William Sartori and Gary Sartori

v.

City of Concord

Docket No.: 18480-00PV

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 2000 denial of an application for abatement based on poverty and inability to pay. The Taxpayers' "Property" consists of a condominium unit assessed at $49,000. For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, they were 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 Taxpayers failed to carry their burden.

The Taxpayers argued they were entitled to the abatement because:

(1) they applied for an exemption from the City and were informed by the City's assessor during a phone call in October 2000, they were entitled to a "rebate" of $1,673 on their real estate taxes; (2) about five months later, the City informed the Taxpayers that a hearing would be required before the City's human services department to receive further information;

(3) the Taxpayers provided some additional information requested by the City, but were still denied an abatement;

(4) they reported a total, combined, adjusted income of less than $16,000 for 2000;

(5) while William Sartori was denied Social Security disability, he has an illness that limits his ability to work; and

(6) they need an abatement because they cannot afford to pay the taxes on the Property with their limited income and their disclosed expenses.

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

(1) the Taxpayers failed to meet the standards established by the City's human services department for financial assistance;

(2) although Gary Sartori works at Sears and William Sartori works occasionally as a substitute teacher, the Taxpayers failed to prove they were unable to obtain additional employment to meet their expense obligations;

(3) the Taxpayers' choice of not working more and earning additional income does not meet the standards for exemption established by the New Hampshire Constitution and case law;

(4) while the City's assessor recommended the abatement be granted, his recommendation was not accepted by the City's board of assessors and it denied the abatement request on April 13, 2001, one week after the City's human services department (identified as "Concord City Welfare" in its notice) denied the Taxpayers' application for "general assistance" because of "sufficient income"; and

(5) the Taxpayers failed to meet their burden of proof that they were entitled to an abatement.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to carry their burden of proof to show they were entitled to an abatement due to poverty and inability to pay. The board, however, does recognize the Taxpayers' frustration concerning the City's management of this case and the City's lack of internal protocol for handling requests of this nature. The Taxpayers stated that initially the City's director of property assessments, Mr. Michael Fedele, told them they were entitled to and would be getting an abatement for the entire amount of their property taxes ($1,673). However, Mr. Fedele's recommendation to the City's board of assessors was not accepted, the Taxpayers' request was turned down, and the case was referred to the human services department (welfare department) without the Taxpayers' knowledge. Following a hearing, the human services department notified the Taxpayers that they were not entitled to relief as they have sufficient income to maintain their way of life.

At the board's hearing, the City admitted that prior to receiving this case, there was no established protocol for processing abatement requests due to inability to pay. However, the City stated it has subsequently established some procedures that should prevent future miscommunications similar to the ones that occurred. The board urges the City to develop standard procedures for handling these types of cases so that taxpayers will be able to follow the steps required to facilitate the disposition of their cases. Notwithstanding all of these facts, the board finds the Taxpayers are not entitled to an abatement of their taxes due to poverty and inability to pay.

The board's decision is based on the following reasons. First, at the hearing, the

Taxpayers submitted a financial statement itemizing their income and expenses. The board reviewed this list of monthly expenses and found the Taxpayers' reported income would be sufficient to pay the expenses as they are outlined, including the real estate property taxes. Even if the board were to find the Taxpayers had significantly underestimated their expenses (by as much as 50%), there would still be sufficient income to pay the expenses as they were reported.

Pt. 1, Art. 12th of the New Hampshire Constitution requires that each member of society contribute their share to paying for the government that provides the protection for society. Part 1, Article 12 of the New Hampshire Constitution reads as follows:

> **[Art.] 12th. [Protection and Taxation Reciprocal.]** Every member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property; he is therefore bound to contribute his share in the expense of such protection, and to yield his personal service when necessary. But no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. Nor are the inhabitants of this state controllable by any other laws than those to which they, or their representative body, have given their consent.

The board finds the Taxpayers have the ability, and are therefore obligated, to contribute their fair share of the expenses for the above-noted protections.

Second, there is case law that has guided the board. In Ansara, the supreme court held that because a property owner spends all of his or her income on the essentials of existence is not, alone, enough to sustain a finding that he/she is entitled to a tax abatement due to poverty and inability to pay. "We hold that plaintiffs who claim that they are entitled to an abatement because of poverty and inability to pay, and who have some equity in their homes, must show that it is not reasonable for them to relocate, refinance, or otherwise obtain additional public assistance. Without such a showing, the equities do not balance in the plaintiff's favor. See,

e.g., Fowler v. Taylor, 97 N.H. 294, 297, 86 A.2d 325, 326 (1950) ('a plaintiff seeking equitable relief must do equity')." Ansara supra at 881. In this case, the Taxpayers have sufficient income to pay for their expenses as submitted.

Third, the board finds the Taxpayers may be able to obtain additional public assistance, one of the criteria in Ansara. In this case the board finds the Taxpayers could have requested additional public assistance or made further attempts to find additional gainful employment that would have augmented their income. William Sartori testified he has a medical condition, which he did not specify, that does not allow him to do any work which requires strenuous activity. The board finds William Sartori did not show that he had made sufficient efforts to find other employment which would not cause his medical condition to be aggravated.

Given the above reasons, it is not necessary for the board to address the other criteria in Ansara, specifically the reasonableness of whether or not the Taxpayers should use the equity in the Property to refinance or relocate.

For the above reasons, the board finds the Taxpayers failed to carry their burden to show the City's denial of their request for an abatement due to poverty and inability to pay was unreasonable.

Findings of Fact and Rulings of Law

The board responds to the City's Request for Findings of Fact and Rulings of Law as follows.

In these responses, "neither granted nor denied" generally means one of the following:

a. The request contained multiple requests for which a consistent response could not be given;

b. The request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;

c. The request contained matters not in evidence or not sufficiently supported to grant or deny;

d. The request was irrelevant; or

e. The request is specifically addressed in the decision.

1. Granted.
2. Neither granted nor denied.
3. Neither granted nor denied.
4. Granted.
5. Granted.
6. Granted.
7. Granted.
8. Neither granted nor denied.
9. Granted.

Rehearing

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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Paul B. Franklin, Chairman

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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: William Sartori and Gary Sartori, Taxpayers; and Chairman, Board of Assessors, City of Concord.

Date: April 19, 2002

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Anne M. Bourque, Deputy Clerk