

Lois Newton

v.

Town of Alton

Docket No.: 15738-94PV

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, for an abatement of the second half of her 1994 taxes (the Taxes) (\$202.40 inclusive of interest as of December 21, 1995). The Taxpayer seeks the abatement based on poverty and inability to pay. The "Property" at issue is a manufactured home in a trailer park assessed at \$26,600 with an equalized value of \$18,730. The Taxpayer owns the Property with Robert E. Simmons, Jr., her son, and Susan M. Simmons, her daughter-in-law. The board issued orders of notice to Mr. and Mrs. Simmons. For the reasons that follow, the board denies the abatement request.

The Taxpayer has the burden to show that she was entitled to the abatement for poverty and inability to pay. TAX 203.09. We find the Taxpayer has not carried this burden of proof.

The Taxpayer argued she was entitled to the abatement because of her financial situation. Specifically, the Taxpayer had no cash income between August and April 1995, and she was unable to pay her reasonable living expenses. During this period, the Town helped the Taxpayer with her mortgage, park rent, and utilities, but the Town refused to provide her assistance with

the Taxes. In April 1995, the Taxpayer began to receive social security.

The Taxpayer argued that while she owned the Property with Mr. and Mrs. Simmons, Mr. and Mrs. Simmons would not assist with the Taxes, and thus, the Taxpayer was threatened with the loss of her home for nonpayment of the Taxes.

The Taxpayer argued the board should not deny the abatement request because of Mr. and Mrs. Simmons' failure to pay the Taxes. Rather, the board should look at the Taxpayer as an individual who was poor and unable to pay the Taxes and was, therefore, entitled to the abatement.

The Town argued the abatement should not be granted because not only must the Taxpayer show poverty and inability to pay, but Mr. and Mrs. Simmons must also show poverty and inability to pay. The Town also asserted the Taxpayer had not shown sufficient efforts to get another job to pay the Taxes. Finally, the Town stated it had assisted the Taxpayer by paying her park rent, utilities and mortgage, but the Town concluded it was not obligated to assist with the Taxes.

BOARD FINDINGS

Based on the evidence, the board finds the abatement for poverty and inability to pay should be denied. If the Taxpayer owned the Property alone, she would be entitled to an abatement for poverty and inability to pay under Ansara v. City of Nashua, 118 N.H. 879 (1978). The Taxpayer, however, is not the only owner of the Property, and the other owners have the ability to pay the Taxes.

The board's findings of fact and rulings of law are stated below, and this discussion will focus on the issue of the co-owners' obligation to pay the Taxes.

The board has in the past concluded that co-ownership is not necessarily a bar to receiving an RSA 72:38-a lien, Mitchell v. Town of Cornish, BTLA Docket No. 14982-93EX. The board concludes here that where one owner seeks an abatement based on poverty and inability to pay, the relationship of the co-owners to the owner and the financial situation of the co-owners are factors the board must consider. In this case, Mr. Simmons is the Taxpayer's son who has an obligation to support his mother. His obligation precedes the obligation of the Town to support the Taxpayer. See RSA 165:19.

The board ordered Mr. and Mrs. Simmons to file a financial affidavit with the board. This financial affidavit clearly indicated that Mr. and Mrs. Simmons have the ability to pay the Taxes. To order the Town to abate the Taxes would allow Mr. and Mrs. Simmons to shift onto other Town taxpayers the Simmons' responsibility to pay the Taxes and to provide for the Taxpayer.

The above denial is the legally correct decision in this case, but the board is frustrated with Mr. Simmons' failure to pay the Taxes and with the Town's failure to seek payment from Mr. Simmons.

While the board concludes Mr. Simmons ought to pay the Taxes, the board concludes it does not have the power to order Mr. Simmons to pay the Taxes. Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's powers entirely statutory). The Town, however, has the statutory power, see RSA 165:19, to effectuate the same result. The board encourages the Town to seek payment from Mr. Simmons, not as a co-owner but as a son. Under RSA 165:19, copy attached, the Town can make this request, and Mr. Simmons would be required to pay, especially if nonpayment threatens the Taxpayer with the lose of her home. Mr. Simmons should read RSA 165:19, and he should recognize that the

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Town can, under its welfare authority, ask him to pay the taxes on the Property. If he fails to do so after the request, the Town may then file a complaint against him in court to obtain compliance. Obviously, it would be better if Mr. Simmons would just pay the Taxes without requiring these additional steps.

FINDINGS OF FACT AND RULINGS OF LAW

In these responses, "neither granted nor denied" generally means one of the following:

- a. the request contained multiple requests for which a consistent response could not be given;
- b. the request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;
- c. the request contained matters not in evidence or not sufficiently supported to grant or deny; or
- d. the request was irrelevant.

Taxpayer's Requests for Findings of Fact

- 1. Granted.
- 2. Granted.
- 3. Granted.
- 4. Granted.
- 5. Granted.
- 6. Granted.
- 7. Granted.
- 8. Granted.
- 9. Granted.

10. Granted.

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11. Granted, except the word "her" is changed to read "their."

12. Granted.

13. Granted.

Taxpayer's Request for Rulings of Law

1. Granted.

2. Denied.

3. Denied.

4. Neither granted nor denied.

5. Denied.

6. Denied.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) 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 in 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. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be

filed within thirty (30) days of the date on the board's denial.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John E. Tobin, Jr., Esq., Counsel for Lois Newton, Taxpayer; Robert E. and Susan M. Simmons, Jr., Taxpayers; and Chairman, Selectmen of Alton.

Dated: March 27, 1996

Valerie B. Lanigan, Clerk

0005

Lois Newton

v.

Town of Alton

Docket No.: 15738-94PV

ORDER

This order responds to the "Taxpayer's" rehearing motion, which is denied.

The board understands the Taxpayer's unfortunate situation. Nonetheless, after considering the rehearing motion, the original decision must stand. The board continues to conclude that it does not have the authority to shift the Taxpayer's tax burden to other taxpayers when her co-owners have the ability to pay the tax. The fact that neither the co-owners nor the "Town" will address this problem does not alter the board's conclusion. (Based on the information that was presented at the hearing, the board already knew that the Simmons were unwilling to pay the taxes.)

In the decision, the board referred to RSA Chapter 165 not because the board has jurisdiction over such matters but to encourage the Town and the Simmons to address this matter under the welfare statute. Unfortunately neither the Town nor the Simmons will do so.

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Given the limits of the board's jurisdiction, see Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's powers are entirely statutory), the board does not have the authority to provide a remedy here where the Simmons, as co-owners, can afford to pay the tax of \$202.40 (plus interest).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John E. Tobin, Jr., Esq., Counsel for Lois Newton, Taxpayer; Robert E. and Susan M. Simmons, Jr., Taxpayers; and Chairman, Selectmen of Alton.

Date: May 22, 1996

Valerie B. Lanigan, Clerk

0006

Lois Newton

v.

Town of Alton

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ORDER

On December 21, 1995, the board held a hearing on Lois Newton's (Newton) property tax appeal. In the appeal, Newton seeks an abatement based on poverty and inability to pay the second half of her 1994 property taxes (approximately \$146; now \$202 because of interest). The board heard from Newton and the "Town." During the hearing the board discovered that Newton owned the Property with Robert E. Simmons, Jr., her son, and Susan M. Simmons, her daughter-in-law (collectively "Simmons"). At the hearing the issue was raised about whether Simmons' interest in the Property affected Newton's right to seek a hardship abatement or the right of the board to grant relief "as justice requires." See RSA 76:16-a.

To address the above issues the board makes the following orders:

1) Simmons shall be added as a party to this appeal. All future correspondence from the board and from the other parties shall be copied to Simmons (address below in certification).

2) The board's clerk shall prepare orders of notice for Simmons that shall be sent certified mail returned receipt requested. The orders of notice

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include a copy of the appeal document and a copy of this order. The clerk shall set a date by which Simmons shall respond. If Simmons does not respond by the set date, the board may subpoena certain information from Simmons, but the board will decide this matter without a further hearing.

Simmons shall complete the attached financial affidavit and shall file the affidavit with the board within ten (10) days of receipt of the orders of notice. Simmons shall copy the affidavit to Newton and the Town at the addresses in the certification at the end of this order. This financial information is required from Simmons because the Property is owned by Simmons and Newton, and Newton's appeal has raised the issue of her inability to pay the taxes. Therefore, the board must inquire about the Simmons' financial situation. If Simmons does not timely file the financial information, the board shall issue subpoenas for the information, and the board will hold the Simmons liable for any cost incurred by such a subpoena.

First NH Mortgage Corp. has a mortgage on the appealed Property. It does not appear that the bank has any interest in these proceedings, but a copy of this order and the Taxpayer's appeal shall be sent to the bank. If the bank wishes to file an intervention motion, it shall do so within ten (10) days of receipt of this order. If the bank does not move to intervene, the board will not provide the bank with any further notices, and the bank will have no further rights in this matter.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to John E. Tobin, Jr., Esq., counsel for the Taxpayer, 15 Green Street, Concord, New Hampshire, 03301; Chairman, Selectmen of Alton, Post Office Box 659, Alton, New Hampshire, 03809; Robert E. & Susan M. Simmons, Jr., 22 Grove Street, Post Office Box 1382, Wolfeboro, New Hampshire, 03894; and, First NH Mortgage Corp., 28 West River Road, Post Office Box 16478, Hooksett, New Hampshire, 03106-4000.

Date:

Valerie B. Lanigan, Clerk

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Lois Newton

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ORDER OF NOTICE
FOR ROBERT E. SIMMONS, JR. & SUSAN M. SIMMONS

This order is issued pursuant to the New Hampshire Board of Tax and Land Appeal's December 29, 1995 order (copy attached). The order was issued after the board received an appeal from Lois Newton (Newton) (copy attached) who was seeking a tax abatement pursuant to RSA 76:16-a on property at Merry Meeting Mobile Home Park, Lot #3, Alton, New Hampshire, which is owned by Newton and Robert E. Simmons, Jr. and Susan M. Simmons. The board is serving this notice on you:

- 1) because the board has ordered that you be named as a party; and,
- 2) to provide you with an opportunity to participate in the proceedings and to raise any issues you would like to raise.

If the board grants Newton's request for the abatement, the order could affect your rights in the property.

You are ordered to respond to this notice by notifying the board in writing that you wish to participate in this proceeding. A letter will suffice. Your notification must be made to the board in writing no later than

10 days after Page 2
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receipt of this order. You shall state in the notification whether you want a hearing. Failure to request a hearing shall be treated as a waiver, but you may still make a written submission.

If you fail to so notify the board, you will be finally defaulted, and the board will proceed without your input. This means that if the board grants Newton relief, that relief could affect your rights.

The board has already held a hearing on this appeal. You may review the file, the exhibits and the hearing tape by contacting the undersigned.

FAILURE TO ACT ON THIS NOTICE COULD ADVERSELY AFFECT YOUR RIGHTS.

If you have any questions please contact the undersigned.

BOARD OF TAX AND LAND APPEALS

Date:

Valerie B. Lanigan, Clerk

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to John E. Tobin, Jr., Esq., counsel for the Taxpayer, 15 Green Street, Concord, New Hampshire, 03301; Chairman, Selectmen of Alton, Post Office Box 659, Alton, New Hampshire, 03809; Robert E. & Susan M. Simmons, Jr., 22 Grove Street, Post Office Box 1382, Wolfeboro, New Hampshire, 03894; and, First NH Mortgage Corp., 28 West River Road, Post Office Box 16478, Hooksett, New Hampshire, 03106-4000.

Date:

Valerie B. Lanigan, Clerk