Roger W. Marcoux

v.

Department of Revenue Administration

Docket No.: 18141-99HR

DECISION

The "Taxpayer" appeals, pursuant to RSA 198:54, the determination by the department of revenue administration ("DRA") reducing the amount of hardship relief to 50% of the amount claimed by the Taxpayer. The Taxpayer requested leave not to attend the hearing scheduled for August 18, 2000 and this request was granted. The DRA appeared at the hearing and submitted a "Memorandum of Law" (the Memorandum).[1] For the reasons stated herein, the appeal is denied and the DRA's decision is affirmed.

The Taxpayer (in his written submittal to the board) argued he was entitled to relief because:

(1) while two names are listed on the tax bill and the 1976 deed (the Taxpayer and his 'former girlfriend,' Sandra Cook), they have been separated for a long time and he has been "the sole

[1]The board notes that this Memorandum contains a certification signed by the DRA's attorney that a copy "was delivered this day" (August 18, 2000) to the Taxpayer. Since the Taxpayer was not in attendance at the hearing, this certification is incorrect; while the board presumes the DRA subsequently sent a copy of its Memorandum to the Taxpayer by mail, an additional copy will be sent to the Taxpayer with this Decision.

occupant" of the Property "for the last 17 years";

(2) Taxpayer has paid "all expenses," including property taxes, on the Property and should be entitled to the full amount of hardship relief, rather than the 50 percent granted by the DRA.

The DRA argued the denial was proper because:

(1) Taxpayer and Ms. Cook are both owners of the Property and are still listed on the deed, presumably as "joint owners" in the absence of any evidence to the contrary;

(2) even if the Taxpayer pays the entire property tax and other expenses himself, the joint owner remains liable if such taxes are delinquent and the statute is clear that the Taxpayer is entitled only to "the proportionate share of the homestead value that reflects the ownership percentage of the claimant," RSA 198:5, V; and

(3) Taxpayer has failed to meet his burden of proving that he is entitled to more than the 50 percent hardship relief amount granted by the DRA.

While Chapter 338 (the statewide education property tax law) contains no specific provision as to who has the burden in this type of appeal, it is well settled that in civil actions the burden of proof is generally on the plaintiff to establish his case by a preponderance of the evidence. Dunlop v. Daigle, 122 N.H. 295 (1982); Jodoin v. Baroody, 195 N.H. 154 (1958); TAX 201.27(f). According to the DRA, a taxpayer assumes the burden of demonstrating that the DRA's determination is wrong or excessive, and this burden extends to the DRA's reduction of the amount of hardship relief the Taxpayer claimed by 50 percent. See the cases cited in the DRA's Memorandum at p. 2.

Board's Rulings

Under the applicable statute, the board may only reverse or modify the decision of the DRA "when there is an error of law or when the board finds the commissioner's [DRA's] actions to be arbitrary or unreasonable." RSA 195:54, II. The Taxpayer has not sustained his burden of establishing any error of law or arbitrary or unreasonable action by the DRA in this case. Based on the evidence, the board finds the DRA was correct in its determination. By the Taxpayer's own admission, Ms. Cook does not reside on the Property and is not a claimant for hardship relief. Under the explicit terms of the statute, the Taxpayer is entitled to no more than 50% of the hardship relief claimed for the Property. See RSA 198:5, V: "Only one claim may be filed for a single homestead" and, if joint owners do not reside on the homestead property, hardship relief can only be given for "the proportionate share of the homestead value that reflects the ownership percentage of the claimant." For reasons not free of doubt, both the Taxpayer and Ms. Cook continue to be listed as owners under a deed recorded July 20, 1976.[2] They are also both listed as owners on the Town of Bartlett's property tax records pertaining to the Property.

The board finds the Taxpayer's explanations as to why this condition has persisted for so

[2]This document lists Arthur E. Cook as the grantor and refers to a prior conveyance from David and Ethel Buckley to Arthur E. Cook dated June 7, 1976, just one month earlier.

long to be less that compelling.[3] More importantly, such explanations are at odds with the language of the hardship relief statute.[4] This statute makes "ownership percentage" rather than some other factor like intent or who actually pays the taxes determinative of who is entitled to hardship relief. In addition, as the Memorandum filed by the DRA notes, Ms. Cook remains "equally responsible [for property tax payments] . . . The fact that they are no longer a couple does not change their relationship and responsibilities as joint owners of the homestead property."

For all of these reasons, the board affirms the decision of the DRA in this case.

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

[3]The Taxpayer's written statements explain that Ms. Cook was not taken off the deed for the Property "because we'd mutually decided it didn't make sense to remortgage it, and lose the low interest rate." While this may or may not have been true 17 years ago, interest rates have fluctuated since that time to a degree sufficient to have permitted the owners to have changed the form of ownership on the deed and the property tax bill without undue financial consequences.

[4]In the absence of ambiguity, the board must apply the statute as it was written and not modify it. State v. Dushame, 136 N.H. 309, 313 (1992); Penrich, Inc. v. Sullivan, 136 N.H. 621, 623 (1992); Bradley Real Estate Trust v. Taylor, Comr., 128 N.H. 441, 444 (1986). The recourse in these situations must be to the Legislature, not the appellate body charged with applying the statute as written.

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

_____
Paul B. Franklin, Chairman

_____
Michele E. LeBrun, Member

_____
Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Roger W. Marcoux, Taxpayer; and Kathleen J. Sher, Esq., Counsel for the Department of Revenue Administration.

Date: September 22, 2000

_____
Lynn M. Wheeler, Clerk

S:\BOARD\PFMLAS\18141-99