

James I. Carnie

v.

Marjorie Heimann and Town of Richmond

Docket No. 4264-88 and 5985-89

DECISION

Introduction

James I. Carnie (Complainant) filed a complaint, pursuant to RSA 71-B:16 I, against Marjorie Heimann (Taxpayer) and the Town of Richmond (Town), claiming the Taxpayer's property was improperly assessed. The Complainant specifically questioned the Town's granting of an \$8,383.63 solar exemption (the Exemption), which was granted pursuant to RSA 72:61-64. For the reasons stated below, we find the Taxpayer was not entitled to the Exemption in 1988 and the Exemption was improperly calculated in 1989. We find also the complainant did not submit any evidence to support a change in the Taxpayer's general assessment, and the remainder of the decision will only address the Exemption issue.

1988 Tax Year

Facts

For the 1988 tax year, the Town granted the Taxpayer the Exemption based on a written application that was not filed until October 24, 1988. The Taxpayer admitted the application was not filed by the April 15, 1988 deadline imposed by RSA 72:68 I. Furthermore, she stated the only reason she did not timely file the application was because the Town had taken the position with other taxpayers that passive solar systems were not entitled to the exemption under RSA 72:61, 62. Finally, the Taxpayer conceded she filed for 1988 only

after learning of the board's decision in Squicciarini v. Town of Richmond,
docket no. 3638-87 (August

31, 1988) (hereinafter "Squicciarini 1987 Decision") in which the board ruled that passive solar systems were entitled to the solar exemption, but to calculate the Exemption, the system's cost had to be reduced by the equalization ratio. The Taxpayer did not have any personal reason for the late filing.

At the Town's October 24, 1988 selectmen's meeting, the Taxpayer finally submitted her Exemption application. The selectmen present at the meeting--Charles Heimann, the Taxpayer's husband, and Nicholas Squicciarini, another party with an interest in granting taxpayers the Exemption--voted to grant the Exemption. It does not appear they even addressed the late filing issue.

Analysis

Under RSA 72:62 I, the Taxpayer was required to file the Exemption application by April 15, 1988. This deadline was not complied with, and thus, the Taxpayer could only file by showing her failure to file was due to accident, mistake or misfortune. See RSA 72:64 II. Although the Taxpayer did not make any showing of accident, mistake or misfortune, the selectman voted to grant the Taxpayer the Exemption filed on October 24, 1988.¹

There was no accident, mistake or misfortune in this case. Rather, the Taxpayer did not timely file simply because she was told the Town would not grant the Exemption for passive solar system under RSA 76:61. If the Taxpayer wanted to protect her rights to the Exemption, she should have filed her application by April 15th, awaited the Town's decision and then appealed the Town's decision if adverse to her position. The Taxpayer chose not to follow

¹ The Complainant has raised the issue of whether the selectmen's conduct constituted a violation of the conflict of interest law. See RSA 95:2 and cases cited thereunder. Clearly, voting on his wife's request for the exemption was a conflict of interest, and Mr. Heimann should not have participated in the vote. Nonetheless, it is beyond our jurisdiction to directly address the conflicts issue, and our decision is not based on this impropriety. The Town's handling of this matter through its selectmen, however, supports our award of costs. In awarding costs, it is appropriate for the board to consider giving the selectmen's conflict of interest because the board is required by RSA 71-B:5, 16 to ensure that taxes are administered in a fair and just manner. The manner in which this matter was handled was anything but just and fair.

this course, and thus, she lost her right to seek the Exemption.

Late filings are allowed under RSA 72:62 II to avoid the harsh result of rigidly applying a procedural deadline where the taxpayer could not file to protect a substantive right because of accident, mistake or misfortune. It was not intended to allow this Taxpayer to file late simply because she chose not to challenge the Town's position. See Jamieson, Inc. v. Copeland Coating Co., 126 N.H. 101, 103 (1985) (holding no accident, mistake or misfortune where party failed to assert rights).

Conclusion

Based on the foregoing, the Taxpayer inexcusably failed to timely file for the 1988 Exemption, and therefore, no Exemption should have been granted. The Town is ordered to revise the 1988 tax bill, i.e., without the Exemption, and to send the Taxpayer the revised bill within 30 days of the clerk's date below. The Taxpayer shall have 30 days from the mailing of the revised bill to pay the taxes attributable to the denial of the Exemption (without interest).

Thirty days after the mailing of the bill, interest and collection shall be governed by the applicable statutes.

The 1989 Tax Year

Facts

Although not timely filed for 1988, the Taxpayer's 1989 Exemption application was timely filed before April 15, 1989. The Taxpayer applied for and was granted an Exemption for \$8,383.63, which was presented as the full cost of the passive solar system.

Analysis

The question presented by this appeal is whether the Exemption should have been calculated using: (1) the system's full cost; or (2) the system's cost reduced by a) the value attributable to other benefits and b) the equalization ratio. This question was answered in the Squicciarini 1987 Decision, and the board concluded the second method (i.e., 2 above) must be used. Neither party to Squicciarini appealed the board's decision. Thus, the Town should have followed that decision in handling the Taxpayer's Exemption because it would be collaterally estopped from relitigating the issue. See Appeal of Public Service

Co. of New Hampshire, 120 N.H. 830, 831-32 (1980); see also Petition of Breau, 132 N.H. 351, 359 (1989). Despite this, the Town did not follow the Squicciarini 1987 Decision.

Thus, a question is raised as to why the Town did not abide by the Squicciarini 1987 Decision. The Town did not appear at the hearing on the Taxpayer's appeal, but Mr. Heimann and Mr. Squicciarini testified about the Town's actions. They testified the Town did not just ignore the board's decision, but rather they called the department of revenue administration (the DRA) concerning the DRA's interpretation of how to calculate the Exemption. They further testified the DRA stated the full value should be used without applying the equalization ratio.

Unfortunately, the Town's attempt to seek an answer contrary to Squicciarini 1987 Decision does not justify the Town's action of ignoring the board's prior decision. Without going into an elaborate discussion about the board's powers as compared to the DRA's powers, suffice it to say the board is a quasi-judicial tribunal with powers parallel to the superior court in tax matters. RSA 71-B:5, 11; Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975).

As such, the board makes decision that are binding on the parties unless the board's decision is reversed by the supreme court. On the other hand, the DRA administers certain tax matters, but in terms of solar exemptions, the DRA's opinion is only advisory. Moreover, in this case the DRA was only called on the phone by dissatisfied taxpayers playing the role of selectmen. The DRA had no formal proceeding before it because this board is empowered with that role.

Quite frankly, it appears the DRA was only called because biased selectmen with a personal interest wanted a contrary opinion without having to seek reversal by the supreme court of the board's prior decision. This is not the way tax matters should be handled.² Irrefutably, the Town was bound by the board's decision in

² We note the hypocritical way in which the Town, the selectmen and the Taxpayer treated the Squicciarini 1987 Decision. They accepted the part of the decision they agreed with--that passive systems are entitled to the Exemption-- , but they ignored the part of the decision they did not like--that the equalization ratio was to used in calculating the Exemption. See Taxpayer's October 24, 1988 letter to the selectmen with the revisions thereto.

Squicciarini 1987 Decision, and there was no valid reason for the Town's failure to abide by the board's prior ruling.

We turn now to calculating the 1989 Exemption. This too is a complicated issue because of the amount of Exemption claimed by the Taxpayer and because the credibility of the Taxpayer's evidence has been tainted by collusion and abuse of process. The board, however, is bound to apply the law, and it will in this appeal, giving due weight to the Taxpayer's evidence.

The Taxpayer was granted an \$8,384.00 Exemption, which appears to include costs directly attributable to the solar system and also attributable to the living space created by the addition of the sunroom. As stated in the Squicciarini 1987 Decision, the value attributable to increased living space cannot be included in calculating the Exemption. To reach a contrary result would enable the Taxpayer to enjoy the sunroom free of taxation, and this would not be within the intent of RSA 72:66 and would be antithetical to the principle of fair and proportionate property taxation. See RSA 76:16, 16-a, 17; see, e.g., Appeal of Town of Sunapee, 126 N.H. 214 (1985).

The Taxpayer claims the following for the Exemption:

| | |
|---|------------|
| 1) Fan and hookup | \$ 150.93 |
| 2) Vertical windows | \$5,296.32 |
| 3) Skylights | \$1,451.90 |
| 4) Concrete slab | \$ 309.48 |
| 5) Tile floor | \$ 775.00 |
| 6) Labor to install vertical windows | \$ 400.00 |
| TOTAL | \$8,383.63 |

The board finds the full value (subject to applying the equalization ratio) of items 1, 4, and 5 are properly included in calculating the Exemption.

However, items 2, 3 and 6 need to be reduced by 40% to reflect their value as this room is also utilized as living space and not just as a solar energy system.

Furthermore, the board questions whether the Taxpayer's have included costs in

items 2 and 3 that are not part of the system, e.g., framing and roofing. Unfortunately, the Taxpayer did not present any evidence of the system's costs other than the above summary. Given the manner in which this entire matter was handled, we have treated the Taxpayer's figures with some suspect.

The basis for calculating the Exemption shall be \$5,523.00 (items 1, 4 and 5 -- \$1,235.00, plus reduced items 2, 3 and 6 -- \$4,288.00). Next, this number must be multiplied by the equalization ration (35% for 1989), resulting in an Exemption of \$1,933.00.

Conclusion.

The Town is ordered to revise the 1989 tax bill, using the revised Exemption amount, and to send a revised bill to the Taxpayer within 30 days of the clerk's date below. The Taxpayer shall have 30 days from the mailing of the revised bill to pay the taxes attributable to the reduction in the Exemption (without interest). Thirty days after the mailing of the bill, interest and collection shall be governed by the applicable statutes.

Costs

Given the Town's conduct, albeit through selectmen with a conflict of interest, the board is awarding the Complainant his costs in pursuing this very legitimate complaint. See RSA 71-B:9 (Board may award costs as in the superior court.). The following costs are awarded:

| | |
|-------------|---------|
| filing fees | \$20.00 |
| mileage | \$12.00 |
| TOTAL | \$32.00 |

The mileage has been equally divided between this appeal and the appeal in our docket numbers 4287-88 and 5986-89. The Town shall pay these costs within 10 days of the clerk's date below.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Peter J. Donahue, Member

Ignatius MacLellan, Member

Date: March 14, 1991

I certify that copies of the within Decision have this date been mailed, postage prepaid, to James I. Carnie, complainant; Marjorie Heimann, taxpayer; and the Chairman, Selectmen of Richmond.

Michele E. LeBrun, Clerk

Date: March 14, 1991