

**Karen Nunes**

**v.**

**Town of Bristol**

**Docket No.: 12561-91EX and 12931-92EX**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a and RSA 72:34-a, the "Town's" 1991 and 1992 denial of a hardship abatement under RSA 76:16 and RSA 72:38-a financial hardship and disability exemption on the assessment of \$57,150 (land \$34,450; buildings \$22,700) on a 0.55-acre lot with a house (the Property). For the reasons stated below, the appeals are denied.

**Arguments**

The Taxpayer argued the abatement or exemption should be granted because:

- (1) there is no equity in the home so it cannot be refinanced;
- (2) a two year moratorium on paying the mortgage granted by Farmer's Home Administration (FHA) ceased in August, 1992;
- (3) it is impossible to relocate because the house has to be environmental illness safe because of the Taxpayer's illness; and
- (4) FHA refused to approve a disabled tax lien be placed on the Property.

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The Town argued no exemption is warranted because:

- (1) section IV of RSA 72:38-a was not met as the mortgage holder would not approve of a lien being placed on the Property; and
- (2) the Taxpayer has received assistance for two mortgage payments, electric bills, etc. through Town welfare and could apply and receive additional general assistance under RSA 165:1-a if certain financial guidelines are met.

**Board's Rulings**

This appeal was taken both under a denial of a RSA 72:38-a (tax lien for elderly and disabled) application and a denial of a hardship abatement under RSA 76:16.

RSA 72:38-a exemption

RSA 72:38-a reads:

- I. Any resident property owner may apply for a tax lien if he:
  - a. Is either at least 65 years old or eligible under the federal Social Security Act for benefits to the totally and permanently disabled; and
  - b. Has owned his homestead for at least 5 years; and
  - c. Is living in his home.

The assessing officials may annually grant a person qualified under this paragraph a tax lien for all or part of the taxes due, plus annual interest at 5 percent, if in their opinion the tax liability cause the taxpayer an undue hardship or possible loss of the property. The total of tax liens on a particular property shall not be more than 85 percent of its assessed value.

- II. Applications shall be made within 4 months after receipt of the tax bill for the year. The application form shall be provided by the town. Its format shall be set by the commissioner of revenue administration through rules adopted under RSA 541-A.

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- III. A tax lien shall be subject to any prior lien on the property and shall be treated as such in any foreclosure proceeding.
- IV. If the property is subject to a mortgage, the owner must have the mortgage holder's approval of the tax lien. Such approval does not grant the town a preferential lien.
- V. When the owner of a property subject to a tax lien dies, the heirs, heirs-at-law, assignee or devisee shall have first priority to redeem the estate by paying in full the tax lien plus any interest due.
- VI. The assessing officials shall file notice of each lien granted, within 30 days, with the registry of deeds of the county in which the property is located to perfect it.

Based on the evidence, the Taxpayer meets most, but not all, of the criteria of the section. She is eligible for and receives SSI payments. She had owned the Property for more than five years and was residing in the dwelling during both tax years. However, FHA was unwilling to allow a lien, as described in paragraph four, to be placed on the Property. Without this consent as required by statute, the Town was correct in not granting the exemption.

RSA 76:16 hardship abatement

The basis for an individual's taxes to be abated for hardship reasons is contained in Ansara v. City of Nashua, 118 N.H. 879 (1978) in which the supreme court held "plaintiffs who claim that they are entitled to an abatement because of poverty and inability to pay, and who have some equity in

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their homes, must show that it is not reasonable for them to relocate, refinance, or otherwise obtain additional public assistance." 118 N.H. 881.

As outlined in the analysis that follows, the board rules that while it

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would be unreasonable for the Taxpayer to relocate or refinance, she did not make a showing that she could not otherwise obtain public assistance and, thus, no abatement is warranted.

**Analysis**

There was inconclusive evidence submitted to absolutely determine if the Taxpayer had any equity in her Property. However, comparing the Taxpayer's testimony of an outstanding mortgage balance of \$51,500 with the Property's indicated value of \$44,650 for 1991 and \$39,150 for 1992 (calculated by equalizing the assessment by the 1991 and 1992 equalization rates of 1.28 and 1.46 respectively) indicates that there is minimal, if any equity, in the Property. This finding alone would support the conclusion that it would be unreasonable for the Taxpayer to relocate or refinance.

However, additionally, the Taxpayer presented evidence that her house had been significantly modified over the years to make it free of synthetic substances to which she is allergic. To find a similar "environmentally safe" home would be unlikely and expensive.

Refinancing would also be unreasonable because: 1) the Taxpayer lacks equity in the Property; and 2) because FHA had indicated it would not further reamortize the loan beyond that done in 1992 for covering the property taxes in arrear.

In addition to a showing of no equity and the unreasonableness of

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relocating and refinancing, the Taxpayer must show that no other public

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assistance is available. That was not done. In fact, the Town stated that the Taxpayer has on several occasions received general assistance under RSA 165:1-a and would most likely again if she could show that her expenses, including taxes, exceed her financial resources.

The board notes at the time the Taxpayer filed her requests for exemption or abatement with the Town her taxes for the respective years in question were unpaid. Subsequent to the appeal, however, FHA paid the taxes and reamortized the Taxpayer's loan. Consequently, these appeals are an attempt by the Taxpayer to recover the taxes paid by FHA to help offset the Taxpayer's current expenses.

The effect of this decision is the Town is not authorized to grant an exemption under RSA 72:38-a nor is it liable for the abatement of the 1991 and 1992 taxes for hardship reasons under RSA 76:16. However, the Taxpayer continues to have an avenue of relief in the future, as she has had in the past, under RSA 165 (local public assistance) with the Town having the lien protection provided in that chapter at RSA 165:28.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

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Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Karen Nunes, Taxpayer; and Chairman, Selectmen of Bristol.

Dated: August 17, 1993

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Valerie B. Lanigan, Clerk