

In Re: Henry G. Carnevale

Docket No.: 18145-99OS

FINAL DECISION

On April 20, 2000, the board issued an order requesting the "Taxpayer" and the Town of Sutton ("Town") submit their arguments as to the appropriateness of the board asserting RSA 71-B:16, II jurisdiction in this matter. Following review of these submissions, the board held a limited hearing on the jurisdictional issue on June 20, 2000.

For all of the reasons stated, the board will not assert jurisdiction over the Taxpayer's property tax claims in this case, insofar as they involve attempts to appeal assessments made by the Town prior to the 1999 tax year. For the 1999 tax year, however, the Town has acknowledged that the Taxpayer has requested an abatement, which the Town has not yet acted upon; the Taxpayer may file an appeal with the board or in the superior court if he is dissatisfied with the Town's response, provided he fills out and files the required documentation by September 1, 2000 and either pays the requisite filing fee or demonstrates that he is entitled to a waiver.

The board does not have jurisdiction over tax assessments prior to 1999 because the

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Taxpayer never filed an appeal with the board of any of those assessments, pursuant to RSA RSA 76:16 and 76:16-a, the prescribed method of applying for an abatement of property tax assessments. Under the strict filing deadlines contained in these statutes, a taxpayer must first “apply in writing” to the selectmen or assessors by “March 1 . . . following the date of notice of tax.” Appeal to the board is then permitted “[i]f the selectmen neglect or refuse to so abate” by July 1 and an appeal is filed with the board by September 1.¹

While an alternative basis for asserting jurisdiction might exist in certain cases under RSA 71-B:16, II,² the Taxpayer failed to make a showing at the hearing sufficient to permit the

¹Appeals may also be filed with the superior court. RSA 76:17.

²This section provides: “The board may order a reassessment of taxes previously assessed . . . II. When it comes to the attention of the board from any source, except as provided in paragraph I, that a particular parcel of real estate or item of personal property has not been assessed, or that it has been fraudulently, improperly, unequally, or illegally assessed.” Cf. Appeal of Wood Flour, 121 N.H. 991, 994 (1981) [construing legislative purpose: “the general thrust of the statute is to promote the legality of real estate taxes”].

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board to establish jurisdiction. In particular, the Taxpayer failed to present any unique or compelling facts³ as to why he did not follow the normal request for abatement and appeal process set forth in RSA 76:16 and 76:16-a for the years prior to 1999.

The Town presented documentary evidence (Exhibit A) that the Taxpayer was aware of these statutory procedures. Exhibit A is evidence that the Taxpayer signed and submitted an application for abatement of taxes with the Town for the 1995 tax year; the application includes a statement regarding the Taxpayer's right to appeal an adverse decision to the board or the superior court. For reasons of his own, the Taxpayer did not file an appeal either for 1995 or for

³The only potentially mitigating facts mentioned by the Taxpayer were his 'fifth grade' formal education, his low income and his belief that applying for an abatement from the Town would be futile. These factors are not sufficient to excuse the Taxpayer. Among other things, the record reflects that the Taxpayer: (i) has represented himself adequately in this and other proceedings; (ii) did file a request for an abatement in 1995 with the Town, but chose not to appeal to the board; (iii) has consulted with one or more attorneys from New Hampshire Legal Assistance; and (iv) has, on his own, successfully negotiated an agreement with officials from the New Hampshire Department of Environmental Services pertaining to his obligations.

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any other tax year.

The board is aware of significant disputes between the Taxpayer and the Town. The Taxpayer claims that the Property is contaminated and has little or no value. The Town, for its part, claims the Taxpayer has refused to pay taxes since 1991 and hence has been able to occupy the property “tax free” for a very long time by manipulating this excuse to his own advantage. Whatever the merit of these respective positions, the board cannot act until the Taxpayer files a proper appeal in the manner described herein.

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

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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 a copy of the foregoing decision has this date been mailed, postage prepaid, to Henry G. Carnevale, Taxpayer; Timothy Bates, Esq., Counsel for the Town of Sutton; and Chairman, Selectmen of Sutton.

Date: July 7, 2000

Lynn M. Wheeler, Clerk

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ORDER DENYING MOTION FOR REHEARING

On July 19, 2000, the board received a lengthy, handwritten “Motion for Rehearing and Reconsideration” (the “Motion”) of the board’s Final Decision dated July 7, 2000 by the “Taxpayer” (Henry G. Carnevale). The Final Decision dismissed this case on jurisdictional grounds. Upon review of the issues presented by the Taxpayer, and the “Objection to Motion for Rehearing” (the “Objection”) filed by the Town of Sutton (the “Town”) in response, the board denies the Motion.

The board’s rules require: the Motion to “state with specificity any points of law or fact the moving Party contends the Board overlooked, misapprehended, or requires clarification”; the Motion “shall only be granted for ‘good reason’ pursuant to RSA 541:3, and a showing shall be required that the [b]oard overlooked or misapprehended the facts or the law and such error affected the [b]oard’s decision”; and the Motion “shall not be granted to consider evidence previously available to the moving Party but not presented at the original hearing or to consider new arguments that could have been raised at the hearing.” TAX 201.37(b), (c), (d) and (f)⁴.

⁴The same rules further provide: “Except by Leave of the [b]oard, Parties shall not submit new evidence with rehearing motions. Leave shall only be granted when the offering Party has shown the evidence was newly discovered

and could not have been discovered with due diligence in time for the hearing and when the new evidence will assist the [b]oard." Id.

The Taxpayer's argument in his Motion is that the Town 'unfairly' introduced a document at the June 20,2000 hearing, a hearing limited to the issue of jurisdiction. The document, a copy of the 1995 abatement application for the Taxpayer's Property, was introduced by the Town to rebut the Taxpayer's testimony about whether any previous abatement application had been filed with the Town.

The board finds the submission of this document by the Town at the hearing was neither unfair nor improper. The Town was under no obligation to furnish the document (which the Taxpayer had signed) prior to the hearing and was not precluded from presenting it to the board as rebuttal to the Taxpayer's testimony.

The Taxpayer argues he signed the document (an abatement application to the Town dated December 31, 1995) because he was compelled to do so by reason of a Decree of Divorce.⁵ While paragraph 7 of this decree does require the Taxpayer to "promptly execute all documents necessary to effectuate the sale of the property," requesting an abatement of taxes

⁵Entered by the Presiding Justice of the Merrimack County Superior Court on June 23, 1994 and submitted as part of the Motion by the Taxpayer. This Decree of Divorce, among other things, finds Taxpayer "in contempt for failing to pay alimony as agreed to and ordered" and requires the Property to "continue to be marketed" for sale with the proceeds to benefit the Taxpayer's wife more than proportionately.

would not necessarily fall within this obligation.

More to the point, as noted in the Town's Objection:

“[T]he undated statement by [the realtor who apparently prepared the 1995 abatement application] submitted by [the Taxpayer] in his motion for rehearing confirms that she filled out the abatement application and told both Mr. Carnevale and his wife what the purpose of the application was before they signed it [.] (‘I took these papers I had made out, to Henry [the Taxpayer] and Josephine [his wife], in turn, and got their signatures. I told them in general terms what I was trying to do for them about their property’s assessment with these papers.’ (emphasis added)) [by the Town]”

The Taxpayer's assertion that he was unaware of the 1995 abatement application and his motivation for signing the application are of no force and effect since the Taxpayer failed to establish any unique or compelling facts at the June 20, 2000 hearing sufficient for the board to assert jurisdiction over prior year property tax assessments. See Final Decision at p. 2 and fn. 3. As also noted, the Taxpayer still had an opportunity to perfect an appeal of the Town's assessment for the 1999 tax year. Id. at p. 1.

In conclusion, the Taxpayer has failed to state any “good reason” to grant a rehearing and has failed to show the board overlooked or misapprehended the facts or the law or that any such alleged error affected the board's decision. See TAX 201.37(d). Pursuant to RSA 541:6, any appeal of this order by the Taxpayer to the supreme court must be filed within thirty (30) days of the date of this order.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Concurred, Unavailable for signature
Michele E. LeBrun, Member

Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

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I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Henry G. Carnevale, Taxpayer; Timothy Bates, Esq., Counsel for the Town of Sutton; and Chairman, Selectmen of Sutton.

Date: September 5, 2000

Lynn M. Wheeler, Clerk