

Donald E. Brady

v.

Town of Wilmot

Docket No.: 26213-11PV

DECISION

This appeal arises pursuant to RSA 76:16-a based on the “Town’s” 2011 denial of an application for abatement filed by Donald E. Brady (“Petitioner”) based on poverty and inability to pay. The “Property,” owned by the Chaia Brown Trust, consists of a single family home on 0.80 acres (Map 15/Lot 13, 14 North Wilmot Road) with an assessment of \$140,800 (land \$64,400; building \$76,400). For the reasons stated below, the appeal for abatement is denied.

The Petitioner has the burden of establishing first that he is a “person aggrieved” pursuant to RSA 76:16 and, if that burden is carried, he must show by a preponderance of the evidence, he was entitled to a tax abatement on the grounds of poverty and inability to pay, based on tax abatement and appeal statutes and the standards established in prior supreme court decisions. See RSA 76:16-a; Tax 201.27(f); Tax 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994); and Ansara v. City of Nashua, 118 N.H. 879 (1978). The board finds the Petitioner failed to prove the Town erred in denying the abatement.

The Petitioner argued he was entitled to the abatement because:

- (1) as holder of a life estate from the Chaia Brown Trust, he is the “owner” of the Property for property tax purposes (see Taxpayer Exhibit No. 1);
- (2) he has been disabled for many years and was receiving assistance from the Town in paying “rent” on the Property for many years until the Trustee of the Chaia Brown Trust passed away in 2011;
- (3) as the financial affidavit provided to the board indicates, he does not have the ability to pay the property taxes on the Property; and
- (4) he satisfies the requirements for poverty and inability as stated in Ansara because, as the holder of a life estate, it is unreasonable for him to relocate and not possible for him to refinance the Property.

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

- (1) the Town had been assisting the Petitioner since 1997 with “rent” through the Town’s welfare officer in the amount of \$200 per month and since 2007 those payments were made payable to Helen Chaia, Trustee of the Chaia Brown Trust (see Municipality Exhibits C, D, E and F);
- (2) after learning of the death of the Trustee, Helen Chaia, the Town requested the Petitioner supply information regarding the name of the new Trustee; because the Petitioner failed to comply with the request, the Town ceased making “rent” payments in mid-2011;
- (3) because multiple transfers of the Property occurred during the past 40 years (some of which were not recorded in the registry of deeds), the Town repeatedly requested financial information from the Petitioner as to the legal ownership of the Property which the Petitioner has refused to provide;

(4) further, the Town requested copies of the trust documents for many years which the Petitioner has also not provided (see Municipality Exhibit B);

(5) the Petitioner has asserted for many years he is a life tenant and is responsible for (and needs assistance in) making rent payments to the Trust and has only recently (concurrently with the filing of this appeal) made any assertions that he has standing as the “owner” of the Property;

(6) the Petitioner has deliberately placed the Property in the name of a trust and refused to provide the Town with the requested information in a way to fraudulently obtain welfare assistance and when that assistance stopped he filed this appeal as the “owner” of the Property as another way to avoid paying his fair share of the tax burden and the appeal should be denied.

Based on the evidence, the board finds the Petitioner is not a “person aggrieved” pursuant to RSA 76:16 and thus has failed to prove he was entitled to a tax abatement for tax year 2011 under the established standards governing poverty and inability to pay the property taxes. The appeal is therefore denied.

Background

Prior to stating its reasons for denying this appeal, the board notes the testimony and evidence presented at the hearing was disturbing for several reasons. From the evidence presented, it appears the Petitioner has been playing an elaborate “shell game” with the Town for many years with the express purpose of receiving assistance from the Town based on deliberately incorrect financial and ownership information.

A little background regarding the Petitioner and the Town’s interactions during the past several decades is important to document in light of the board’s findings in this appeal. The Property has been in the same family for more than 100 years, and with the exception of an encumbrance for legal fees, is owned free and clear. Since 1969, there have been a minimum of

seven deeds filed with the Merrimack County Registry of Deeds, most of which (if not all) were prepared by the Petitioner. In the chain of title, there appears to be at least one missing deed between 1978 (when the Property was deeded from Donald Brady to Dorothea Brady) and 1984 (when the Property was deeded from Donald Brady to Lois Nellis). (See Municipality Exhibit A.)

Beginning in August 1997, the Petitioner requested welfare assistance from the Town to meet his “rent obligation.” The Town’s welfare officer approved the assistance and from 1997 through mid-2007, the Town paid \$200 per month in “rent” to the owner of the Property¹. In order to qualify for such assistance, the Petitioner completed financial affidavits annually, each of which stated his current needs as “help with rent” (see Municipality Exhibits D, E and F). In 2012, after the death of the Trustee (Helen Chaia), the Petitioner completed a financial affidavit that stated his current needs were “to meet monthly expenses,” but listed “Rent per mo.” as \$220.

Until mid-2011, the Town had been paying \$200 per month in rental assistance to the Property owner who then paid the Town property taxes. After the rental assistance payments stopped, the payment of the property taxes stopped and the “second half” tax bill for 2011 remains unpaid. In February, 2012 the Petitioner filed an abatement application with the Town stating the “Party(ies) Applying (Owners(s)/Taxpayer(s))” as “Donald E. Brady Atty for Chaia Brown Trust et al” with a footnote stating, “[s]ubmission of this application is made without waiver of any and all rights of Donald E Brady, Chaia Brown Trust and all members of the Brown Family past and/or present at law or in equity,” and the document is signed “Donald E. Brady, individually and as attorney for Chaia Brown Trust et al.” Attached to the abatement

¹ According to the recorded deeds, the “owner” was Donald Brady as Trustee of the Chaia Brown Trust from 1984 until December, 2006, then The Wilmot House, LLC (Lois Nellis as “sole member” and Donald Brady as “sole manager” and then in May 2007 to the Chaia Brown Trust, Helen Chaia, Trustee.

application is a letter signed by “Donald E. Brady (himself) + (attorney),” which states the basis for his request as “a reduction of 80% in amount of the annual tax bill amount assessed... due to poverty of said Donald E. Brady (Life Tenant of the said property) and designed to replace the 80% rent subsidy) the Town of Wilmot had been paying to the CHAIA BROWN TRUST.”

Board’s Rulings

A threshold issue in this appeal is whether the Petitioner has standing to file an appeal as a “person aggrieved” as stated in RSA 76:16. Under the tax abatement and appeal statutes, a “person aggrieved” is a party who has suffered or will suffer an injury in fact as a result of the tax assessment, based upon the plain and ordinary meaning of this phrase and the overall purpose of these statutes. Appeal of Thermo-Fisher Scientific, Inc., 160 N.H. 670 (2010). Thus, a corporate parent who paid the tax on behalf of a subsidiary who owned the property is a person aggrieved and can file for a tax abatement in its own name. Id. A “person aggrieved” may be a tenant who, though a legally binding lease, assumes responsibility for the payment of real estate taxes and pays them. (See, Appeal of City of Lebanon, 161 N.H. 463 (2010).)

In order to obtain an abatement for grounds other than disproportionate assessment, a taxpayer must demonstrate nothing less than financial hardship resulting in poverty and inability to pay. In Ansara v. City of Nashua, 118 N.H. 879, 881, the supreme court ruled “plaintiffs who claim 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 unreasonable 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. (Citations omitted.)” Id. at 881.

In this instance, the Chaia Brown Trust (not the Petitioner) is the legal owner of the Property and paid the taxes.² The Petitioner testified he “is the owner” of the Property as he has a life estate, although he acknowledged he does not own all of the “sticks in the bundle of rights” associated with fee simple ownership as he cannot legally sell or lease the Property or use it as collateral for a mortgage. The Petitioner’s own appeal form to the Town indicates there are multiple parties that have an ownership interest in the Property, including the Trust and “all members of the Brown family past and/or present at law or in equity.” Without a showing the payment of property taxes places a hardship on all owners of the Property, the Town did not err in denying the abatement.

For all of these reasons, the appeal is denied.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively “rehearing motion”) 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(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,

² The Petitioner presented three documents during the hearing, including a “Life Estate” from the Chaia Brown Trust to Donald Brady, a “Notice of Lease” from the Chaia Brown Trust to Donald Brady for a period of 40 years and a “Property Lease” from the Chaia Brown Trust to Donald Brady stating “the annual rent for the said lease shall be equal to the real estate taxes assessed against the leased property by the Town of Wilmot, NH”. All three documents are dated March 24, 2007 and signed by Helen B. Chaia, Trustee. See Taxpayer Exhibit Nos. 1, 2 and 3.

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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

Michele E. LeBrun, Chair

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Donald E. Brady, 14 North Wilmot Road, Wilmot, NH 03287, Petitioner; Chairman, Board of Selectmen, Town of Wilmot, PO Box 72, Wilmot, NH 03287; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 7/9/13

Anne M. Stelmach, Clerk