

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
TAX DIVISION

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Edward J. Donahue, III )  
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Petitioner, )  
 )  
v. )  
 )  
District of Columbia )  
 )  
Respondent. )  
 )

SUPERIOR COURT OF THE  
DISTRICT OF COLUMBIA  
TAX DIVISION

Tax Docket No. 6349-95

MEMORANDUM OPINION AND ORDER

Facts

The facts in this case are undisputed. The petitioner is the owner and resident of a condominium located at 3101 New Mexico Avenue, N.W., Unit 243 (Square 1601, Lot 3592). He is also the owner of the adjacent condominium located at 3101 New Mexico Avenue, N.W., Unit 245 (Square 1601, Lot 3594).

In 1992, the petitioner submitted a homestead deduction application for both condominium units, on which he provided sworn statements of eligibility for this deduction. Although the petitioner previously indicated an intent to combine the two units into one residence, the two units remained separate at the time of his application for the homestead deduction and at all times thereafter. The petitioner subsequently received the \$30,000 homestead deduction on each unit for tax years 1992 through 1994.

Upon a routine audit in 1994, the respondent determined that the petitioner was never eligible for a homestead deduction on unit 245, because the deduction is only available for the property the

owner occupies as his residence. On September 30, 1994, the respondent notified the petitioner of its findings and reversal of the homestead deductions. It also provided an adjusted real property tax bill for tax years 1992 to 1994 in the amount of \$6,245.45, including a 10% penalty and 1% monthly interest.

On March 29, 1995, the petitioner filed this suit seeking to waive the collection of the adjusted tax, penalty and interest. In response, the respondent filed an unopposed motion for summary judgment on May 30, 1995.

### Analysis

Summary judgment is only appropriate when there is no genuine issue as to any material fact and when the movant is entitled to a judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Musa v. Continental Ins. Co., 644 A.2d 999 (D.C. 1994). In the instant case, no genuine issue of material fact exists. Thus, the question becomes whether the respondent is entitled to summary judgment as a matter of law.

D.C. Code § 47-850 (Repl. 1990 & Supp. 1994) sets forth the provisions governing the homestead deduction. To be eligible for the \$30,000 deduction from the estimated market value, the property must be an owner-occupied, single dwelling unit owned as a condominium, and used exclusively for nontransient residential dwelling purposes. D.C. Code § 47-850 (c)(1) (Supp. 1994). Eligibility is determined according to the actual use of the property on the first day of each tax year. D.C. Code § 47-850

(e) (2) (Supp. 1994).

Based on the foregoing eligibility requirements, 3101 New Mexico Avenue, N.W., Unit 245 (Square 1601, Lot 3594) was not eligible for the homestead deduction on the first day of tax years 1992 through 1994, because it was neither owner-occupied nor was it a combined single dwelling unit with Unit 243. D.C. Code § 47-850 (e) (6) (B), which mandates the reversal of homestead deduction when the eligibility requirements are not met, requires that Unit 245 be reclassified and taxed at the appropriate rate for that class for tax years 1992 through 1994. The petitioner is thus liable for the adjusted tax on Unit 245.

D.C. Code § 47-850 (e) (6) (B) specifies the penalties for failure to notify the Mayor of the termination of eligibility. In this case, the petitioner's eligibility did not terminate or discontinue after the homestead deduction was granted. The petitioner was never eligible for the deduction in the first place. D.C. Code § 47-850 does not have a specific penalty for failure to notify the Mayor of the lack of eligibility on the first day of the tax year. The D.C. Code, however, does have a general provision for failure to pay any real property tax within the time prescribed. D.C. Code §§ 47-811 (c) and 47-1509 (Repl. 1990 & Supp. 1994) impose, in addition to the tax amount, a penalty of 10% of the unpaid tax amount and 1% monthly interest on such unpaid amount until the tax is paid.


The petitioner, having applied and received the homestead deductions for which he was ineligible, failed to pay the proper

tax amount within the time prescribed. Although the homestead deduction application clearly states the eligibility requirements, the petitioner, who was ineligible at the time of his application, proceeded to file his application. Therefore, the general provisions for failure to pay any real property taxes apply to this case. The respondent is thus entitled to summary judgment as a matter of law.

Conclusion

Upon consideration of Respondent's unopposed written Motion for Summary Judgment, the applicable law, and the written record herein, it is by this Court, this 18th of July, 1995,

**ORDERED** that Respondent's motion be and hereby is GRANTED.

  
JUDGE WENDELL P. GARDNER, JR.  
Signed in Chambers

cc: Melbra J. Giles  
Assistant Corporation Counsel, D.C.  
441 4th Street, N.W., 6th Floor  
Washington, D.C. 20001

P. Michael Nagle, Esq.  
Nagle & Associates  
10480 Little Patuxent Parkway, Suite 650  
Columbia, MD 21044

