

**UNITED STATES BANKRUPTCY APPELLATE PANEL
FOR THE FIRST CIRCUIT**

BAP No. MW 00-084

**IN RE: NATALE J. SERGI,
Debtor.**

**CITY OF LOWELL,
Appellant,**

v.

**NATALE J. SERGI
Appellee.**

**Appeal from the United States Bankruptcy Court
for the District of Massachusetts
[Hon. James F. Queenan, Jr., U.S. Bankruptcy Judge]**

**Before
VOTOLATO, de JESUS & HAINES, U.S. Bankruptcy Judges.**

**Evan Slavitt, Esq., Robyn J. Bartlett, Esq.
Gadsby Hannah, LLP, on brief for the Appellant.**

**William H. Harris, Esq., William H.
Harris, P.C., on brief for the Appellee.**

August 24, 2001

Per curiam.

The City of Lowell appeals two rulings contained in the bankruptcy court's opinion of July 20, 2000. The City contends the bankruptcy court did not have the authority to determine Mr. Sergi's real estate tax liability for the fiscal years 1995 through 2000, and the court erred when it rejected the City's argument that the Massachusetts Appellate Tax Board's dismissal of Sergi's appeal from the denial of an abatement for the taxable year 1996 precluded the court from ruling. We affirm for the following reasons.

The facts which are not in issue were set forth in detail by the bankruptcy court and need not be repeated here. It is enough to recall that Sergi did not pay real estate taxes on two apartment buildings located in the City of Lowell. He commenced an abatement procedure to reduce the taxes for the fiscal year 1996. Because its jurisdiction was subject to payment of the contested tax, and since these taxes had not been paid, the Tax Board dismissed the appeal. Sergi then sought bankruptcy relief and filed a proceeding before the bankruptcy court to determine his real estate tax liability. Aggrieved by the bankruptcy court's rulings, the City brought the instant appeal.

Jurisdiction

The Bankruptcy Appellate Panel has jurisdiction over this

appeal pursuant to 28 U.S.C. § 158.

Standard of Review

Applications of law by the bankruptcy court are reviewed *de novo*. We review discretionary rulings for abuse of discretion. *In re Gonic Realty Trust*, 909 F.2d 624, 626-27 (1st Cir. 1990); *In re DN Associates*, 3 F.3d 512, 515 (1st Cir. 1993); see *Perry v. Warner (In re Warner)*, 247 B.R. 24, 25 (B.A.P. 1st Cir. 2000) (explaining abuse of discretion review).

Discussion

The City first argues the bankruptcy court did not have jurisdiction to determine the tax liability, as Mr. Sergi had not followed procedures established by state law to determine the value of the apartment buildings.

Bankruptcy Code Section 505 (a) (1) states a bankruptcy court "may determine the amount or legality of any tax...whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction." The statute grants the bankruptcy court broad discretionary power to determine tax liabilities, allows prompt resolution of a debtor's tax liability where that issue has not been determined before bankruptcy, and it protects creditors from the dissipation of estate assets where a debtor fails to challenge a prepetition tax assessment. *In re Penking Trust*, 196 B.R. 389, 392 (Bankr. E.D. Tenn. 1996); *In re*

New England High Carbon Wire Corp., 39 B.R. 886, 889-890 (Bankr. D. Mass. 1984); *In re Cumberland Farms, Inc.*, 175 B.R. 138 (Bankr. D. Mass. 1994); *In re New Haven Projects Ltd. Liability Co. v. City of New Haven, et al.*, 225 F. 3d 283, 287-289 (2nd Cir. 2000). Section 505 (a) (1) clearly grants the bankruptcy court the power to determine tax liability regardless of debtor's exhaustion of administrative remedies, and irrespective of any noncompliance with state law procedures for challenging the tax liability. *Penking*, at 397; *In re Ledgemere Land Corp.*, 135 B.R. 193, 194-197 (Bankr. D. Mass. 1991); *In re New Haven Projects*, at 286. Thus, the City's first assignment of error is without merit.

Next, the City claims the bankruptcy court erred when it ruled despite the limitation contained in 11 U.S.C. Section 505 (a) (2) (A). The City argues the taxes due for the fiscal year 1996 had been determined by the Tax Board when it dismissed Sergi's appeal before the filing of the bankruptcy petition. The State tax board dismissed Sergi's appeal because he had not paid the challenged tax, a jurisdictional prerequisite under State law. According to the City, the dismissal was an "adjudication" by an administrative tribunal of competent jurisdiction and, therefore, triggered Section 505 (a) (2) (A)'s statutory exception to the bankruptcy court's broad discretionary power to determine an estate's tax liability. 11 U.S.C. § 505 (a) (2) (A).

We would agree, had the Tax Board ruled on the merits of Sergi's claim. The mentioned exception applies to tax claims "contested before" and "adjudicated by" a "judicial or administrative tribunal of competent jurisdiction before the commencement of the [bankruptcy] case". *Ibid.* Because there was no adversarial hearing, no presentation of evidence and no ruling on the substance of Sergi's claim by the Tax Board that would preclude the bankruptcy court from exercising its powers under Code Section 505 (a), it cannot be said that the real estate taxes were "contested before", or "adjudicated by" the Board. Thus, the Section 505 (a) (2) (A) exception does not apply in this case. *In re Northwest Beverage, Inc.*, 46 B.R. 631, 633-634 (Bankr. N.D. Ill. 1985); 4 *Collier on Bankruptcy* ¶ 505.LH[2][a] at pp. 505-8 (15th ed. rev.); 15 *Collier on Bankruptcy*, ¶ TX5.04[2][a] at p. TX5-30 (15th ed. rev.); *In the Matter of Trans State Outdoor Advertising Co., Inc.*, 140 F.3d 618, 620-621 (5th Cir. 1998); *In re Tapp*, 16 B.R. 315, 318-321 (Bankr. D. Alaska 1981); *In re Buchert*, 69 B.R. 816 (Bankr. N.D. Ill. 1987); *In re Bruce W. Brooks General Contractor, Inc.*, 27 B.R. 9 (Bankr. D. Or. 1982); *In the Matter of Century Vault Co.*, 416 F.2d 1035, 1041 (3rd Cir. 1969).

Conclusion

For those reasons, the decision of the bankruptcy court is AFFIRMED.

