Geraldine K. Hipsky

v.

Department of Revenue Administration

Docket No.: 18022-99HR

FINAL ORDER

The board has reviewed its April 11, 2000 "Order," and the parties' additional statements regarding whether this appeal should now be dismissed because of the specific "principal place of residence and domicile" requirements contained in the "Education Property Tax Hardship Relief" statute, RSA 198:50 et seq.. Based on the evidence in the file, including the detailed statement presented by the "Taxpayer," the board orders the appeal be dismissed due the Taxpayer's Moultonborough dwelling not being her principle place of residence in accordance with RSA 198:51, III (b).

The board has carefully reviewed the evidence, in particular, the Taxpayer's April 16, 2000 handwritten statement, on printed stationery bearing a Connecticut address, that the appeal not be dismissed because of her husband's alleged residency in the Moultonborough, New Hampshire house (House) on which the application for hardship relief is based. The Taxpayer's letter states that her husband, Andrew P. Hipsky, resided "alone" in the House "from August,

1993 thru December 1998." The Taxpayer acknowledges that during this period she lived out of state (first in New York and then in Connecticut) for personal reasons involving her family.

Although both the application for hardship relief and the Taxpayer's joint 1998 federal tax return (dated April 13, 1999) show the Connecticut address (130 Turnpike Road, Willington, CT), the Taxpayer contends that Andrew Hipsky's alleged residency during the period stated above should be determinative of her rights as the owner of the House to qualify for the tax exemption.

The Taxpayer's contention is without merit. The statute requires the claimant for hardship relief be the actual owner and have "resided in such homestead for a period of one year."[1] The department of revenue administration's (DRA) regulation promulgated under the statute requires the one-year period to apply to the "period . . . prior to the date of application" for hardship relief. See RSA 198:51, III and REV 1202.01(b). This statute and regulation, when read together, require that the claimant reside in the House for the year preceding the date of the application and that this "homestead" be her "principal place of residence and the claimant's domicile."

The application is dated December 26, 1999, and there is no indication the Taxpayer, or her husband for that matter, actually resided on the property on that date. Indeed, her April 16, 2000 letter states that once her application denial is "reviewed once again . . . . We would truly be happy to become New Hampshire residents" (emphasis added), indicating the Taxpayer is still

[1]As noted in the Order, homestead is defined as the "dwelling owned . . . and used as the claimant's principal place of residence and the claimant's domicile for purposes of RSA 654:1." RSA 198:50, II. Section 654:1 states that "domicile is the voter's residence to which, upon temporary absence, he has the intention of returning. This domicile is that place in which he

dwells on a continuing basis for a significant portion of each year.”

a resident of another state (Connecticut, presumably). While the Taxpayer may intend to reside in New Hampshire, the board must decide this appeal based upon her actual "principal place of residence" for the year preceding December 26, 1999, which in this case was not New Hampshire due to family circumstances.

Even if the Taxpayer's husband did physically reside on the property during all of 1999, the Taxpayer would still not be eligible for this tax exemption. Mr. Hipsky is not an owner of the property and is not mentioned on the property deed, tax bills or assessment-record card. The Taxpayer and Dawn M. Hipsky (but not Andrew), were the owners shown on the deed recorded in July 1991 "as joint tenants with right of survivorship;" they remained joint owners until Dawn Hipsky transferred her interest to the Taxpayer on February 3, 2000. At best, the Taxpayer would have been entitled to 50% of any hardship relief granted by the DRA, but only if she met all other eligibility requirements contained in the statute and regulations, which, for reasons already indicated, she does not.

The DRA's denial of the Taxpayer's Application for Education Property Tax Hardship relief is, therefore, affirmed, and this appeal is hereby dismissed.

If any party is dissatisfied with the board's action, a motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this order must be filed within thirty (30) days of the clerk's date below, not the date this order is received. RSA 541:3; TAX 201.37(a). 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(f). 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

_____
Paul B. Franklin, Chairman

_____
Michele E. LeBrun, Member

_____
Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify that copies of the foregoing order have this date been mailed, postage prepaid, to: Geraldine K. Hipsky, Taxpayer; and Ms. Jan M. Wickens, Hardship Relief Bureau Manager, Department of Revenue Administration.

Date: June 9, 2000

_____
Lynn M. Wheeler, Clerk