

Roberta J. Pigott

v.

Town of Barrington

Docket No.: 25464-10PV

ORDER

On December 27, 2012, the “Taxpayer” filed a Motion for Rehearing (“Motion”) of the December 7, 2012 Decision denying her appeal for a full 2010 tax abatement on the grounds of poverty and inability to pay. The suspension order entered on January 7, 2013 to allow the board more time to consider the Motion is dissolved. The Motion is denied.

Rehearing motions cannot be granted when the requirements set forth in RSA 541:3 and Tax 201.37 are not met. They require a showing that “the board overlooked or misapprehended the facts or the law and such error affected the board’s decision.” [See, Tax 201.37(e).] Further, each party is required to “submit all evidence and present all arguments at the hearing” and “rehearing motions 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.” [See Tax 201.37(g).] The Motion does not satisfy these requirements.

The Motion mentions many of the same issues discussed at the hearing which result in the “severe financial challenges” the Taxpayer is facing that were noted by the board in the Decision (pp. 3 – 4). These challenges, such as the statements in the Motion regarding her alleged inability to obtain a mortgage “modification” and her belief any alternative “housing payment” (rent?) would not be as low as her present mortgage, do not meet the standards for granting a tax abatement established by the supreme court in Ansara v. City of Nashua, 118 N.H. 879, 880 (1978), as discussed in the Decision (p. 4). Thus, the Motion fails to demonstrate the board “overlooked or misapprehended the facts or the law.”

With her Motion, the Taxpayer enclosed a packet of original documents (approximately one inch thick) which the board has reviewed. These documents include pleadings from her Chapter 13 bankruptcy (which was still pending in 2012), her 2010 tax return (already presented as Taxpayer Exhibit No. 1 at the November 27, 2012 hearing) and correspondence with the Town and other parties (such as her bankruptcy attorney, the VA, the Social Security Administration and federal and state attorney general offices to lodge complaints about mortgage lending practices).

Many of these documents were generated in 2011 and 2012, well after the operative date of this appeal: the April 1, 2010 assessment date. Further, one of the documents (her December 12, 2012 letter to the Town administrator after the November 27, 2012 hearing) indicates the Taxpayer paid her 2012 tax obligations to the Town in full.

In any event, the submission of these documents with the Motion does not influence the outcome of this appeal. The Taxpayer was noticed on May 17, 2012 her hearing would be held on November 27, 2012, which gave her ample time to prepare. The Taxpayer attended the

November 27, 2012 hearing with her daughter and brought a number of documents with her, which she looked through prior to the start of the hearing. At that time, she was given a full opportunity to decide what documents she wished to present to the board and chose to present only: Taxpayer Exhibit No. 1 (her 2010 federal tax return, mentioned above); Taxpayer Exhibit No. 2 (Social Security Administration documents confirm its decision, on October 27, 2011, that she was disabled since the time of an October 10, 2010 accident); and Taxpayer Exhibit No. 3 (her 2011 federal tax return).

The board's rules (see Tax 201.37, discussed above) do not permit a party to refrain voluntarily from presenting at the hearing of an appeal documents or other evidence in her possession and then enable their presentation through a rehearing motion in order to affect the outcome of the appeal. This is fundamentally unfair to the other party. If the Taxpayer was "not prepared adequately" (as stated in the Motion) at the time of the November 27, 2012 hearing, she could have requested a continuance, but did not do so.

The Motion states the Taxpayer's intention "to appeal to the supreme court." Such an appeal may result in a review of the standards stated in the Ansara decision for a tax abatement based on poverty and inability to pay. In the Decision, the board made findings consistent with Ansara.

Pursuant to RSA 541:6, any appeal of the Decision must be by petition filed with the supreme court within thirty (30) days of the date of this Order, with a copy provided to the board in accordance with Supreme Court Rule 10(7). If the Taxpayer chooses not to appeal, she may

Roberta J. Pigott v. Town of Barrington

Docket No.: 25464-10PT

Page 4 of 4

request return of the original documents submitted to the board pursuant to Tax 201.32 (Return of Exhibits).¹

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Albert F. Shamash, Esq., Member

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Roberta J. Pigott, 90 Long Shore Drive, Barrington, NH 03825, Taxpayer; and Chairman, Board of Selectmen, Town of Barrington, PO Box 660, Barrington, NH 03825.

Date: 1/28/13

Anne M. Stelmach, Clerk

¹ Paragraph (b) of this rule provides:

[U]pon written request, exhibits shall be available for pick up forty-five (45) days after a final, non-appealable decision has been issued. Exhibits not picked up within ninety (90) days of the board's final, non-appealable decision shall be destroyed.