

**ANDREW NOVAK,**  
*Plaintiff*

No. 17 – 1, 373

v.

**LYCOMING TAX CLAIM BUREAU,**  
*Defendants*

PETITION TO SET ASIDE TAX SALE

**OPINION AND ORDER**

Before the court is Plaintiff's Petition to Set Aside a Tax Sale of his property, identified as tax parcel 49-3650-0109, with an address of 200 Spring Road, Jersey Shore, Pennsylvania, ("Property") that was sold at an upset tax sale on September 13, 2017. A hearing was held on December 22, 2017 and post hearing submissions were received on January 4<sup>th</sup> and 5<sup>th</sup> of 2018. Upon consideration of the testimony, exhibits, submissions and argument, the petition is granted.

**FINDINGS OF FACT.**

1. The Property was sold at an upset tax sale on September 13, 2017.
2. The Property was owned by husband and wife, Marie and Andrew Novak, whose correct mailing address is 555 Meadowbrook Ave, Ambler, Pennsylvania.
3. Nobody lives at the Property.
4. Thomas Heap has been the Director of the Lycoming County Tax Claim Bureau for the past twenty three years.
5. Mr. Heap confirmed that all three methods of notice required by 72 P.S. § 5860.602 were properly completed.
6. Properties get exposed for sale if taxes are unpaid for two years prior to current year unless there is no payment plan.
7. In July of 2016, Mr. Novak entered a payment agreement to avoid sale when his property was exposed to tax sale for 2014, 2015 and 2016 delinquent taxes.

8. After the initial payment, Mr. Novak failed to make further payment.
9. In September 2016, the Tax Claim Bureau sent notice of default and eligibility for next scheduled upset tax sale.
10. After default, the Tax Claim Bureau listed the property for sale and sent notice by certified mail to both owners listed at 555 Meadowbrook, Amber, Pennsylvania.
11. This was the last known address provided to the Tax Claim Bureau and in fact was the actual correct mailing address for both of them.
12. The certified mail sent to both of them was returned unclaimed by the postal service with a notation that it was unable to forward.
13. A warning notice sent of tax sale that was sent on August 14, 2017 was not returned from the Amber, PA address.
14. Mr. Heap credibly testified that the required ten day notices were sent out 30 days in advance and were not returned by the postal service, the property was posted on June 12, 2017, the advertising requirements were met, and proof of publication was provided as part of the confirmation of the sale.
15. No evidence was presented that the Tax Claim Bureau made efforts to locate Mr. Novak.
16. The Tax Claim Bureau had no reason to believe they did not have a good address for Mr. Novak.
17. All of the notices sent out and all tax bills wen to the same address and were not returned by the postal service.
18. Mr. Novak admits that the address used by the Tax Claim Office is his correct mailing address.
19. Mr. Novak knew about the delinquency and the need for payment to avoid a future sale.

20. Mr. Novak had the means and intent to pay in the fall.

21. Mr. Novak was aware of the procedures for delinquency and his usual practice is to pay “one hunk” to get him out of a hole.

#### **CONCLUSIONS OF LAW**

1. The Tax Claim Bureau sent notices in the manner mandated by 72 P.S. § 5860.602.
2. However, the Tax Claim Bureau was required by 72 P.S. § 5860.607 to make reasonable efforts to locate Mr. Novak when the certified mail was returned unclaimed by Mr. Novak, even though the Tax Claim Bureau had Mr. Novak’s correct mailing address and Mr. Novak was aware of the delinquency.
3. No evidence was presented that the Tax Claim Bureau made any effort to locate Mr. Novak.

#### **DISCUSSION.**

Plaintiff contends that the tax sale should be set aside because the Tax Claim Bureau failed to comply with the additional notification efforts mandated by 72 P.S. § 5860.607a, triggered by unclaimed certified mail.

Although this Court doubts the wisdom of the decisions, our Commonwealth Court has held numerous times that the tax claim bureau must make reasonable efforts to find the taxpayer whenever the certified mailing is unclaimed. *See, Grudsky v. Lackawanna Cty. Tax Claim Bureau (In re Upset Tax Sale of September 29)*, 163 A.3d 1072 (Pa. Cmwlth. 2017); *Grove v. Franklin Cty. Tax Claim Bureau*, 705 A.2d 162 (Pa. Cmwlth. 1997), *Petition for Allowance of Appeal Denied*, *Grove v. Franklin Cty. Tax Claim Bureau*, 558 Pa. 623, 737 A.2d 745 (Pa. 1999); *Maya v. Cty. of Erie Tax Claim Bureau*, 59 A.3d 50 (Pa. Cmwlth. 2013);

This is required even when the correct address as in this case was used. Here the Bureau documented no efforts.

This seems absurd in the context of this case and enables delinquent taxpayers who know they are delinquent with their taxes like Mr. Novak to evade responsibility. Here Mr. Novak had signed and breached a repayment agreement utilizing his Amber, Pennsylvania address. He owned other property in the county via a LLC, knew his tax was due in the fall, and neglected to read his mail or have it forward to another address. On the witness stand, Mr. Novak admitted the Bureau used his correct address and he has the money to pay.

However, the Court is compelled by decisions cited above to grant Mr. Novak's petition. Accordingly, the Court enters the following Order.

### **ORDER**

AND NOW, this 25<sup>th</sup> day of **January, 2018**, for the reasons stated, it is **ORDERED** and **DIRECTED** that Plaintiff's complaint to set aside the tax sale is **GRANTED**; the September 13, 2017 tax sale of parcel 49-3650-0109A is set aside and vacated. Petitioner shall fully pay his delinquent taxes within thirty (30) days. The parties shall pay their own costs and attorney fees.<sup>1</sup>

BY THE COURT:

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Richard A. Gray, J.

c: Mark S. Drier, Esquire (for Petitioner Novak)  
David Wilk, Esquire (for Tax Claim Bureau)  
O. Kenneth Shaffer, 2688 Route 4008, Forksville, PA 18616.

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<sup>1</sup> Petitioner cited no statutory authority for an award of attorney's fees and the Court finds no reason to award them. *See*, 42 Pa.C.S. § 2503.