

**Richard T. Williams**

**v.**

**Town of Ellsworth**

**Docket No.: 24545-08PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2008 assessment of \$161,800 (land \$54,300; building \$107,500) on Map E2/Lot 47, a single family home on 1.27 acres (the “Property”). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, that he satisfies the “poverty and inability to pay” standard he claims entitles him to an abatement. See Ansara v. City of Nashua, 118 N.H. 879, 880-81 (1978); see also Tax 201.27(f). We find the Taxpayer failed to meet this burden.

The Taxpayer argued the assessment should be abated because:

- (1) he was in a severe financial situation and qualified for various forms of public assistance which he applied for and received in 2008;
- (2) he is self-employed and had negative reported income because of the nature of his business (as an independent “industrial sales” representative for several manufacturers, working only on

commissions, with a fall-off in sales and a lag in payment of commissions earned until the customer actually pays the manufacturer);

(2) to meet pressing financial obligations in that year, he withdrew the funds in his IRA account and exhausted it;

(3) he had only one physical asset (a 2001 pickup truck used in his business) and less than \$300 in his bank account;

(4) he provided adequate documentation to the Town showing his negative income in 2008 and lack of assets and cooperated with most of the Town's requests for additional information regarding his financial situation;

(5) the Ansara standards support his claim for a tax abatement due to poverty and inability to pay because the Property is "under water" (he has no equity in it because of a mortgage and two home equity loans with principal balances that in total exceed the value of the Property, as reflected in the Town's assessment) and it is not reasonable for him to relocate or refinance; and

(6) the Town erred in not abating his assessment on the ground of poverty and inability to pay.

The Town argued the Taxpayer does not qualify for a tax abatement based on poverty and inability to pay because:

(1) as set forth in the Town's "Hearing Memorandum" (see p. 2) the Taxpayer cannot demonstrate "that he is poor and unable to pay his taxes";

(2) his 2008 income tax return shows he was self-employed and received "\$34,279.09 in IRA distributions in 2008" (id.), as well as taking substantial deductions for his home office and car;

(3) while his 2008 income tax return reports negative adjusted gross income, he did not demonstrate "there are not other avenues of relief available to him to assist him with the payment of taxes";

(4) for example, there is a public assistance program available at the Town level, see RSA ch. 165, but the Taxpayer chose not to apply for it apparently because he did not want the Town to have a “lien” on the Property; and

(5) the Taxpayer failed to meet his burden of proof.

### **Board’s Rulings**

The board has carefully reviewed all of the facts presented regarding the Taxpayer’s financial situation in 2008 to determine if he qualified for an abatement due to “poverty and inability to pay,” the sole ground for this appeal, as well as the Town’s factual and legal arguments that he did not qualify and has not met his burden of proof. For the reasons discussed below, the board finds the Taxpayer, although no doubt in dire financial circumstances, did not meet the burden of proof necessary for a tax abatement for tax year 2008 and the appeal is therefore denied.

There is no dispute between the parties that Ansara, a 1978 supreme court decision, frames the relevant standards for deciding a tax abatement appeal based on “poverty and inability to pay.”<sup>1</sup> The Taxpayer contends he meets these standards because, unlike the taxpayer in Ansara who did not get an abatement, he has no equity in the Property (it is “under water” because of a mortgage and two home equity loans). The Town does not dispute the lack of available equity in the Property because of these loans. The Taxpayer also asserts it is not “reasonable” for him to relocate or refinance the Property, but the Town questions why he could not relocate, if not refinance, in order to reduce his housing expenses.

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<sup>1</sup> See also Briggs’ Petition, 29 N.H. 547 (1854). At the hearing, the Taxpayer cited Jacobson v. Town of Brookline, BTLA Docket No. 20578-04LC, a LUCT (Land Use Change Tax) appeal where the board applied the Ansara standards and ruled the taxpayers did not qualify for a LUCT abatement, in part because they had “equity” in their property.

Without restating all of the sensitive financial information submitted regarding these disputed matters, the board agrees with the Taxpayer that, because of the nature of his self-employment and other factors, neither relocation nor refinancing of the Property is “reasonable.” His testimony on these issues was credible and deserving of weight, notwithstanding the Town’s questions regarding his situation.

In deciding this appeal, the board is bound by established New Hampshire law, including the standards articulated in Ansara. Although claims of poverty and inability to pay invariably present difficult and troubling questions, the board finds at least two reasons for denial of the appeal.

First, the Taxpayer did not meet his burden of proving an inability to pay the taxes in a literal sense. While he was no doubt under severe financial pressures, due to the downturn in the economy generally and his business as an industrial sales representative, the Taxpayer somehow managed to stay current in his mortgage payments in 2008. These mortgage payments included “escrow” amounts for current taxes and insurance. Consequently, one could argue, as the Town does, that he did not have an actual “inability to pay” and found the means to do so, despite the financial challenges he faced. The force of this argument is tempered, however, by the fact the Taxpayer was probably required to stay current on his mortgage payments or else risk losing his home, sooner or later, to foreclosure. This constraint probably applied also to the payments on his home equity loans.

Second, the Town is correct in noting the Taxpayer, despite his limited financial resources, did not pursue all available sources of additional public assistance. See Town’s Hearing Memorandum at p. 4, where the Town notes the Taxpayer “has made no demonstration

that there are not other avenues of relief available to him to assist him with the payment of his taxes.”

At the hearing, the Town cited RSA ch. 165 (“Aid to Assisted Persons”), which is a form of relief available at the municipal level, for a person who “is poor and unable to support himself,” see, e.g., RSA 165:1 and RSA 165:1-a, provided he applies for relief and is willing for the Town to take a lien for the amount of money provided by the Town. See RSA 165:20-b; and RSA 165:28. According to the Town, the Taxpayer chose not to pursue this form of assistance at all only because he did not want to have a “lien” on the Property. The Town further stated the lien for public assistance, if provided, would not have priority over his existing financial encumbrances. See RSA 165:30 (any lien “shall be subordinate to mortgages and other valid liens”). In other words, the Taxpayer chose not to pursue at least one available form of public assistance, but could have done so to relieve his financial situation. The Taxpayer did not dispute these contentions, but did indicate he applied for and received other forms of financial assistance. These included the state’s property tax relief program for low and moderate income homeowners (under the income guidelines in RSA 198:57), fuel/utility assistance and food programs.

In making this necessarily difficult decision, the board has carefully reviewed the facts and circumstances summarized in Ansara. Ansara is clear in stating it is not enough to establish an inability to relocate or refinance a property: in order to get an abatement, a taxpayer also “must show” it is “not reasonable” for him or her to “otherwise obtain additional public

assistance.” Id. at 881.<sup>2</sup>

There is no doubt the Taxpayer was in very severe financial straits in 2008 due to circumstances beyond his control. At that time, he exhausted his available IRA account assets and had to juggle his bills and his credit ‘to keep a roof over his head.’ Under the Ansara standards, however, the board finds the Taxpayer did not satisfy his burden of demonstrating it would have not been “reasonable” to at least try to “otherwise obtain additional public assistance” before seeking a full or partial abatement of his taxes from the Town.

In considering the facts presented and the Taxpayer’s financial situation, the board also reviewed the lien provisions in RSA ch. 80. This statute provides another ‘safety valve’ for property owners who are temporarily unable to pay their current tax obligations by allowing a time frame for delayed payments (approximately two years) before these taxpayers face loss of the property, provided they find the means to cure the delinquency within that time, along with the payment of additional interest and other costs due. See RSA 80:19, et seq. This alternative, however, may not be feasible for a taxpayer who has a lender that escrows tax payments and might declare the mortgage in default if such a tax delinquency arises for any reason.

For these reasons, the appeal is denied.

. 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

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<sup>2</sup> In Ansara, the plaintiff was a divorcee with two young children who received AFDC assistance (\$308 per month) and “had no other income from any other source.

...  
A plaintiff’s showing that all of her income is spent on the essentials of existence is not, standing alone, enough to sustain a finding that she is entitled to a tax abatement because of poverty and inability to pay.” Id. at 880-81.

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(g). 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Richard T. Williams, 3243 Stinson Lake Road, Rumney, NH 03266, Taxpayer; Chairman, Board of Selectmen, Town of Ellsworth, 3 Ellsworth Pond Road, Campton, NH 03223; and Laura A. Spector, Esq., Mitchell Municipal Group, P.A., 25 Beacon St. East, Laconia, NH 03246, counsel for the Town.

Date: July 14, 2010

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Anne M. Stelmach, Clerk