

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: LYCOMING COUNTY TAX : NO. 12 – 02,141

CLAIM BUREAU

:

: Petition to Set Aside Upset Tax Sale of

: September 12, 2012

OPINION AND ORDER

Before the court is the Petition to Set Aside Upset Tax Sale of September 12, 2012, filed by Denise E. Taylor on February 14, 2013. A hearing thereon was held April 25, 2013.

At the Upset Tax Sale held on September 12, 2012, the Tax Claim Bureau sold the property located at 123 South Broad Street, Jersey Shore, Pennsylvania, otherwise known as parcel 20-010-353, the record owner of which is Denise E. Taylor. In the instant petition, Ms. Taylor contends the tax sale must be set aside for defective notice, specifically arguing that although the property was posted and notices of the sale were mailed to her,¹ she was not personally served with notice at least ten days prior to the sale in accordance with Section 601(a)(3) of the Real Estate Tax Sale Law.²

Section 601(a)(3) provides as follows:

(3) No owner-occupied property may be sold unless the bureau has given the owner occupant written notice of such sale at least ten (10) days prior to the date of actual sale by personal service by the sheriff or his deputy or person deputized by the sheriff for this purpose unless the county commissioners, by resolution, appoint a person or persons to make all personal services required by this clause. The sheriff or his deputy shall make a return of service to the bureau, or

¹ Ms. Taylor testified that she did not receive the mailed notices and did not see the notice posted on her door. In light of the case law requiring the sale to be set aside for lack of personal service, the court need not determine the credibility of this testimony.

² At the hearing, the Tax Claim Bureau admitted that there had been no personal service.

the persons appointed by the county commissioners in lieu of the sheriff or his deputy shall file with the bureau written proof of service, setting forth the name of the person served, the date and time and place of service, and attach a copy of the notice which was served. If such personal notice cannot be served within twenty-five (25) days of the request by the bureau to make such personal service, the bureau may petition the court of common pleas to waive the requirement of personal notice for good cause shown. Personal service of notice on one of the owners shall be deemed personal service on all owners.

72 P.S. § 5860.601(a)(3). In McKelvey v. Westmoreland Tax Claim Bureau, 983 A.2d 1271 (Pa. Commw. 2009), the Commonwealth Court held that the plain language of this section requires personal service on the owner-occupant even if that person had actual notice of the sale. Therefore, since here the Tax Claim Bureau admits that personal service was not made on Ms. Taylor, her petition must be granted and the sale must be set aside.

ORDER

AND NOW, this 7th day of May 2013, for the foregoing reasons, the Petition to Set Aside Upset Tax Sale of September 12, 2012, filed by Denise E. Taylor on February 14, 2013, is hereby GRANTED. As to Parcel 20-010-353, otherwise known as 123 South Broad Street, Jersey Shore, Lycoming County, Pennsylvania, the tax sale of September 12, 2012, is hereby set aside.

cc: Peter Burchanowski, Esq.
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Gary Weber, Esq.
Hon. Dudley Anderson

BY THE COURT,

Dudley N. Anderson, Judge