

Richard C. Dell'Erba

v.

City of Keene

Docket No.: 13798-93PV

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" January 20, 1994 denial of the Taxpayer's request for abatement of taxes based on his inability to pay. For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the Town erred in denying the abatement application. We find the Taxpayer failed to carry his burden.

The Taxpayer argued he was entitled to an abatement because of his financial inability to pay the taxes for the following reasons:

- (1) the City welfare office indicated to the Assessors office that the Taxpayer was unable to pay his taxes;
- (2) the Taxpayer is unable to be employed due to arthritis in both hands; and
- (3) the City held a hearing without the Taxpayer being present.

The Town argued the denial was proper because:

- (1) the Taxpayer has no other outstanding tax bills that would jeopardize his ownership of his property;

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(2) the Taxpayer still has equity in his Property and he has access to the equity by borrowing against the Property; and

(3) the 1992 abatement was for that year only and did not indicate future years would necessarily be abated.

Board's Rulings

Based on the evidence, we find the request for abatement was properly denied.

The parameters for granting an abatement for inability to pay are laid out in Ansara v. City of Nashua, 118 N.H. 879, 881 (1978) ***"plaintiffs who claim that they are entitled to an abatement because of poverty and inability to pay, and who have some equity in their homes, must show that it is not reasonable for them to relocate, refinance, or otherwise obtain additional public assistance."

The Taxpayer testified based on the current assessed value of \$59,700 and a mortgage of approximately \$30,000, he had equity of approximately \$29,000 to \$30,000 remaining in the Property. Further, the Taxpayer stated that he received an equity loan in 1991 and has been borrowing on that equity loan in some cases to pay taxes and other necessary expenses. Therefore, the board rules that the Taxpayer has not shown an inability to pay his taxes as is set out in Ansara v. City of Nashua.

If the Taxpayer had been present at the hearing before the City, a proper application of the law by the City would have resulted in the same conclusion.

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A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Richard C. Dell'Erba, Taxpayer; and Chairman, Board of Assessors, City of Keene.

Dated: June 10, 1994

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Valerie B. Lanigan, Clerk