

William R. Discipio, Sr.

v.

Town of Hampstead

Docket No.: 15969-95PV

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 denial of an application for abatement based on poverty and inability to pay.

The "Property," a 1.377-acre lot with a single-family home, was assessed \$162,700. For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing he was entitled to the abatement based on poverty and inability to pay. See RSA 76:16-a; PART TAX 202 and TAX 204.06; Ansara v. City of Nashua, 118 N.H. 879 (1978). We find the Taxpayer failed to carry this burden.

The Taxpayer testified he was entitled to the abatement because:

- (1) he was disabled by an automobile accident while on the job in November 1993;
- (2) he has lived alone for 6 years and has not worked since he became disabled;
- (3) the Taxpayer's monthly worker's compensation income is \$1,968.59 and his monthly expenses total approximately \$1,852.38; and

(4) the portion of the tax bill applicable to school services should not have to be paid because the Taxpayer has no children in school.

The Town argued its denial of the abatement was proper because:

- (1) the Town offered to provide welfare assistance and lien the Property;
- (2) taxes are not predicated on the services provided by the Town but are based on the funds needed to run the Town; and
- (3) the Taxpayer has not shown that he was unable to pay his taxes, and the Taxpayer has the option of selling the Property or selling his land in Groton.

**Board's Rulings**

Based on the evidence, the board finds the Taxpayer did not show that he was entitled to an abatement based on inability to pay.

Under Ansara v. City of Nashua, 118 N.H. at 881, to qualify for a poverty and inability to pay abatement, a taxpayer must show: 1) all income is spent on essentials of existence; and 2) if there is any equity in the home, it would be unreasonable to relocate, refinance or obtain other assistance. Based on the evidence, the Taxpayer did not meet either test.

The board denies the request for the following reasons.

- 1) Taxpayer's income covers living expenses and taxes. The Taxpayer submitted an income and expense statement that showed his total expenses were \$1,852 and his monthly income was \$1,968. This leaves him with a monthly net of \$116. It is important to note that the Taxpayer included the tax payment as one of his monthly expenses. Therefore, based on the Taxpayer's own income and expense statement, he is able to pay his essentials of living and the property taxes.

2) Taxpayer owns other property that could be sold to pay taxes. The Taxpayer owns a 10-acre vacant lot in Groton. The Taxpayer testified that a realtor estimated this lot was worth between \$15,000 and \$17,000. The Taxpayer stated the lot was not subject to a mortgage. The board must consider all of the Taxpayer's assets in determining whether to grant an abatement based on inability to pay. The board concludes it would be reasonable to require the Taxpayer to sell this lot before relieving the Taxpayer of his tax responsibility. The Taxpayer also presently has approximately \$4,000 in his checking account and \$90,000 in his IRA. The board did not focus on these last two assets, but certainly these assets could enter into the analysis if the land were eventually sold.

3) Relocation is not unreasonable. The Taxpayer built his home when he had a family. The home is worth approximately \$142,500 (based on a rough realtor's estimate) to \$162,000 (based on the assessment). Using the \$142,500 value, the home has approximately \$43,980 in equity (\$142,500 - \$90,000 mortgage - \$8,520 realtor's commission). The Taxpayer testified that approximately six months ago, while he was on worker's compensation, he was able to refinance the Property. Therefore, the board concludes it is not unreasonable for the Taxpayer to relocate to a smaller property. The board is mindful, however, that this is the Taxpayer's home, and we considered this as one factor in our deliberations.

4) The Town's offer of welfare assistance constituted "other assistance" under the Ansara case. The Taxpayer also testified that Joseph Guthrie, the Town selectmen and welfare officer, stated the Town would pay the taxes and

take a welfare lien on the Property. The Taxpayer testified he did not want to accept welfare, and therefore, he refused the Town's offer. The Town's offer to provide welfare constituted other available assistance to the Taxpayer.

5) The Taxpayer may have the ability to increase his income. The board asked the Taxpayer whether he was able to perform any other work to supplement his income. The Taxpayer was unwilling to answer that question given his pending worker's compensation claim. The board is not convinced that the Taxpayer does not have the ability to take on some nonmanual labor job to supplement his income.

6) Taxes are not based on Taxpayer's use or nonuse of services such as schools. The Taxpayer argued strenuously that he should not be required to pay for services that he does not receive. Specifically, the Taxpayer testified that \$3,392 of his taxes constituted school taxes, and he no longer has any children in the school. Furthermore, he stated if he moved from his house, a family would probably move in and increase the Town's education burden. As stated at the hearing, property taxes are based on value not on the services that are provided to individual taxpayers. The fact that the Taxpayer has no children in school is irrelevant to our considerations.

In conclusion, based on the above factors, the board finds the Taxpayer is not entitled to an abatement based on inability to pay because his income exceeds his expenses and because it would not be unreasonable for him to relocate, refinance or obtain other assistance either from his own assets or from the Town welfare office.

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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to William R. Discipio, Sr., Taxpayer; and Chairman, Selectmen of Hampstead.

Date: October 18, 1996

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Valerie B. Lanigan, Clerk

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