

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 11, 2013

**OPINION AND ORDER**

Before the court is the Petition to Set Aside Upset Tax Sale of September 11, 2013, filed by Jeremy B. Vonstein on November 1, 2013. A hearing thereon was held December 19, 2013. At the conclusion of the hearing, Petitioner requested the opportunity to file a brief and was provided until December 27, 2013, to do so. Petitioner did not file a brief.

At the Upset Tax Sale held on September 11, 2013, the Tax Claim Bureau sold the property located at 485 Mountain Road, Montoursville, Pennsylvania, otherwise known as parcel 56-2920-012405-000, the record owner of which is Jeremy B. Vonstein. Mr. Vonstein contends the tax sale must be set aside for defective notice.

The notice required, as it applies in this case, is set forth in the Real Estate Tax Sale Law, as follows:

**§ 5860.602. Notice of sale**

(a) At least thirty (30) days prior to any scheduled sale the bureau shall give notice thereof, not less than once in two (2) newspapers of general circulation in the county, if so many are published therein, and once in the legal journal, if any, designated by the court for the publication of legal notices. Such notice shall set forth (1) the purposes of such sale, (2) the time of such sale, (3) the place of such sale, (4) the terms of the sale including the approximate upset price, (5) the descriptions of the properties to be sold as stated in the claims

entered and the name of the owner.

...

(e) In addition to such publications, similar notice of the sale shall also be given by the bureau as follows:

(1) At least thirty (30) days before the date of the sale, by United States certified mail, restricted delivery, return receipt requested, postage prepaid, to each owner as defined by this act.

(2) If return receipt is not received from each owner pursuant to the provisions of clause (1), then, at least ten (10) days before the date of the sale, similar notice of the sale shall be given to each owner who failed to acknowledge the first notice by United States first class mail, proof of mailing, at his last known post office address by virtue of the knowledge and information possessed by the bureau, by the tax collector for the taxing district making the return and by the county office responsible for assessments and revisions of taxes. It shall be the duty of the bureau to determine the last post office address known to said collector and county assessment office.

(3) Each property scheduled for sale shall be posted at least ten (10) days prior to the sale.

72 P.S. Section 5860.602.

The Bureau offered the following evidence:

- 1) The notice required by Subsection (e)(1) was sent certified mail, return receipt requested, restricted delivery, on or about June 4, 2013, to the address on file with the collections office.
- 2) Since that notice was returned as undeliverable another notice was sent August 13, 2013, to the address on file with the assessment office (which was the same as the address to which the first notice had been sent).
- 3) After that notice was returned as undeliverable, the Collections Office searched the records of the Costs and Fines Office and found a different

address for Mr. Vonstein. The August 13, 2013, notice was re-sent to this address on August 23, 2013. This notice was received.

- 4) The posting of the property required by Subsection (e)(3) was accomplished on June 28, 2013.

The court finds that such notice complies with the requirements of the Tax Sale Law.<sup>1</sup>

Petitioner offered evidence that although the notice may have been delivered to his residence before the September 11 tax sale, he had not been there for a period of time and the mail was unopened, and thus he argues that he did not have actual notice of the sale. Such lack of receipt does not invalidate the sale, however. *See In re Upset Tax Sale Held 11/10/97*, 784 A.2d 834 (Pa. Commw. 2001)(where county tax claim bureau complied with all notice provisions, fact that notice was not actually received will not defeat the sale).

Petitioner also argues that since the first 10-day notice was mailed to the same incorrect address as the original notice, this somehow makes it defective. Even were the notice defective, however,<sup>2</sup> the fact that a second 10-day notice was mailed to the correct address cures any defect. *See In re Upset Price Tax Sale of September 9, 1985*, 561 A.2d 1301 (Pa. Commw. 1989)(properly addressed notice of tax sale sent ten days before date of sale has effect of curing any defect in a prior notice).

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<sup>1</sup> No evidence regarding publication of the notice as required by § 5860.602 (a) was presented; Petitioner raised objection to only the mailed notices, however.

<sup>2</sup> Since the notice was mailed to the address on file with the assessment office, the court does not believe the notice was defective. See § 5860.602(e)(2)( “It shall be the duty of the bureau to determine the last post office address known to said collector and *county assessment office*.”)(emphasis added). *See also Difenderfer v. Carbon County Tax Claim Bureau*, 789 A.2d 366 (Pa. Commw. 2001)(sale confirmed where bureau mailed a properly addressed notification to the last known address of the person liable for paying the taxes).

As the Tax Claim Bureau complied with the notice provisions of the Tax Sale Law, Petitioner has offered no basis upon which to set aside the sale.

Accordingly, the court enters the following:

**ORDER**

AND NOW, this 7<sup>th</sup> day of January 2014, for the foregoing reasons, the Petition to Set Aside Upset Tax Sale of September 11, 2013 is hereby denied. As to Parcel 56-2920-012405-000, otherwise known as 485 Mountain Road, Montoursville, Pennsylvania, the tax sale of September 11, 2013, is hereby confirmed absolutely.

BY THE COURT

Dudley N. Anderson, Judge

cc: Peter Burchanowski, Esq.  
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Hon. Dudley Anderson