COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

JOYCE M. HURLEY	**v.**	**BOARD OF ASSESSORS OF THE CITY OF QUINCY**

Docket No. F337963

Promulgated:
February 26, 2021

This is an appeal under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the City of Quincy ("assessors" or "appellee") to grant a real estate tax deferral under G.L. c. 59, § 5, cl. Forty-first A ("Clause Forty-first A") for real estate located at 80 Norton Road in the City of Quincy ("subject property") owned by and assessed to the Quincy Realty Trust ("Trust"), Joyce M. Hurley, Trustee ("appellant"), under G.L. c. 59, §§ 11 and 38, for fiscal year 2019 ("fiscal year at issue").

Commissioner DeFrancisco heard this appeal. Chairman Hammond and Commissioners Good, Elliott, and Metzer joined him in the decision for the appellant.

These findings of fact and report are made pursuant to a request by the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.

Joyce M. Hurley, pro se, Trustee of the Trust, for the appellant.

John Rowland, Member of the Board of Assessors, for the appellee.

ATB 2021-65

FINDINGS OF FACT AND REPORT

The issue in the present appeal is whether the assessors properly denied an application for deferral of real estate tax under Clause Forty-first A because the appellant did not file a "mortgage permission" document with the assessors.

On the basis of the testimony and documents submitted into evidence at the hearing of this appeal, the Appellate Tax Board ("Board") found the following facts.

In 2011, the appellant and her husband, Walter Hurley, lifelong residents of the City of Quincy who had occupied the subject property as their home for several decades, applied to the assessors for a deferral of the real estate tax on the subject property. The assessors determined that the appellant and her husband exceeded sixty-five years of age, met the domicile, residency, maximum gross income, and that they met the other requirements under Clause Forty-first A. The assessors therefore allowed the deferral application.

As required under Clause Forty-first A, the appellant and her husband entered into a tax deferral and recovery agreement with the assessors ("Agreement"). Under the Agreement, the assessors agreed that real estate taxes on the subject property would be deferred beginning in fiscal year 2011 until the subject property was either sold or the owners of the property died. For their part, the appellant and her husband agreed that upon either of these

events, they or their heirs would repay the deferred taxes together with four percent interest. In accordance with Clause Forty-first A, a notice of the agreement was recorded in the appropriate Registry of Deeds on May 18, 2011 and the fiscal year 2011 real estate taxes on the subject property were deferred. Some time after entering into the Agreement, the appellant and her husband executed a reverse mortgage with respect to the subject property.

After fiscal year 2011, the appellant was required to file an annual application for deferral that included financial information such as copies of joint income tax returns and social security statements of earnings to establish that the appellant and her husband had gross receipts below the statutory ceiling to qualify for the deferral. For eight consecutive years – from the initial approval in fiscal year 2011 through fiscal year 2018 – the assessors approved the appellant's application and granted deferrals of real estate tax.

In January 2019, the appellant's husband died. Approximately two weeks after the death of the appellant's husband, the assessors' office began contacting the appellant regarding her deferral application for the fiscal year at issue, which was not due until April 1, 2019. In a series of telephone and written communications, the assessors requested information from the appellant that they had never before requested in the prior eight years; specifically, the assessors requested evidence that the

appellant was the trustee of the Trust and that the holder of the reverse mortgage on the subject property granted its permission to the deferral of real estate taxes for the fiscal year at issue.

The appellant timely filed her application for deferral of her real estate tax for the fiscal year at issue on March 13, 2019. The assessors denied the application on March 26, 2019. The denial notice indicated that the reason for the denial was "Not a Trustee." The appellant then provided a copy of the Trust instrument to the assessors showing that she was the successor trustee of the Trust upon the death of her husband and the assessors have conceded the issue.

However, the assessors reconsidered the abatement application and voted to deny the application a second time, on April 9, 2019. The reason stated on this second denial notice was "No Mortgage Permission." The appellant timely filed her appeal with the Board on May 28, 2019. On this basis, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The appellant testified that she had never been asked to produce a permission letter from the mortgagee holding the reverse mortgage on the subject property as part of her annual deferral application process. She was certain that the mortgagee was aware of the deferrals because she had faxed to it copies of the assessors' property tax deferral certificates for previous fiscal years. When she requested that the mortgagee produce a permission

letter to satisfy the assessors' request, the mortgagee professed no knowledge of such a requirement and was unwilling to draft such a letter.

As a result, the assessors denied the appellant's deferral application for the fiscal year at issue on April 9, 2019 and determined that the first three quarterly payments of real estate tax – due on August 1, 2018, November 1, 2018, and February 1, 2019 – were delinquent. Moreover, without prior notice to or the permission of the appellant, the assessors contacted the appellant's mortgagee directly to inform it that the appellant's real estate taxes were no longer deferred and that the assessors considered all deferred taxes to be due and payable.

At the demand of the assessors, the appellant's mortgagee drew down mortgage proceeds that had been allocated for the appellant's living expenses and paid the real estate taxes on the subject property for the fiscal year at issue, including the fourth-quarter payment, as well as the taxes for the eight prior fiscal years that had been deferred. These sums included a fourteen percent delinquency interest rate for the real estate taxes for the fiscal year at issue and a four percent rate for the prior eight years' deferred taxes as provided in the Agreement.

As a result of the assessors' denial of the appellant's deferral application and their demand for payment of the prior eight years' deferred taxes, the appellant, a widow in her 80s who

relied on the reverse mortgage proceeds for her living expenses, was forced to sell the subject property, which was her family homestead for approximately fifty years where she and her late husband raised their family. At the time of the hearing of this appeal, the sale of the subject property was scheduled to close within approximately two weeks.

On the basis of the foregoing, the Board found and ruled that the assessors had no basis for denying the appellant's deferral application. First, as will be detailed in the following Opinion, there is no requirement in Clause Forty-first A that a "mortgagee permission letter" accompany the appellant's application. The only mortgagee approval of a deferral agreement that is necessary under Clause Forty-first A is a "written prior approval" for a deferral agreement, "which written approval shall be made a part of such agreement." In the present case, the Agreement was executed in May of 2011 prior to the execution of the reverse mortgage and, therefore, no prior approval was needed. More importantly, there is no requirement for a post-agreement "mortgagee permission letter" or approval to be created or filed eight years later in 2019.

Further, there is nothing in Clause Forty-first A or the Agreement that allows the assessors to accelerate the payment of the taxes deferred between 2011 and 2018. Both the statute and the Agreement provide that only two events trigger a repayment

obligation: the sale of the subject property or the death of both the appellant and her husband. Neither event occurred when the assessors demanded payment of the fiscal year 2011 through 2018 taxes.

On the basis of the foregoing, the Board ruled that the assessors' denial of the 2019 deferral application and demand for repayment of deferred taxes were erroneous. The question remained, however, as to the appropriate remedy in this appeal. Because the sale of the subject property was scheduled to take place approximately two weeks from the hearing date, it would have no practical effect to order the repayment to the appellant of the deferred taxes paid, since they would have to be repaid at the closing pursuant to Clause Forty-first A and the Agreement. Further, the four percent interest charge that the mortgagee paid on demand from the assessors was the same interest that the appellant would have had to pay if the deferred taxes were paid at the closing. From a strictly financial viewpoint, the prepayment of the deferred taxes was essentially the same amount that would have been due at the closing. The Board recognizes that the most significant harm caused by the assessors' actions was forcing the appellant to sell her home before she intended to, in contravention of the purpose of Clause Forty-first A, but the Board is without jurisdiction to remedy that harm.

However, the assessors' erroneous denial of the appellant's deferral application resulted in a tax liability in excess of what she owed for the fiscal year at issue. Had the assessors properly granted the appellant's deferral application, her tax obligation would have been deferred at an interest rate of four percent. Instead, the assessors erroneously determined that the taxes were delinquent and imputed a rate of fourteen percent on her real estate tax for the fiscal year at issue. The Board therefore issued a decision for the appellant and granted an abatement in the amount of $848.63, the difference between what the appellant was charged for the fiscal year at issue and what was due under Clause Forty-first A and the Agreement, computed as follows:

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total
Tax	$2,208.33	$2,208.32	$2,843.68	$2,843.68	$10,104.01
Paid	10/30/19	10/30/19	10/30/19	10/30/19	10/30/19
Interest Charged	$385.40	$307.47	$295.59	$198.51	$1,186.97
Interest Due	$109.87	$87.61	$84.51	$56.41	$338.34
Abatement	$275.53	$219.86	$211.14	$142.10	$848.63

OPINION

Clause Forty-first A provides an exemption from the present obligation to pay real estate tax to a taxpayer who: (1) is sixty-five years of age or older; (2) has been domiciled in the commonwealth for the preceding ten years; (3) has owned and occupied property in the commonwealth for five years; and (4) if married, has gross receipts not in excess of $20,000 or such other

amount as a city or town may approve. At all material times, the appellant met all four of these requirements and the assessors did not argue otherwise.

Clause Forty-first A goes on to provide that a taxpayer like the appellant who meets these four requirements may apply to the assessors for an exemption of the present obligation to pay real estate tax and the "board of assessors shall grant such exemption provided that the owner or owners of such real property have entered into a tax deferral and recovery agreement with said board of assessors on behalf of the city or town." The assessors entered into a tax deferral and recovery agreement with the appellant and her husband, and notice of the Agreement was recorded in the appropriate registry of deeds in accordance with Clause Forty-first A on May 18, 2011.

Any such agreement must contain certain provisions under Clause Forty-first A. Two of those provisions relate to payment of the deferred taxes, which must be paid: (1) prior to any transfer of the property covered by the agreement; and (2) upon the death of the owner of the property covered by the agreement. There is no question that the Agreement contained these provisions.

The assessors' sole reason for denying the appellant's application for deferral of real estate taxes for the fiscal year at issue was that the appellant did not provide a current permission letter from the appellant's mortgagee. The assessors

took this action apparently relying on the following provision that Clause Forty-first A requires to be contained in a deferral agreement: "that any joint owner or mortgagee holding a mortgage on such property ***has given written prior approval for such agreement***, which written approval shall be made a part of the agreement." (emphasis added).

This requirement, by its plain terms, applies only to mortgagees who hold a mortgage prior to the execution of a deferral agreement, as any written mortgagee approval is to be obtained prior to the deferral agreement. There is no annual requirement that must be satisfied to qualify for the deferral. The Agreement in the present appeal has been in place since 2011, and when it was executed, no approval was required from the appellant's reverse mortgage mortgagee because the reverse mortgage did not yet exist. Indeed, the assessors recognized the Agreement for eight consecutive years from fiscal year 2011 through and including fiscal year 2018. There is simply no basis for the assessors' imposition of a new requirement for the fiscal year at issue that is directly contrary to the language of Clause Forty-first A.

The assessors' unwarranted actions caused a cascade of events that had a detrimental impact on the appellant. The assessors improperly denied the appellant's deferral application and, without the appellant's consent or knowledge, inappropriately demanded payment of deferred and purportedly late taxes for the

fiscal year at issue. These actions restricted the appellant's access to reverse mortgage proceeds that she needed for living expenses and forced her to sell her homestead long before she had intended. As previously noted, the Board is without jurisdiction to provide a remedy for these actions of the assessors.

The Board, however, does have jurisdiction to determine the proper amount due from the appellant for the fiscal year at issue, which should have been computed at the rate of four percent and not fourteen percent. Accordingly, the Board issued a decision for the appellant and granted an abatement in the amount of $848.63, plus statutory interest pursuant to G.L. c. 59, § 69.

THE APPELLATE TAX BOARD

By: /S/ Thomas W. Hammond
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: /S/ William J. Doherty
Clerk of the Board