Horn v. Harmony Sand & Gravel, Inc., 442 N.J. Super. 333, 341 (App. Div. 2015). However, given plaintiff's acknowledgement that a "lease agreement" was negotiated and corresponding statement that plaintiff receives "monthly basic rent" from "Subtenant[s]" occupying portions of the subject property, the court concluded the subject property was income-producing and need not address whether LGS Innovations license fees constitute rental income or another form of income to plaintiff.

notice to a taxpayer of its statutory obligations. See ML Plainsboro Ltd. Partnership v. Plainsboro Township, 16 N.J. Tax 250, 257 (App. Div.), certif. denied, 149 N.J. 408 (1997); Summerton Shopping Plaza v. Manalapan Township, 15 N.J. Tax 173 (App. Div. 1995); SAIJ Realty Inc. v. Town of Kearny, 8 N.J. Tax 191 (Tax 1986); Cassini, supra, 16 N.J. Tax 438; Southland Corp. v. Township of Dover, 21 N.J. Tax 573 (Tax 2004); Town of Phillipsburg v. ME Realty, LLC, 26 N.J. Tax 57, 64 (Tax 2011).

The latter line of cases focus upon the obligation of the tax assessor to provide "clear and unequivocal notice of the specific information which must be submitted," thereby affording taxpayers reasonable notice of their Chapter 91 obligations. ML Plainsboro Ltd. Partnership, supra, 16 N.J. Tax at 257. See also Cassini, supra, 16 N.J. Tax at 453 (concluding that the assessor "must utilize 'clear and unequivocal language.'"). In these cases the courts have observed that "[t]ax assessors are experts in the field of real estate valuation. . . while the owners of income producing properties include not only substantial business enterprises. . . but also small business persons who may have difficulty reading complex and confusing forms and may lack ready access to legal advice. Consequently, 'the assessor's request notice to the taxpayer must be clear cut.'" ML Plainsboro Ltd. Partnership, supra, 16 N.J. Tax at 257 (citations omitted). A "property owner that receives a Chapter 91 request for which a response is impossible, or for which it is unclear what response is being sought, may not have its appeal dismissed for failure to timely respond to such a request." Cassini, supra, 16 N.J. Tax at 453.

Conversely, the former series of cases underscores the tax assessor's statutory and constitutional duty to accurately and fairly assess real property, and the corresponding obligation of a taxpayer to fashion a timely response to a valid Chapter 91 inquiry. Taxpayers must "take action to challenge the [Chapter 91] request within the forty-five day statutory time limit, and to

put the municipality on notice of its contention." Tower Center Associates, supra, 286 N.J. Super. at 438. A taxpayer cannot "simply ignore its statutory obligation to respond" under Chapter 91 and thereafter pursue, without sanction, a local property tax appeal. Waterside Villas Holdings, LLC, supra, 434 N.J. Super. at 283. When the Chapter 91 request "is thought not to be 'legitimate,' in whole or in part, the taxpayer must do something to assert that contention before the assessment is imposed to avoid the statutory bar to appeal embodied in N.J.S.A. 54:4-34." Id. at 284. Thus, absent evidence of "a good cause excuse made within the 45-day time period" a taxpayer must nonetheless respond to a Chapter 91 request "or be deprived of the opportunity to appeal their tax assessments." Cassini, supra, 16 N.J. Tax at 444. See also Ocean Pines, Ltd., supra, 112 N.J. at 8.

In attempting to reconcile the two lines of cases, this court observes that when a taxpayer has furnished a timely, good faith response to an imprecisely written Chapter 91 request, or if a tax assessor's Chapter 91 request was untimely, or failed to comply with statutory prerequisites, taxpayers have not faced the sanction of complaint dismissal. See ML Plainsboro Ltd. Partnership, supra, 16 N.J. Tax 250; Delran Holding Corp. v. Delran Township, 8 N.J. Tax 80 (Tax 1985); Westmark Partners v. Township of West Deptford, 12 N.J. Tax 591 (Tax 1992); Cassini, supra, 16 N.J. Tax 438; Tri-Martin Associates II, LLC v. City of Newark, 21 N.J. Tax 253 (Tax 2004); Green v. East Orange, 21 N.J. Tax 324 (Tax 2004). Conversely, when a challenge is lodged to a request for income and expense information under N.J.S.A. 54:4-34 that is deemed vague, unreasonable or overbroad our courts have been less yielding, dismissing local property tax appeals unless the taxpayer has timely asserted a valid objection and responded to that portion of the request not deemed improper. See Ocean Pines, Ltd., supra, 112 N.J. 1; Tower Center Associates, supra, 286 N.J. Super. 433; Waterside Villas Holdings, LLC, supra, 434 N.J. Super. 275; TMC Properties v. Wharton Borough, supra, 15 N.J. Tax 455.

In Ocean Pines, Ltd., supra, 112 N.J. at 8, our Supreme Court introduced a "two step analytical framework" for reviewing motions to dismiss under N.J.S.A. 54:4-34. TMC Properties, supra, 15 N.J. Tax at 463. In Ocean Pines, Ltd., supra, the property owner purchased a twenty-unit garden apartment complex on February 15, 1984. On March 26, 1984, the tax assessor requested income and expense records from the property owner for the 1983 tax year. The owner received the assessor's request for financial and expense information, but failed to respond "apparently believing that its status as a recent purchaser exempted it from compliance." Id. at 4. Thereafter, the property owner filed a complaint challenging the local property tax assessment and the municipality moved to dismiss the complaint under N.J.S.A. 54:4-34. The property owner argued that "as a recent purchaser of the property, it did not have the income and expense records for the time period that preceded its purchase" and therefore, "good cause" existed for its failure to respond to the request for income and expense information. Id. at 5. In rejecting the property owner's arguments, the Court explained that "[i]t is apparent from the record that plaintiff made no attempt within the forty-five-day period to explain to the assessor why it could not comply with the request. Instead, plaintiff simply chose to ignore the notice." Id. at 8. Although the Court declined to express a view on whether the absence of financial and expense information would have constituted "good cause" under the statutory scheme, the Court unequivocally stated that "plaintiff's failure to respond in any fashion to the assessor's [Chapter 91] request precluded plaintiff from asserting a 'good cause' claim . . . ." Id. at 9.

Thus, the Court endorsed the view that as a prerequisite to addressing the "good cause" exception in N.J.S.A. 54:4-34, a property owner is required to furnish a "response" to the Chapter 91 request within the statutorily prescribed forty-five day time period. Ibid. See also TMC Properties, supra, 15 N.J. Tax at 461-462. Only after the court is satisfied that the property owner

supplied the tax assessor with an adequate "response," must the court address, on a case-by-case basis, whether the property owner's failure to provide financial and expense information constituted "good cause."

Similarly, in Tower Center Associates, supra, 286 N.J. Super. at 438, the Appellate Division addressed dismissal of a property owner's local property tax appeals as a result of its failure to respond to the municipality's Chapter 91 requests. There, the tax assessor mailed Chapter 91 requests to the property owner on June 14, 1991 and June 12, 1992. Id. at 435. The requests sought income and expense information for the periods January 1, 1990 through December 31, 1990, and January 1, 1991 through December 31, 1991, respectively, including "all details of the lease be disclosed, such as expiration dates, options for renewal, fixed rents, tax escalator and maintenance clauses and specific identity of the area occupied." Ibid. The property owner received each of the financial and expense information requests and failed to respond. The property owner argued "the assessor's requests for information for both years were 'patently illegal and overreaching' and that it, therefore, did not have to respond." Id. at 436. In rejecting this argument, the Appellate Division concluded that "Chapter 91 provides a system for obtaining information necessary to establish the value of property for purposes of levying tax assessments. It may be that the scope of a request thereunder is too broad, or in some way infringes on the rights of the taxpayer, but the statutory requirement cannot be altogether ignored." Id. at 438. Although the court expressed some uncertainty as to the response a taxpayer must furnish "to challenge a request deemed improper," it categorically explained that a "taxpayer should undoubtedly respond to at least that part of the request not deemed improper and. . . seek relief as to the balance. . . following an unsuccessful endeavor to convince the assessor that the request must be modified." Ibid. (citations omitted).

In Morey v. Borough of Wildwood Crest, supra, the Appellate Division rejected the taxpayers' argument that their worsening health constituted "good cause" for failing to respond to the municipality's Chapter 91 request. 18 N.J. Tax at 340. In affirming the Tax Court's dismissal of the local property tax appeal, the court concluded that "total avoidance of the [Chapter 91] request during the forty-five day period . . . cannot be good cause. The taxpayer cannot 'altogether ignore' the assessor's request" and thereafter seek to maintain an action challenging the local property tax assessment. Ibid. (quoting Tower Center Associates, supra, 286 N.J. Super. at 438.)

Finally, in Waterside Villas Holdings, LLC, supra, 434 N.J. Super. at 280, the tax assessor mailed the property owner a Chapter 91 request on August 13, 2010. The request instructed the owner to "[u]nder [the] 'Statement and Expenses' [section of the form] enter your recent twelve months (January 1, 2009 through December 31, 2009) operational costs to the extent that such cost is actually paid by management." Ibid. The property owner received the request on August 16, 2010 and did not respond. In opposition to the municipality's motion to dismiss the property owner's complaint under Chapter 91, the property owner argued that "the assessor's request was not 'clear and unequivocal'" and "asserted that a taxpayer is left to guess whether the assessor is looking for the most recent [twelve] months of information (August 2009-July 2010) or January to December 2009". Id. at 281. The owner further asserted that the assessor's "omission of the word 'may' in the copy of N.J.S.A. 54:4-34 [accompanying the request]. . . precluded relief under the statute." Id. at 285. In rejecting the property owner's arguments, the Appellate Division concluded that when a property owner receives a Chapter 91 request "that it deems improper in some fashion, it may not simply ignore its statutory obligation to respond." Instead, the court recited with approval the holding in Tower Center Associates, supra, which states:

> the taxpayer must take action to challenge the request within the forty-five day statutory time limit, and to put the municipality on

> notice of its contention. In any event, the taxpayer cannot just sit by and do nothing until the assessment is finalized, as this taxpayer did, and thereafter seek to appeal the assessment by plenary review. Such conduct results in 'unnecessary expense, time and effort in litigation'.
>
> [286 N.J. Super. at 438.]

Because the property owner "ignored a clear and proper Chapter 91 request for information," the court found it unnecessary to address the second step of the Ocean Pines, Ltd. analysis, whether "good cause" existed for the property owner's failure to furnish financial and expense information. Waterside Villas Holdings, LLC, supra, 434 N.J. Super. at 284. Moreover, the court rebuffed the property owner's claim that omission of the word "may" from the copy of N.J.S.A. 54:4-34, included with the assessor's information request, rendered the Chapter 91 request defective. Instead, the court observed that if "an assessor provides property owners with a copy of the statute that omits 'critical [and] substantive' statutory provisions, principles of fair dealing" would preclude the assessor from seeking relief under the statute. Id. at 287 (quoting SAIJ Realty, supra, 8 N.J. Tax at 194). However, when the "omission is minor and inadvertent, [and] does not alter the substance of the statute, and does not prejudice the property owner," the municipality is entitled to a dismissal under Chapter 91. Ibid. The "minor alteration" to N.J.S.A. 54:4-34, included with the information request, did not "obscure or omit any substantive provision" of the statute. Thus, the property owner was not entitled to equitable relief from Chapter 91.

Here, it is undisputed that plaintiff received defendant's 2013 Chapter 91 Request and 2014 Chapter 91 Request. It is also uncontroverted that on June 13, 2013, plaintiff's corporate counsel forwarded a response to the 2013 Chapter 91 Request. (See infra, discussion of the "false or fraudulent" nature of that account.) Moreover, it is uncontroverted that plaintiff furnished no response to the 2014 Chapter 91 Request, nor notified defendant's tax assessor in writing of its

difficulty in complying with the 2014 Chapter 91 Request within the forty-five day statutory period. Plaintiff argues that the 2014 Chapter 91 Request was vague and ambiguous and failed to precisely identify the time period for which plaintiff was required to furnish income and expense data. However, no evidence was produced that plaintiff communicated or attempted to communicate such difficulties or confusion in responding to the 2014 Chapter 91 Request to defendant's tax assessor in writing within the forty-five day time period. The plaintiff bore an obligation under N.J.S.A. 54:4-34 to, at the bare minimum, respond to those parts of the 2014 Chapter 91 Request which were not vague, imprecise and/or ambiguous, and seek clarity or reformation of the 2014 Chapter 91 Request from defendant's tax assessor. See Tower Center Associates, supra, 286 N.J. Super. at 438. Having reviewed the 2014 Chapter 91 Request, the court concludes that Part 1 of the Annual Statement of Business Income and Expenses Commercial Properties was not vague or ambiguous, and sought basic property information including, the block and lot, property owner name, property owner address, property location, tenant name(s) and tenant address(es). Moreover, the 2014 Chapter 91 Request complied with the strict obligations of the statute: (1) was forwarded by certified mail to the owner of the real property; (2) included a copy of the statutory text with the request for income and expense information (discussed infra); and (3) explained in straightforward terms the consequences of plaintiff's failure to comply. Thus, plaintiff's failure to furnish a timely and adequate written response to defendant, pinpointing why it could not comply with the entirety of the 2014 Chapter 91 Request, precludes plaintiff from asserting a "good cause" exception to its statutory obligation. Ocean Pines, Ltd., supra, 112 N.J. at 9.

Accordingly, the court grants defendant's motion to dismiss plaintiff's 2015 Tax Appeal Complaint, subject to a reasonableness hearing.

C. False or Fraudulent Account

A motion to dismiss under Chapter 91 must be filed the earlier of: (i) 180 days after a complaint is filed, or (ii) 30 days before the trial date. R. 8:7(e). However, when a motion to dismiss is centered on the premise that the Chapter 91 response constituted a "false or fraudulent account," the time limits under R. 8:7(e) are inapplicable. See Lucent Technologies, Inc., supra, 405 N.J. Super. 257 (App. Div. 2009), rev'd in part, aff'd in part, 201 N.J. 237 (2010).

Here defendant's motions to dismiss plaintiff's 2014 Tax Appeal Complaint and 2014 Farmland Assessment Complaint were filed more than 180 days after the filing of the complaints, however because the substance of defendant's motions arise from plaintiff's alleged "false or fraudulent account," the motions are timely before this court. See Id.

Defendant raises two principal arguments that plaintiff's response to the 2013 Chapter 91 Request was a "false or fraudulent account" warranting dismissal of plaintiff's 2014 Tax Appeal Complaint and 2014 Farmland Assessment Complaint. First, defendant argues Lewis M. Lefkowitz's June 13, 2013 letter "intentionally misrepresent[ed] that the property is not income producing . . . by stating that the property is not [sic] owner-occupied." Second, defendant argues that by excluding the LGS Innovations license income on the 2012 Rental Income Report plaintiff "misrepresented the total rental income."

Conversely, plaintiff advocates for the court to examine the intent of a taxpayer in furnishing information in response to a Chapter 91 request before concluding that it is a "false or fraudulent account." Plaintiff charges that in his June 13, 2013 letter, Mr. Lefkowitz was simply expressing his legal opinion and conclusions based upon his understanding of the facts and interpretation of applicable law at that time. Plaintiff submits that Mr. Lefkowitz did not intentionally misrepresent the occupancy status of the subject property and was not attempting to

deceive defendant's tax assessor. Plaintiff offers that at the time Mr. Lefkowitz responded to defendant's 2013 Chapter 91 Request, LGS Innovations "was a wholly owned subsidiary of plaintiff." Thus, plaintiff maintains that Mr. Lefkowitz's June 13, 2013 letter was not a "false or fraudulent account" as it was not designed or intended to deceive defendant's tax assessor. Moreover, plaintiff emphasizes that it provided the income and expense information sought in response to defendant's 2013 Chapter 91 Request.

Thus, the issues presented to the court can be succinctly summarized as follows: were the factual assertions and opinions expressed by Mr. Lefkowitz, in his June 13, 2013 letter deliberately designed to deceive or defraud defendant's tax assessor; or were they good faith and rational legal conclusions based upon an interpretation of applicable law. Moreover, did the exclusion of the LGS Innovations license income render plaintiff's June 13, 2013 response a "false or fraudulent account" under N.J.S.A. 54:4-34. Stated differently, did our Legislature contemplate examination of a party's mindset and intent, as a prerequisite for addressing whether a response constitutes a "false or fraudulent account" under N.J.S.A. 54:4-34.

N.J.S.A. 54:4-34 provides, in part, that:

> No appeal shall be heard from the assessor's valuation and assessment with respect to income-producing property where the owner has failed or refused to respond to such written request for information within 45 days…or shall have rendered a false or fraudulent account…
>
> [N.J.S.A. 54:4-34.]

Defendant strictly interprets the phrase "false or fraudulent" to mean something not true, erroneous or incorrect. Thus, defendant argues that when a property owner's response to a Chapter 91 request contains any inaccuracy, distortion or misrepresentation, no matter how insignificant, Chapter 91 requires dismissal, and the intent of the offering party is of no moment. Conversely,

plaintiff interprets "false or fraudulent" as a deliberate and knowing act designed to deceive. Hence, in evaluating whether a response to a Chapter 91 request constitutes a "false or fraudulent account," plaintiff argues the court should examine both the scope of the information submitted and the corresponding intent of the party in formulating the response.

The rules of statutory construction require "consideration of [a statute's] plain language." Merin v. Maglaki, 126 N.J. 430, 435 (1992). See also Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123, 128 (1987); In re Plan for the Abolition of Council on Affordable Hous., 214 N.J. 444, 467-68 (2013). If based upon a plain reading, the statutory language is "clear and unambiguous," the court must "implement the statute as written without resort to judicial interpretation, rules of construction, or extrinsic matters." Bergen Commercial Bank v. Sisler, 157 N.J. 188, 202 (1999) (quoting In re Estate of Post, 282 N.J. Super. 59, 72 (App. Div. 1995)). Conversely, if the "plain language of a statute creates uncertainties or ambiguities, a reviewing court must examine the legislative intent underlying the statute and 'construe the statute in a way that will best effectuate that intent.'" Musikoff v. Jay Parrino's the Mint, L.L.C., 172 N.J. 133, 136 (2002) (quoting New Jersey State League of Municipalities v. Department of Community Affairs, 158 N.J. 211, 224 (1999)). It is of paramount importance for the court to effectuate "the 'fundamental purpose for which the legislation was enacted.'" Township of Pennsauken v. Schad, 160 N.J. 156, 170 (1999).

In the taxation arena, when faced with an issue of statutory construction, the preferred "approach to [interpreting] the meaning of a tax statute is to give to the words used by the Legislature 'their generally accepted meaning, unless another or different meaning is expressly indicated.'" Public Service Electric & Gas Co. v. Woodbridge Township, 73 N.J. 474, 478 (1977) (quoting New Jersey Power & Light Co. v. Denville Township, 80 N.J. Super. 435, 440 (App. Div.

1963)). However, when the generally accepted meaning of a word or words are indeterminate, the courts "sole guidepost" must be to effectuate the intent of our Legislature. Ibid.

N.J.S.A. 54:4-34 does not offer a definition of either the individual terms or phrase "false or fraudulent account" therefore, the court will look to the plain or generally accepted meaning of those terms. In its rudimentary form, "false" refers to something "[n]ot true; artificial; counterfeit; assumed or designed to deceive; contrary to fact; deceitful; deliberately and knowingly false; designedly untrue; erroneous; sham; feigned, incorrect . . ." Black's Law Dictionary 600 (6th ed. 1990). Merriam-Webster defines "false" as "being contrary to truth or fact," "deliberately untrue," "intentionally deceptive," or "resembling but not accurately or properly designated as such." Webster's II New College Dictionary 404 (1995). The term "fraudulent" is derived from the term fraud, meaning an "intentional perversion of trust for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or, to surrender a legal right." Black's Law Dictionary 660 (6th ed. 1990).

Thus, a literal reading of the term "fraudulent" signals a deliberate state of mind and actions intended to deceive another. However, the word "false" may, but does not always, require intentional conduct or implicate a party's state of mind. Because a plain reading of the statutory language provides no meaningful insight into resolution of the issue presented, this court will turn to an examination of the legislative history of Chapter 91 to attempt to glean our Legislature's intent. See Township of Pennsauken v. Schad, supra, 160 N.J. at 170.

As originally proposed, the bill introducing Chapter 91 observed that "[w]hen such relevant [income] information is not made available to the assessor, the valuation of the property is based on [the] assessor's judgment making use of the information that is available." Statement to Senate, No. 309. To combat what was characterized as a "property owner['s] . . . appeal [of] the

assessment, notwithstanding his refusal or failure to provide information which may have affected the valuation," the legislation precluded "a hearing on an appeal from the assessor's valuation. . . unless and until the required information is provided." Ibid. Stated differently, the appeal preclusion sanctions imposed under Chapter 91 were intended to provide tax assessors with "access to" "relevant information" or information "pertinent to the valuation of the property." Senate Revenue, Finance and Appropriations Committee, Statement to Senate, No. 309. Thus, although the legislative history of Chapter 91 is devoid of empirical evidence that our Legislature intended to ascribe a different or identical meaning to the terms "false" or "fraudulent," it does reveal that Chapter 91 was aimed at ensuring relevant, pertinent and meaningful information which may affect the assessment was timely delivered to tax assessors.

Although the court's review of the legislative history provides little insight into the intent of our Legislature, this court construes the term "false" to include some knowledge of falsity and embodies an element of materiality. If state of mind was wholly irrelevant as it relates to a "false . . . account," then including mention of the term "fraudulent" would be superfluous, which would be a disfavored reading of the statute. See Medical Soc. of N.J. v. N.J. Dep't of Law & Public Safety, 120 N.J. 18, 26-27 (1990); Abbotts Dairies, Inc. v. Armstrong, 14 N.J. 319, 327-28 (1954). Additionally, our Legislature, by expressing the view that taxpayers must furnish relevant and pertinent information which may affect the valuation and assessment of property, conferred an element of materiality on the information to be supplied.

Moreover, in his concurring opinion, in Lucent Technologies, Inc., supra, Justice Albin expressed the view that:

> . . . there may be cases in which a taxpayer inadvertently files false information and quickly attempts to remedy the mistake. I do not read the Court's opinion to preclude . . . the tax court from exercising its equitable powers to deny a municipality's dilatory

> motion to dismiss, provided the taxpayer does not have unclean hands.
>
> [Lucent Technologies, Inc., supra, 201 N.J. at 251-252.]

Although it is well settled that "portions of an opinion that are dicta are not binding," it nonetheless can be an effective tool for resolving complex legal matters. See National Mortgage Co. v. Syriaque, 293 N.J. Super. 547, 554 (Ch. Div. 1994) (citing Township of West Milford v. Garfield Recreation Committee, Inc., 194 N.J. Super. 148 (Law Div. 1983)). Here, the court finds meaningful insight in Justice Albin's use of the phrase "inadvertently files false information," which signals to this court a careless, accidental or unplanned submission of inaccurate information. In sharp contrast, the term "unclean hands" denotes a deliberate act designed to deceive. Thus, Justice Albin postulates that a taxpayer whose submission of false information which was inadvertent or careless should not suffer the severe appeal preclusion consequences if they timely endeavor to cure the mistake. Conversely, a taxpayer who acted deliberately and with "unclean hands" must be barred from pursuing a tax appeal.

The court is not convinced that in enacting Chapter 91 our Legislature intended taxpayers to face the harsh appeal preclusion consequences when a timely, good faith response to a Chapter 91 request was furnished which inadvertently excluded, overstated or understated property or income and expense information. By employing the approach advanced by plaintiff, the court would be positioned to weigh and assess the credibility of the party who offered the information and to discern their intent. If following a hearing, the court concludes that the responding party was disingenuous, had unclean hands or was deliberately attempting to secure an advantageous assessment, Chapter 91 would mandate dismissal of the tax appeal. Conversely, if the court concludes that the offering party in good faith timely supplied information in response to a Chapter 91 request and accidentally or inadvertently omitted information which was otherwise

inconsequential in fixing the tax assessment, the court can exercise its equitable powers and deny a municipality's motion to dismiss.

Accordingly, the court will schedule the 2014 Tax Appeal Complaint and 2014 Farmland Assessment Complaint for a hearing on plaintiff's intent in fashioning its June 13, 2013 letter in response to defendant's 2013 Chapter 91 Request, and the materiality of the information omitted in fixing the 2014 tax assessment on the subject property. The burden rests with plaintiff to demonstrate that its June 13, 2013 letter and attachments were prepared and supplied in good faith, and were not designed to deceive or mislead the defendant.

D. Farmland Assessment

In 1962 our Supreme Court concluded that L. 1960, c. 51, which afforded preferential tax treatment to lands "devoted to agricultural use" impermissibly violated N.J. Const., Art. VIII, Sec. I, Para. 1, which requires application of the same standard of value to all real property. Switz v. Kingsley, 37 N.J. 566 (1962). Following that ruling, Governor Richard J. Hughes convened the Governor's Farmland Assessment Committee to assist in the development of recommendations with respect to the assessment of farmlands in New Jersey. East Orange v. Livingston Twp., 102 N.J. Super. 512, 532 (Law Div. 1968). The committee recommended an amendment to our State's Constitution permitting the special and separate tax assessment of agricultural lands. Report of Governor's Farmland Assessment Committee (March 20, 1963). The constitutional amendment, known as Senate Concurrent Resolution No. 16, provided that:

> Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value, except as otherwise permitted herein, and such real property shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district.

> (b) The Legislature shall enact laws to provide that the value of land, not less than 5 acres in area, which is determined by the assessing officer of the taxing jurisdiction to be actively devoted to agricultural or horticultural use and to have been so devoted for at least the 2 successive years immediately preceding the tax year in issue, shall, for local tax purposes, on application of the owner, be that value which such land has for agricultural or horticultural use.
>
> Any such laws shall provide that when land which has been valued in this manner for local tax purposes is applied to a use other than for agriculture or horticulture it shall be subject to additional taxes in an amount equal to the difference, if any, between the taxes paid or payable on the basis of the valuation and the assessment authorized hereunder and the taxes that would have been paid or payable had the land been valued and assessed as otherwise provided in this Constitution, in the current year and in such of the tax years immediately preceding, not in excess of 2 such years in which the land was valued as herein authorized.
>
> Such laws shall also provide for the equalization of assessments of land valued in accordance with the provisions hereof and for the assessment and collection of any additional taxes levied thereupon and shall include such other provisions as shall be necessary to carry out the provisions of this amendment.
>
> [East Orange v. Livingston Twp., supra, 102 N.J. Super. at 533 (quoting Senate Concurrent Resolution No. 16 (1963).]

During the public hearings which followed introduction of Senate Concurrent Resolution No. 16 the expressed "primary objective [of the amendment] was to save the 'family farm' and provide farmers with some economic relief by permitting farmlands to be taxed upon their value as on-going farms and not on any other basis." Id. at 534. See also Van Wingerden v. Lafayette Twp., 303 N.J. Super. 614, 618 (App. Div. 1997). However, other incidental, beneficent purposes were anticipated by the proponents of the constitutional amendment, including "maintaining 'open' space, the beauty of our countryside and in the availability of agricultural products fresh from the farm." New Jersey Turnpike Authority v. Washington Twp., 137 N.J. Super. 543, 546 (App. Div.

1975) (quoting Report of the Governor's Farm Land Assessment Committee (March 20, 1963)). See also Andover Twp. v. Kymer, 140 N.J. Super. 399, 404 (App. Div. 1976).

The constitutional amendment was passed during the November 5, 1963 general election. The Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1, et seq. ("the Farmland Assessment Act"), became the implementing legislation. In enacting the Farmland Assessment Act, our Legislature sought not only to provide a means for valuing land actively devoted to agricultural or horticultural use, but also to eliminate the difficulties previously encountered by tax assessors in gauging eligibility for farmland assessment. Andover Twp. v. Kymer, supra, 140 N.J. Super. at 404–405.

Pursuant to the Farmland Assessment Act,

> [f]or general property tax purposes, the value of land, not less than 5 acres in area, which is actively devoted to agricultural or horticultural use and which has been so devoted for at least the 2 successive years immediately preceding the tax year in issue, shall, on application of the owner, and approval thereof as hereinafter provided, be that value which such land has for agricultural or horticultural use.
>
> [N.J.S.A. 54:4-23.2.]

Land which is "actively devoted to agricultural or horticultural use" is eligible for farmland assessment and taxation, provided that it satisfies the conditions memorialized in N.J.S.A. 54:4-23.6. N.J.S.A. 54:4-23.6 requires, in part, that:

> (a) It has been so devoted for at least the two successive years immediately preceding the tax year for which valuation under this act is requested;
> (b) The area of such land is not less than five acres when measured in accordance with the provisions of section 11 hereof; and
> (c) Application by the owner of such land for valuation hereunder is submitted on or before August 1 of the year immediately preceding the tax year to the assessor of the taxing district in which such land is situated on the form prescribed by the Director of the Division of Taxation in the Department of the Treasury;

[N.J.S.A. 54:4-23.6.]

The Farmland Assessment Act does not exclusively apply to land "devoted to the production for sale of plants and animals useful to man," but is also applicable to real property dedicated to breeding, boarding, raising, rehabilitating, training or grazing certain animals; beekeeping and apiary products; and the production of "trees and forest products." N.J.S.A. 54:4-23.3. However, under the Farmland Assessment Act land "devoted exclusively to the production for sale of tree and forest products. . . shall not be deemed to be in agricultural use" unless the property owner satisfies certain additional statutory criteria for eligibility. Those criteria require the property owner: (1) establish a forest stewardship plan or a woodland management plan approved by the New Jersey Department of Environmental Protection ("NJDEP"); (2) the property owner, or a forester approved by the NJDEP, must annually certify compliance with the forest stewardship or woodland management plan; (3) the property owner must submit an annual application, attaching a copy of the plan, and identifying the woodland management actions performed in the pre-tax year, including the type and quantity of tree products sold, and the income generated therefrom. N.J.S.A. 54:4-23.3.

Plaintiff emphasizes that our Legislature carefully delineated the parameters for farmland assessment under the Farmland Assessment Act. Plaintiff maintains that it timely submitted applications to defendant, which satisfied the constitutional and statutorily imposed criteria for farmland assessment for the 2014 and 2015 tax years under the Farmland Assessment Act. Those applications supplied defendant's tax assessor with, not only a detailed forest management plan approved by the NJDEP, but with woodland data information documenting the quantity of tree and forest products sold during the pre-tax year, and the income derived therefrom. See N.J.S.A. 54:4-23.3. Thus, plaintiff maintains that its 2014 Farmland Assessment Complaint and 2015 Farmland

Assessment Complaint seek only that limited measure of relief afforded property owners of farmland under N.J. Const., Article VIII, Sec. I, Para. 1(b) and the Farmland Assessment Act. Plaintiff highlights that the tax appeal preclusion penalties implemented under Chapter 91 sought to ensure that income-producing property owners timely complied with requests for income and expense information from tax assessors. This correspondingly afforded tax assessors with access to "relevant information" or "information requested by an assessor pertinent to the valuation of the property." Plaintiff stresses that defendant was in possession of information related to the farmland use of the subject property because the Farmland Assessment Act required plaintiff furnish defendant's tax assessor with: (i) an annual application, by August 1 of the tax year immediately preceding the tax year for which farmland assessment was sought; (ii) establishing a forest stewardship plan or a woodland management plan; (iii) an annual certification evidencing compliance with the forest stewardship or woodland management plan; and (iv) identifying the woodland management actions performed during the pre-tax year, including the type and quantity of tree products sold, and the income generated therefrom. Accordingly, plaintiff argues that the objectives of Chapter 91 are not advanced by its application to appeals which arise under the Farmland Assessment Act.

Conversely, defendant charges that all owners of real property, including real property for which farmland assessment is, or may be, sought must nonetheless respond to a Chapter 91 request. Defendant asserts that Cascade Corp. v. Twp. of Middle, 323 N.J. Super. 184 (App. Div. 1999), certif. denied, 163 N.J. 11 (2000), supports its argument that a property owner seeking farmland assessment must nonetheless comply with a Chapter 91 request, and thereafter litigate entitlement to farmland assessment. Defendant contends that whether a property is wholly exempt from property taxation or, is subject to farmland assessment, it is immaterial to the taxpayer's statutory

duty to provide the tax assessor with information that will aid it in setting the local property tax assessment. Thus, defendant maintains that because plaintiff provided an alleged false or fraudulent response to the 2013 Chapter 91 Request and no response to the 2014 Chapter 91 Request, plaintiff's 2014 Farmland Assessment Complaint and 2015 Farmland Assessment Complaint must be dismissed.

Thus, at issue before the court is whether the information-seeking queries under N.J.S.A. 54:4-34 extend to the owners of real property for which farmland assessment is, or may be sought. If applicable, do the tax appeal-preclusion provisions under Chapter 91 bar consideration of a property owner's complaint challenging denial of farmland assessment when no response to a request for data and information under N.J.S.A. 54:4-34 is furnished.

The court's analysis begins with the well-established principal that farmland assessment is a form of tax exemption and entitlement to such preferential tax treatment is strictly construed against the claimant. Society of the Holy Child Jesus v. City of Summit, 418 N.J. Super. 365, 378 (App. Div. 2011) (concluding that "our courts have analogized eligibility for farmland assessment to eligibility for exemption under the [tax exemption] statute. Preferential treatment [under the Farmland Assessment Act] is substantially similar to an exemption from taxes, and the [Farmland Assessment Act] is therefore strictly construed against the party seeking [its] tax benefits."); Cheyenne Corp. v. Township of Byram, 248 N.J. Super. 588, 592 (App. Div. 1991) (in interpreting the Farmland Assessment Act the court concluded that "statutes granting exemption from taxation represent a departure" from the rule that all property must bear its just and equal share of the public burden of taxation.); Borough of Califon v. Stonegate Properties Inc., 2 N.J. Tax 153, 163 (Tax 1981) (concluding that "the Farmland Assessment Act is akin to tax exemption statutes which must be strictly construed against the party claiming the exemption"); Dep't of Envtl. Prot. v.

Franklin Twp., 3 N.J. Tax 105, 119 (Tax 1981) (concluding that "taxation of farm property at favorable rates as provided in the Farmland Assessment Act, being in the nature of an exemption from taxation. . . should also be construed to exist only when such a legislative intention is clear and unmistakable."); Van Wingerden v. Lafayette Twp., 18 N.J. Tax 81, 94 (Tax 1999) (concluding that the "Farmland Assessment Act must be strictly construed against the party seeking the tax benefits of the [Farmland Assessment] Act, because those benefits are generally equivalent to an exemption."); Pio Costa, Anthony II-Subtrust v. Borough of Riverdale, 20 N.J. Tax 169, 176 (Tax 2002) (citations omitted) (concluding that "[s]tatutes granting preferential tax treatment, of any nature, must be strictly construed against the taxpayer seeking such preferential treatment because they provide benefits at the expense of all the remaining taxpayers in the municipality. . . The Farmland Assessment Act is 'akin to tax exemption statutes which must be strictly construed against the party claiming the tax exemption, . .'"); Atlantic Coast LEH, LLC v. Township of Little Egg Harbor, 26 N.J. Tax 151, 159 (Tax 2011) (concluding that "the [Farmland Assessment] Act, which accords treatment equivalent to a partial tax exemption, is construed against the party seeking preferential treatment."); See also Estell Manor City v. Stern, 14 N.J. Tax 394, 417 (Tax 1995); Sudler Lakewood Land, LLC v. Lakewood Twp., 18 N.J. Tax 451, 462 (Tax 1999); Wishnick v. Upper Freehold Twp., 15 N.J. Tax 597, 606 (Tax 1996). Thus, because the Farmland Assessment Act is "akin to [a] tax exemption statute[]," it must be strictly construed against the taxpayer seeking the preferential tax treatment. Stonegate Properties Inc., supra, 2 N.J. Tax at 163.

In Cascade Corp., supra, 323 N.J. Super. 184, the municipal tax assessor served on the taxpayer a request for income and expense information under N.J.S.A. 54:4-34. Believing that the properties were exempt from local property taxation, as "hospital purposes" under N.J.S.A. 54:4-

3.6, the taxpayer did not respond to the Chapter 91 request. Instead, the taxpayer filed an application for local property tax exemption with the tax assessor. The tax assessor denied the taxpayer's local property tax exemption application and the taxpayer appealed. The municipality moved to dismiss the taxpayer's tax appeal as a result of its failure to respond to the Chapter 91 request. In granting the municipality's motion, Judge Rimm concluded that "as a matter of law. . . a response by the filing of an application for exemption under N.J.S.A. 54:4-4.4 is not, under any circumstances, in. . . law or in fact, a response to a Chapter 91 request. The statutes are different [and] unrelated." The court further observed that the statutory scheme of Chapter 91 does not afford the property owner the option not to respond to a Chapter 91 request based on the belief that the property was exempt from local property taxation. That evaluation and analysis, the court concluded, must be left to the sound judgment of the tax assessor, subject to judicial review. The property owner cannot substitute its judgment for that of the tax assessor, the property owner must "comply with the [Chapter 91] request and litigate its entitlement to an exemption in the. . . judicial proceeding provided by law, an appeal from the assessment." Id. at 187.

In affirming the trial court's opinion, our Appellate Division observed that Chapter 91 "requires such data with regard to all 'income-producing property,' irrespective of whether it is entitled to exemption from taxation." Id. at 188 (citing Rolling Hills of Hunterdon, L.P. v. Clinton Twp., 15 N.J. Tax 364, 369 (Tax 1995)). If income and expense "data can be withheld pending separate evaluation of the exemption claim, assessors may well be impeded in discharging their essential functions as required by law." Id. at 189. The court viewed the tax assessor's statutory duty under N.J.S.A. 54:4-27 as a compulsory obligation to "make a valuation of exempt property, irrespective of any assessment and record the same. . . [W]here the property is income-producing, the assessor in discharging this duty, must obviously have access to essential information, i.e., the

data required to be disclosed under Chapter 91 with respect to all income-producing properties." Id. at 188. Thus, the Appellate Division concluded that Chapter 91:

> . . .must logically be interpreted literally to include even tax-exempt property that produces income (as distinguished from profit). Correlatively, the barring language of Chapter 91 must be seen as jurisdictional. . . where the scope of the assessor's request is plain, because of the clarity of the provision prohibiting an appeal from the valuation and assessment where timely disclosures have not been made, and the need for the assessor to meet established deadlines.
>
> [Id. at 190 (emphasis added).]

Indeed, the relevant portion of N.J.S.A. 54:4-34 reads as follows:

> Every owner of real property of the taxing district shall, on written request of the assessor…render a full and true account of his name and real property and the income therefrom, in the case of income-producing property…
>
> [N.J.S.A. 54:4-34 (emphasis added).]

Guided by the principles of statutory construction, the court concludes that the language of N.J.S.A. 54:4-34 is clear and unambiguous, requiring "every owner of real property" to "render a full and true account" of his name and the income derived from "income-producing property." Our Appellate Division has similarly observed that "it seems clear. . . that the phrase 'every owner of real property' includes" owners of non-income-producing properties and owners of income-producing properties. H.J. Bailey Co. v. Neptune Twp., supra, 399 N.J. Super. at 386. This conclusion, Judge Fuentes explained, is "buttressed by the Legislature's inclusion of the language 'every owner of real property of the taxing district shall. . . render a full and true account of his name and real property and the income therefrom, in the case of income-producing property. . ." Ibid. Chapter 91 requires "every" property owner furnish "data with regard to all 'income-producing property,' irrespective of whether it is entitled to exemption from taxation." Cascade Corp., supra, 323 N.J. Super. 188. "The owners of income-producing properties for which

exemption is claimed have an obligation to respond to a Chapter 91 request, and the purpose of Chapter 91 with respect to exempt property is the same as it is with respect to property which is clearly taxable: 'to afford the assessor access to fiscal information that can aid in valuing the property [and] . . . to encourage compliance with the accounting requirement.'" City of Trenton v. Trenton Dist. Energy Co., 21 N.J. Tax 244, 251 (Tax 2004) (citations omitted). In Southland Corp., supra, 21 N.J. Tax at 576, Judge Small similarly observed that in order for the court to consider a taxpayer's claim for property tax exemption "the taxpayer must first raise its defense by way of a timely response to the original Chapter 91 request."

Thus, a property owner who declines to respond to a Chapter 91 request property based on the perception that the property should be exempt from taxation or should receive a preferential tax assessment suffers from the "faulty assumption. . . [that] owners of exempt properties are not required to make Chapter 91 disclosures." Ibid. The "statutory scheme does not afford a property owner an option whether or not to respond to a Chapter 91 request. . ." Cascade Corp., supra, 323 N.J. Super. at 187. In enacting Chapter 91, our Legislature did not carve out exceptions for any property owner group or property class. Moreover, to render a request for information under Chapter 91 inapplicable or irrelevant before a property tax assessment has been fixed, or before a property has qualified for preferential farmland assessment, or before a property has been determined wholly or partially exempt from taxation, would be counterproductive to the very goals Chapter 91 sought to achieve. Accordingly, the court concludes that Chapter 91 is applicable to every New Jersey property owner, including property owners who may subsequently make application for an exemption from local property tax or who believe their land may qualify for preferential farmland assessment under the Farmland Assessment Act.

Further, in 1979 when our Legislature enacted Chapter 91, it was aware of the preferential

tax assessment treatment afforded certain lands under the Farmland Assessment Act. The Legislature is presumed to have been aware of previously enacted legislation concerning a related subject matter. See e.g. Mahwah Twp. v. Bergen County Bd. of Taxation, 98 N.J. 268, 279 (1985) (concluding that the "Legislature is presumed to have been aware of existing legislation" at the time it adopted a co-existing statute addressing a related subject matter.) However, the Legislature did not specifically exclude farmland assessed property or other property which may be entitled to preferential local property tax from the provisions of Chapter 91. Thus, it is reasonable to conclude that our Legislature intended N.J.S.A. 54:4-34 to be applicable to every owner of real property in New Jersey.

However, having concluded that N.J.S.A. 54:4-34 is applicable to every property owner, does not inevitably translate into imposition of the appeal-preclusion penalties under Chapter 91 upon every property owner. The statutory scheme "contemplates that the information provided in response to a Chapter 91 request will differ, depending on whether the property is income-producing or non-income producing." H.J. Bailey Co. v. Neptune Twp., supra, 399 N.J. Super. at 386. The owner of an income-producing property who carelessly or willfully fails to timely respond to a valid request for income and expense information under N.J.S.A. 54:4-34 will face the appeal-preclusion sanctions of Chapter 91. In sharp contrast, owner-occupied property or the "owner of non-income producing property who fails to respond to a written request for information. . . pursuant to N.J.S.A. 54:4-34, is not subject to the sanction of an Ocean Pines reasonableness hearing." Id. at 382. See also James-Dale Enterprises, Inc. v. Township of Berkeley Heights, 26 N.J. Tax 117, 127 (Tax 2011) (concluding that the "appeal-preclusion provision [of Chapter 91] will not be applied to non income-producing property in most instances.") The logic for applying the appeal-preclusion penalty to only income-producing property was succinctly

explained by the Appellate Division as follows: "'[i]f the economic data are to be of any use in the valuation process, they must be submitted in a timely fashion to the assessor, and not to a tribunal on a subsequent appeal.'" H.J. Bailey Co., supra, 399 N.J. Super. at 387 (quoting Ocean Pines, supra, 112 N.J. at 7-8) (emphasis omitted.) Thus, the owner of real property which may seek, and qualify for, preferential farmland assessment and which real property is not "income-producing" will not suffer the appeal preclusion consequences by virtue of its failure to respond to a Chapter 91 request. Conversely, the owner of real property which generates profit or loss from agricultural activities that qualify for preferential farmland assessment, and simultaneously uses the property for non-agricultural income-producing ventures, will experience the Chapter 91 appeal-preclusion limitations resulting from a failure to timely respond to a request for income and expense information.

Our courts have consistently applied the predominant use test in determining whether incidental non-agricultural use of a property disqualified it from farmland assessment. When "the dominant use of the property is a use other than an agricultural or horticultural use, the property is not entitled to preferential farmland assessment." Atlantic Coast LEH, LLC, supra, 26 N.J. Tax at 161. See also East Orange v. Livingston Township, supra, 102 N.J. Super. 512; Andover Township v. Kymer, supra, 140 N.J. Super. 399; Mt. Hope Mining Co. v. Rockaway Township, 8 N.J. Tax 570 (1986); Township of Wantage v. Rivlin Corp., 23 N.J. Tax 441, 446 (Tax 2007). Thus, if a "portion of a tax lot is used for 'independent commercial operations not conducted for the benefit of the farm or the farmer but as a completely separate business activity,' then that portion of the tax lot cannot qualify for farmland assessment even if the non-farming use is not the predominant use of the entire lot." Rivlin Corp., supra, 23 N.J. Tax at 448 (quoting Wiesenfeld v. South Brunswick Township, 166 N.J. Super. 90 (App. Div. 1979)). Correspondingly, if all, or any

portion, of property for which farmland assessment application may or is being sought is a separate income-producing business venture, in order to preserve the property owner's right to challenge the prospective denial of that application, the property owner must timely furnish the tax assessor with income and expense information under N.J.S.A. 54:4-34.

Here, it is undisputed that plaintiff received defendant's 2014 Chapter 91 Request and furnished no response, nor notified defendant's tax assessor in writing of its difficulty in complying with the 2014 Chapter 91 Request within the forty-five day statutory period. Having concluded that the subject property was income-producing, plaintiff was required to furnish defendant with a response to its 2014 Chapter 91 Request in order to preserve its right to challenge the 2015 Farmland Denial Notice. Because plaintiff failed to provide a response to defendant's 2014 Chapter 91 Request, or communicate its inability or difficulty in complying with the 2014 Chapter 91 Request within forty-five days, the court grants defendant's motion to dismiss plaintiff's 2015 Farmland Assessment Complaint, subject to a reasonableness hearing.

However, as set forth herein above, the court reserves decision on defendant's motion to dismiss plaintiff's 2014 Farmland Assessment Complaint, subject to the outcome of a hearing on plaintiff's intent in crafting the June 13, 2013 response to defendant's 2013 Chapter 91 Request for income and expense information under N.J.S.A. 54:4-34.

III. Conclusion

For the above-stated reasons, defendant's motions to dismiss plaintiff's 2015 Tax Appeal Complaint and 2015 Farmland Assessment Complaint are granted, subject to a reasonableness hearing. The court reserves decision on defendant's motions to dismiss plaintiff's 2014 Tax Appeal Complaint and 2014 Farmland Assessment Complaint, subject to the outcome of a hearing

on plaintiff's intent in crafting the June 13, 2013 response to defendant's 2013 Chapter 91 Request and the materiality of the information omitted.

Orders reflecting this opinion will be simultaneously entered herewith.

Very truly yours,

/s/ Hon. Joshua D. Novin, J.T.C.