

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

ALICE ASMAR,)
)
Plaintiff,) TC-MD 111212C
)
v.)
)
DEPARTMENT OF REVENUE,)
State of Oregon)
)
Defendant.) **DECISION OF DISMISSAL**

This matter is before the court on Defendant’s Motion to Dismiss (Motion), filed April 11, 2012, and its Answer, filed December 5, 2011, requesting that the court “uphold the Department of Revenue’s Notice of Account Inactivation[,]” dated September 21, 2011. (Def’s Answer at 2.)

A case management conference was held on March 19, 2012. Plaintiff appeared on her own behalf. Kathy Stevens appeared on behalf of Defendant. During the conference, Plaintiff’s letter, dated November 14, 2011, was reviewed; it states:

“The house we’re talking about is the house my parents bought in 1958 and lived in it until my father’s death in 1971 and my mother’s death in 2005. * * * While I might not live in the house physically I live in it spiritually. * * * At present I’m thinking about moving back to that house – but as you can imagine an 82 year old living by herself! That wish seems overwhelming.

“When I did rent the house this year, I spent a year finding the right tenants for the house. I finally selected four young students who are highly responsible and are attending art school in Portland.”

In its Motion, Defendant referenced ORS 311.670(1), stating that a “[p]roperty is not eligible for tax deferral under ORS 311.666 to 311.701 unless, at the time a claim is filed and during the period for which deferral is claimed: (a) The property has been the homestead of the individual who files the claim for deferral for at least five years . . .” (Def’s Mot at 1.)

The parties agreed, and the court's Journal Entry, filed March 20, 2012, stated that Plaintiff was to submit a written statement setting forth the reasons she qualified for the Senior Property Tax Deferral Program no later than April 19, 2012. In her letter, dated March 22, 2012, Plaintiff wrote:

“I hereby request that my appeal be adjudicated on the basis of my original application of February 9, 2011.

“Your attempt to deceive an 83 year old woman is not worthy of the state of Oregon which I love dearly.”

In response, Defendant filed its Motion, stating that “[t]he department received a copy of a letter to the court from Ms. Asmar on March 26, 2012, but the letter does not provide any information regarding her residency or qualification.” (Def's Mot at 1.)

Plaintiff filed an application to defer her property taxes for property identified as Account R307672 (subject property). Based on the information stated in Plaintiff's letter dated November 14, 2011, Plaintiff does not reside in the subject property. Plaintiff rents the subject property to four individuals. ORS 311.670(1)(a) states, in pertinent part, that a “[p]roperty is not eligible for tax deferral under ORS 311.666 to 311.701 unless, at the time a claim is filed and during the period for which deferral is claimed: (a) The property has been the homestead of the individual or individuals who file the claim for deferral for at least five years preceding April 15 of the year in which the claim is filed.”^{1,2} Plaintiff has presented no evidence that the subject property has been her “homestead * * * for at least five years preceding April 15 of the year in which the claim is filed.” Plaintiff has stated that she rents the subject property to others and

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¹ All references to the Oregon Revised Statutes (ORS) are to 2011.

² “The amendments to * * * [ORS] 311.670 * * * apply to property tax years beginning on or after July 1, 2011.” Or Laws 2011, ch 723, § 24.

does not “physically” live in the subject property. Plaintiff has not carried her burden of proof.

Now, therefore,

IT IS THE DECISION OF THIS COURT that this matter be dismissed.

Dated this ____ day of May 2012.

JILL A. TANNER
PRESIDING MAGISTRATE

If you want to appeal this Decision, file a Complaint in the Regular Division of the Oregon Tax Court, by mailing to: 1163 State Street, Salem, OR 97301-2563; or by hand delivery to: Fourth Floor, 1241 State Street, Salem, OR.

Your Complaint must be submitted within 60 days after the date of the Decision or this Decision becomes final and cannot be changed.

This document was signed by Presiding Magistrate Jill A. Tanner on May 1, 2012. The Court filed and entered this document on May 1, 2012.