

Mark S. Gerreald and Sharon A. Spickler

v.

City of Dover

Docket No. 6674-89

DECISION

Introduction

This is an appeal from the "City's" denial of the "Taxpayers'" request for an abatement of interest attributed to the late payment of the 1987 taxes on the Taxpayers' home (the "Property"). As explained below, the Taxpayers' abatement request is partially granted. Additionally, the board is making an order for costs and attorney's fees and for other remedial action.

Facts

The facts are simple and undisputed. On February 25, 1988, the Taxpayers purchased the Property from Granite State Post and Beam (the Seller). As of the closing date, the final bill for the 1987 taxes had not yet been sent because of Dover's somewhat unique billing cycle. According to the department of revenue, the final 1987 tax bill was sent March 7, 1988. When the final 1987 bill was sent it was sent to the Seller. The deed was recorded on March 1, 1988, and the City received the deed by April 15, 1988.

The final 1987 tax bill was not paid, and on August 30, 1988, the City held the tax sale at which the City apparently purchased the Property.¹ The City, however, did not notify the Taxpayers of the sale as required by RSA 80:21. See also RSA 80:60. The Taxpayers received their 1988 and 1989 tax bills, but the bills did not include any statement concerning the tax arrearages or the tax sale.

By notice dated January 29, 1990, the City finally notified the Taxpayers of the arrearages and the tax sale. The notice, given pursuant to RSA 80-38-a, stated the Taxpayers would lose their home unless the Taxpayers paid the arrearages, interest and costs. This was the first time the City notified the Taxpayers of the arrearages and the tax sale, and it was the first time the Taxpayers knew about the same.

The Taxpayers paid the outstanding 1987 taxes plus \$546.19 for interest and costs (the Penalty), and then they wought a refund of the penalty, which was denied. This appeal followed.

General Discussion and Order

This board has the duty and is empowered to hear and decide all matters relating to taxation, taking appropriate action as justice requires. RSA 71-B:6; RSA 76:16-a. Based on the City's failure to comply with RSA Chapter 80 Rev. 506.07 and the edicts in White v. Lee, 124 N.H. 69 (1983), the City is ordered to do the following:

- 1) refund the interest charges from August 1, 1988, until February 28, 1990, (the Refund);
- 2) pay the Taxpayers interest on the Refund at six percent from February 28, 1990, until the Refund is paid;
- 3) pay the Taxpayers' costs incurred by this appeal, including filing fes and mileage; and
- 4) pay the Taxpayers' legal fees attributable to this appeal.

¹We note the City adopted the alalternative lien statute on February 28, 1988. Whether this tax sale was conducted under the alternative procedure is unclear. The notice before the tax deed was to be given referred to RSA 80:38, which is under the usual tax sales law. Thus, we will assume the alternative procedure was not followed. Whichever statute the City was purportedly using, the notice requirements discussed in this decision are virtually identical in the two statutes.

The Taxpayer shall, within ten (10) days of the clerk's date below, submit a statement of the Refund plus interest, costs and legal fees. If the City disputes the Taxpayers' calculation of the refund, interest or other costs, it shall file such objection within ten (10) days of the Taxpayers' filing of the statement.

Unfortunately, providing these Taxpayers a remedy may not cure the bigger problem presented by this appeal--the City's failure to comply with New Hampshire law. Given the facts presented to us, we must perform our statutory duty, See RSA 71-B:6, and try to protect the Dover taxpayers from City officials who are either uninformed or who simply choose not to follow the law. Therefore, the City is ordered to review its current procedures and to implement new procedures to the extent the current procedures do not comply with New Hampshire law. Specifically, the City shall make its procedures comply with the holding in White v. Lee, and Rev 506.07, and it shall take steps to ensure new addresses are promptly entered on the City's books and are used in mailing tax bills and notices. The City shall, within thirty (30) days of this order, submit an affidavit, stating its procedures have been reviewed and revised. The affidavit shall include a new form of tax bill that will include a space to list arrearages and tax sales.

Analysis of the Order

This appeal raises four issues: 1) the City's mailing of the second 1987 tax bill to the Seller; 2) the City's failure to notify the Taxpayers, as required by RSA 80:21, of the tax sale for the unpaid 1987 taxes; 3) the City's failure to include in the Taxpayers' subsequent tax bills notice of the arrearages and notice of the tax sale; and 4) the order of costs and fees.

1. Mailing the 1987 tax bill

We find the City did not err in sending the final 1987 tax bill to the Sellers. The City sent the second 1987 tax bill in early March 1988. The deed was recorded March 2, 1988, and it was received

by the City no later than April 15, 1988. Given these facts, it would be unreasonable to conclude the final 1987 bill should have been sent to the Taxpayers. Thus, in calculating the Refund, the Taxpayers have not been awarded any interest charged from the initial late date until August 1, 1988 (the day after the Taxpayers should have been notified of the tax sale).

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v.

City of Dover

Docket No. 6674-88

ORDER

This order relates to the "City's" motion for rehearing (the Motion). For the reasons stated below, the Motion is denied.

The Motion raises several arguments, but none of them warrant a rehearing or a reconsideration of the board's October 31, 1990 decision (the Decision). Many of the arguments raised by the City in the Motion are directly and adequately addressed in the Decision and thus will not be reiterated here. Furthermore, in most instances, the "Taxpayers'" objection refutes the City's arguments for rehearing. The thrust of this denial is that the City had a full and informed opportunity to present its case, and no valid reason for a rehearing has been presented. We will, however, address some of the City's arguments.

In addition to disagreeing with the board's analysis and conclusion, the City raises the following grounds for a rehearing:

- 1) the board erred in its analysis by following RSA 80:21 when the City had adopted the alternative tax lien procedure statutes, i.e., RSA 58-86;
- 2) the City has additional evidence that was not presented at the hearing;
- 3) the Decision and the order concerning corrective action conflicts with REV. 506.7; and
- 4) the board erred in awarding attorney's fees where the City acted properly and also where the appellants are lawyers appearing pro se. These arguments will now be addressed.

The City's first argument is adequately addressed in footnote 1, page 2 of the Decision.

The City's second argument asks for an opportunity to retry the appeal by alleging facts not presented at the September 21, 1990 hearing. The City claims the board should allow a rehearing because the City's tax collector, who did not appear at the hearing, has evidence directly contradictory to the evidence presented at the hearing.² Our rule on this, TAX 201.05 (d) states, "Ordinarily, a rehearing will not be granted to consider evidence previously available to the requesting party but not presented at the original hearing." No showing has been made justifying a rehearing to present the proffered evidence. As will next be shown, the City had a full, fair and informed opportunity to present its case.

The City claims the tax collector's testimony was and is essential to reaching a correct decision in this appeal. Nonetheless, the City asserts the tax collector was unable to attend the hearing because she was at an important seminar. As will be discussed, this is an insufficient reason for a rehearing. The parties were notified of the September 21st hearing by notice dated August 9th. Certainly, over 40 days' notice is sufficient. See also TAX 201.03(c). If the City considered the tax collector's testimony to be crucial, the City should have filed a motion for continuance. No motion for continuance was filed,

² Because the Motion has been denied, the board does not intend to address each factual allegation proffered by the City. Rather, the record from the hearing suffices to support the Decision and this order. However, the board is compelled to address one factual allegation--that the City did not receive the deed, naming the Taxpayers' as owners of the property, until after the August tax sale notice went out. The evidence clearly established, and we found, the City received the deed by mid-April. This finding was supported by the evidence. First, the Taxpayers presented an affidavit from the registrar of deeds that stated the deed would have been sent to the City by April 15, 1990. Moreover, the City's assessor testified that when deeds are received they are not immediately loaded into the computer. Instead, deeds are placed in a stack with other deeds, and the new names are not entered on the computer until someone finds time to load them in the computer. Even if we were to consider new evidence, the City does not proffer any competent evidence to refute our finding. The board wanted to specifically address this allegation because the evidence introduced at the hearing, and our findings, are directly contrary to the proffered allegation.

and the City was represented at the hearing by the City's assessor. Coincidentally, the board asked the assessor about the tax collector's whereabouts, and the assessor simply, and without alarm or concern, replied, 'the collector had another commitment.'

Being properly notified of the hearing, the City made its presentation at the hearing without making any of the factual allegations now being proffered. Based on the City's presentation at the hearing, it was clear the assessor knew, before the hearing, what the Taxpayers' testimony and argument would be. Thus, the assessor argued the notice provided was sufficient. The assessor never even hinted the facts, as presented by the Taxpayers, had any errors or the allegations now proffered by City even existed. If the facts now proffered by the City were true and available, those facts should have been presented or at least the assessor should have known of their existence.

The conclusion that a rehearing is not warranted here is further supported by what the City knew before the hearing. This was not a case of surprise where the assessor was confronted with new facts or arguments. No, the Taxpayers' arguments had already been twice presented to the City. The Taxpayers first wrote the City by letter dated February 8, 1990, requesting the abatement of interest. The City reviewed this application and denied the request. The Taxpayers then submitted a detailed appeal, dated April 10, 1990, with this board. This document was sent to the City by the board and the Taxpayers well before the hearing. Therefore, the City knew exactly what the Taxpayers' alleged and intended to argue, and the City did not, until now, ever challenge the Taxpayers' understanding of the underlying facts. The City cannot now attempt to do so. The City had its full, fair and informed opportunity.

We now turn to the City's third basis for rehearing--that the board's order contravenes REV. 506.07. The City's first asserts it complied with REV. 506.07 by sending the Taxpayers notices separate from the tax bills. Thus, the Decision is in error for finding the City failed to provide the Taxpayers with adequate notice of the tax sale and the tax arrearages. This argument is quickly dismissed. No evidence was presented at the hearing to support the City's argument. Moreover, the Taxpayers denied ever receiving any notice, separate or in the tax bills. The City next challenges the board's order of corrective

action, asserting the Decision ignores the alternative notice provision in REV. 506.07. The City is directed to page 3 of the Decision, which states the City shall ensure and demonstrate that its procedures comply with White v. Lee and REV. 506.07. Admittedly, the final sentence in that paragraph refers to submitting a form tax bill with a space for listing arrearages and tax sales, but the board would obviously consider any form that complies with White v. Lee.³

The final argument relates to our award of attorney's fees, especially since the Taxpayers are attorneys appearing pro se. This issue is fully addressed on pages 5 and 6 of the Decision. As discussed there, the City acted in bad faith and directly contrary to New Hampshire law. None of the proffered facts change our mind on this point. Because of the City's actions, the Taxpayers have been required to invest their time and money into prosecuting this appeal. Admittedly awarding fees to attorneys appearing pro se is unusual, but this is an unusual appeal and justice demands this result. A lawyer in a private firm sells his/her time. Mr. Gerreald testified he had spent his professional time on this matter, time which could have been spent on matters for paying clients. The City's poor handling of this matter justifies awarding fees, and the City cannot avoid paying for the consequences of its action simply because the City happened to mistreat attorneys who chose to appear pro se.

For the above reasons, the Motion is denied. The Taxpayers' request for additional attorney's fees of \$330.00 is granted, and the City is ordered to pay such fees within ten days of the clerk's date below.

³ We note the supreme court in White v. Lee, 124 N.H. 69, 77 (1983), specifically stated notices of arrearages and tax sales must be in "all current tax bills." (Emphasis added.) The court did not state that separate notice was sufficient. Nonetheless, until we receive the City's proposed forms and procedures, it is premature for us to decide whether the City's new forms and procedures comply with New Hampshire law.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Peter J. Donahue, Member

(Mr. Franklin did not sit.)

Paul B. Franklin, Member

Ignatius MacLellan, Member

Date: January 7, 1991

I certify that copies of the within Order have this date been mailed, postage prepaid, to Mark Gerreald and Sharon Spickler, taxpayers; and Chairman, Board of Assessors.

Michele E. LeBrun, Clerk

Date: January 7, 1991

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