

Perley E. and Mariea S. Amidon

v.

Town of Swanzey

Docket No.: 16418-95PV

DECISION

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

The Taxpayers' "Property" consists of a 2.8-acre lot with a house assessed at \$64,700.

The Taxpayers have the burden of showing they were entitled to the abatement based on poverty and inability to pay. See RSA 76:16-a; TAX 202 and TAX 204.06; see also Ansara v. City of Nashua, 118 N.H. 879, 881 (1978). We find the Taxpayers did not carry this burden because RSA 72:38-a (Supp. 1995 at 97-98) provides other available public assistance. The board grants the Taxpayers an opportunity to file the lien request with the Town. The board also orders the Town to reduce the assessment to \$57,800.

The Taxpayers argued they were entitled to the abatement because:

- (1) their expenses exceeded their income;
- (2) it was not reasonable to relocate and refinancing had been refused; and

(3) all available public benefits were being received.

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

- (1) the Town has offered to refund the 1995 taxes paid and to execute an RSA 72:38-a tax lien (as was done for the 1996 taxes);
- (2) there is no mortgage on the Property, and the Taxpayers could sell and relocate;

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- (3) if Mr. Amidon could provide proof that he has a 100% service-connected disability, he could receive a \$700 credit¹; he has received a \$50 veteran's credit and a \$10,000 elderly exemption;
- (4) the 1996 assessment was reduced to \$57,800, and the Town will also reduce the 1995 assessment to \$57,800; and
- (5) the Taxpayers have other options available to them.

Board's Rulings

Based on the evidence, the board finds:

- 1) the Taxpayers did not show they were entitled to an abatement based on poverty and inability to pay because RSA 72:38-a provides other assistance;
- 2) the Taxpayers shall have 30 days to file with the Town for an RSA 72:38-a lien, which the board understands the Town will grant and then refund the taxes;
- 3) the Town shall reduce the assessment to \$57,800 for 1995; and
- 4) the Town will grant the RSA 72:38 lien based on an assessment of \$57,800, and the lien shall specify the interest under RSA 72:38-a shall

¹ After the hearing, Mr. Amidon stated he was not entitled to this relief.

accrue as of an effective date of December 5, 1995 (the day after the due date for the taxes).

The Taxpayers filed for an abatement based on poverty and inability to pay. Such an abatement request is governed by the phrase "as justice requires." RSA 76:16-a; Ansara v. City of Nashua, 118 N.H. at 880. To qualify for an abatement based on poverty and inability to pay, a taxpayer must show: 1) all of the taxpayer's income is spent on essentials of existence; and 2) if there is equity in the property, that it would be unreasonable to relocate, refinance or obtain additional public assistance. Id. at 881. An abatement based on poverty and inability to pay requires the

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board to exercise equitable judgment. Id. at 880. Based on the board's review of the evidence, the board finds the Taxpayers did not meet the Ansara tests.

No one disputed that the Taxpayers were spending all of their income on essentials of existence. The Town, however, asserted it would be reasonable for the Taxpayers to relocate, refinance or obtain other public assistance. The board bases its denial on the availability of other public assistance, namely RSA 72:38-a. No one questioned whether the Taxpayers qualified under RSA 72:38-a, and the Taxpayers were actually granted such a lien in 1996. Therefore, because of the other available assistance pursuant to RSA 72:38-a, the board denies the appeal.

Because this is enough to deny the appeal, the board will not address the reasonableness of requiring the Taxpayers to relocate or refinance.

If the Taxpayers want to seek the lien, they shall, within 30 days, file an RSA 72:38-a application with the Town. The Town shall then, within 14 days, grant the RSA 72:38-a lien with interest accruing as of December 5, 1995. The Town shall then have the lien recorded, sending the board a copy of the recorded lien.

The Town also represented that it would reduce the assessment to \$57,800 based on its review of the Property. After the hearing, the Taxpayers filed an appraisal that estimated the Property's value at \$50,000. This appraisal was not submitted at the original hearing as it should have been, and therefore, the board will not accept it at this time. See TAX 201.37 (e) (parties required to submit all evidence at the hearing).

Once the lien has been filed with the registry, the Town shall issue a refund check for the 1995 taxes. The refund shall include 6% interest pursuant to RSA 76:17-a from the date paid to the refund date. The board is ordering a refund of the interest because the board has instructed the Town to draft the lien so that interest begins to accrue when payment was due.

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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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Bennett Mortell, Esq., Counsel for Perley E. and Mariea S. Amidon, Taxpayers; and Chairman, Selectmen of Swanzey.

Date: April 25, 1997

Valerie B. Lanigan, Clerk

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ORDER

This order seeks clarification from the parties relative to the timely filing of the abatement application.

Our records indicate the "Town" of Swanzey mailed their final tax bills on November 4, 1995. The Town, in their checklist filed September 19, 1996, notified this board that the "Taxpayers" filed an abatement application on November 3, 1995, **before** the notice of tax date. Before the board rules on the timely filing issue, the following statements shall be filed within 10 days of the clerk's date below.

1) The Town shall file a statement indicating whether they mailed all the final tax bills on the same date. The statement shall include the date (or dates) the final tax bills were mailed.

2) The Taxpayers shall file a statement indicating whether their final tax bill was received before November 4, 1995, and if so, on what date.

Upon receipt of the parties' statements, the board will rule on the timely filing issue.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Douglas S. Ricard, Member

CERTIFICATION

I hereby certify that copies of the foregoing order have this date been mailed, postage prepaid, to Jonathan P. Baird, Esq., Counsel for Perley E. and Mariea S. Amidon, Taxpayers; and Chairman, Selectmen of Swanzezy.

Dated: October 17, 1996

Valerie B. Lanigan, Clerk

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