

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION

IN RE: OBJECTIONS TO TAX CLAIM :
BUREAU'S SALES OF REAL ESTATE FOR :
UNPAID TAXES LEVIED FOR THE :
YEAR 2013 :
 :
ROBERT J. SHUBECK, :
Petitioner :
vs. : No. 15-2738
CARBON COUNTY TAX CLAIM BUREAU, :
Respondent :

Civil Law - Real Estate Tax Sale Law - Notice Provisions -
Compliance with Due Process - Objections to Tax
Upset Sale - Defective Notice - Conspicuous Posting
of Property Required - Additional Notification
Efforts Required When Certified Mail Notice of Sale
Returned Unclaimed - Research of Public Records

1. Prior to the sale of real estate for delinquent real estate taxes, the Real Estate Tax Sale Law ("Act"), 72 P.S. §§ 5860.101-5860.803, requires that reasonable efforts be undertaken by the tax claim bureau to provide actual notice of the pending sale to a property owner including, at a minimum, that notice be given (1) by certified mail, and, if unclaimed, by first class mail following further investigation of the owner's last known address; (2) by publication; and (3) by posting of the property.
2. The notice provisions of the Act are designed to guard against the deprivation of property without due process. Accordingly, absent strict compliance with the Act's notice requirements, a tax sale of the property is invalid and any purported transfer of title by the tax claim bureau will be set aside.
3. Once objections to a tax sale are filed, the burden shifts to the tax claim bureau to prove that it complied with all statutory notice provisions and applied common sense business practices in ascertaining proper addresses to which to send notice of the tax sale before the notice of tax sale is mailed to a property's owner.
4. Notice by posting requires that conspicuous posting of the impending sale of the property for delinquent real estate taxes be made at least ten days prior to the sale. The type and manner of posting must be such as to be reasonably

likely to inform the taxpayer and public of the intended sale, and be securely attached to the property.

5. Posting the property for tax sale serves two purposes: (1) to provide notice to the owner and others who are likely to notify the owner of the sale; and (2) to provide notice to the public generally so as to encourage competitive bidding at the tax sale in order to obtain the best price at the time of the sale.
6. Because of the dual purpose of posting, defective posting of the property, even if the owner has actual notice of the sale, will often invalidate a tax sale.
7. The tax claim bureau's posting of the property which consisted of vacant land covered with weeds and bushes by making a tear in the paper notice of sale and slipping this onto a weed was neither likely to inform the owner or the public at large of the intended tax sale, or securely attached to the property, and, therefore, was defective under the Act.
8. Notice of a tax sale by mail requires that written notice of the scheduled tax sale of the property be given to the owner at least thirty days before the date of sale by certified mail, restricted delivery, return receipt requested, addressed to the owner's last known address. In the event this notice is returned to the tax claim bureau unclaimed, or under circumstances indicating it has not been received by the owner, then, at least ten days before the date of sale, Section 602 of the Act requires a second mailing of the notice of sale to the owner by United States first class mail to the owner's last known address after first reviewing and examining the records and information possessed and maintained by the tax claim bureau, by the tax collector for the taxing district making the return of unpaid taxes, and by the county office responsible for assessments and revisions of taxes.
9. In the case of an unclaimed notice of sale sent by certified mail, in addition to the review and examination of information in those offices required by Section 602, the tax claim bureau is required by Section 607.1(a) to exercise reasonable efforts to discover the whereabouts of the owner. Such efforts must include, but are not necessarily restricted to, a search of current telephone directories for the county, and of the dockets and indices of the county tax assessment office, recorder of deeds office and prothonotary's office. The making and the results of these additional notification efforts are

required to be documented and maintained by the tax claim bureau in the property file.

10. The requirements of due process require the tax claim bureau to conduct a reasonable investigation to ascertain the identity and whereabouts of the record owner of the property subject to an upset sale for purposes of providing notice to that owner. Consequently, not only must the offices and sources of information required to be searched be reasonably searched, but such search is not necessarily limited to those offices and those sources of information specifically identified in the Act since due process requires that a "reasonable search" be conducted, and the Act sets forth only certain minimum efforts to be undertaken.
11. In this case, the tax claim bureau failed to meet its burden that it complied with the additional notification efforts required by Section 607.1(a) to locate and provide actual notice to the owner of the impending tax sale where it did not document the nature or results of its search of the recorder of deeds records; its search of the prothonotary's records failed to ascertain that the address to which the bureau mailed notice of the tax sale, and where the owner had formerly resided, was in foreclosure and that service of the complaint in foreclosure had been made on the owner at his place of employment; and failed to contact the owner's father whose first and last name was the same as the owner's, and whose name was listed in the local telephone directories, because the father's middle initial either was not provided in the directory or was different from that of the owner's.

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Michael S. Greek, Esquire Counsel for Petitioner
Robert S. Frycklund, Esquire Counsel for Respondent

MEMORANDUM OPINION

Nanovic, P.J. - August 17, 2016

By order dated May 31, 2016, we concluded the Carbon County Tax Claim Bureau (the "Bureau") had failed to comply with the notice provisions of the Real Estate Tax Sale Law and set aside the tax sale of property ("Property") which had been owned by Robert J. Shubeck ("Shubeck"), the record owner at the time of sale. The Bureau appeals from this order.

Procedural and Factual Background

On September 25, 2015, the Bureau sold Shubeck's property at a tax upset sale for nonpayment of unpaid 2013 borough and county taxes. (N.T., p.8). The Property is a vacant lot - approximately 30 to 50 feet wide and 100 feet deep - with no improvements. (N.T., pp.35, 47). The Property is located at 42 West Mill Street, Nesquehoning, Carbon County, Pennsylvania, and bears a property record card number of 105-B1-42-Q15.02.

[FN-34-16]

On April 1, 2014, the Bureau sent Shubeck notice of the return and claim for the 2013 unpaid real estate taxes owed on the Property by certified mail, return receipt requested. (County Exhibit No. 1, Notice of Return and Claim). Notice of the scheduled tax sale of the Property for the unpaid 2013 taxes was given by the Bureau to Shubeck on June 3, 2015, by certified mail, restricted delivery, return receipt requested. (County Exhibit No. 3, Notice of Sale). Both mailings were returned to the Bureau as unclaimed after delivery was attempted by the United States Postal Service. (N.T., pp.9, 11).

In addition to the certified mailings, the Bureau sent Shubeck two separate reminder letters of the delinquency by first-class mail, postage prepaid, on November 5, 2014, and February 2, 2015. (Court Exhibit Nos. 1 and 2). Each of these courtesy notices advised Shubeck that the 2013 taxes must be paid by June 30, 2015, to avoid upset tax sale costs and advertisement and warned that if the taxes were not paid, the Property would be sold to collect the amount owed. Neither of these courtesy letters contained a date for the tax sale.

A third notice was also sent by the Bureau to Shubeck by first-class mail, postage prepaid, on August 27, 2015. (N.T., pp.12-13; County Exhibit No.4, Ten-Day Sale Notice). This notice of public tax sale advised Shubeck of the date of the sale, September 25, 2015, and notified Shubeck that the Property

would not be sold if the estimated upset price disclosed in the notice, \$306.28, was paid prior to the day of sale.

All of the mailed notices identified in the preceding paragraphs were addressed to Shubeck at 108 West Mill Street, Nesquehoning Pennsylvania. With the exception of the reminder letter dated February 2, 2015, Shubeck denied receiving any of this mail. (N.T., pp.53-55). As to the February 2, 2015 notice, Shubeck testified that after receiving this letter he telephoned the Bureau's office and spoke with a representative in the office, that he explained his intent to make payment and was assured he had time to do so, and that he left his cell phone number with the person he spoke to in the event they needed to contact him and was told it would be kept on file. (N.T., pp.41-43).

In explaining further why he had not received any of the other notices sent to the 108 West Mill Street address, Shubeck testified he had been involved in a bitter divorce and for about a year had not been living at this location. (N.T., p.39). Instead, he had been living with his parents at a separate address in Nesquehoning, but occasionally visited his former home to check the mail, which was also checked by his wife who did not communicate with him. (N.T., pp.38-43). Shubeck further testified that the residence at 108 West Mill Street was in foreclosure, that he had been served with the complaint in

the foreclosure proceedings by the Carbon County Sheriff's Office at his place of employment, and that what mail he did pick-up at 108 West Mill Street was mostly related to the foreclosure proceedings. (N.T., pp.39-40, 43).

Renee Roberts, the Director for the Bureau, testified that upon return of the unclaimed notice of public sale sent to Shubeck by certified mail on June 3, 2015, the Bureau undertook additional efforts to determine Shubeck's current address for notification purposes. (N.T., pp.11-12). According to the Director, in addition to examining the records it maintained, the records in the Carbon County Tax Assessment and Prothonotary's Offices were checked, the local and county telephone directories were examined, and the tax collector was contacted. (N.T., p.12). In providing this testimony, the Director referred to and relied upon the second page of County Exhibit No.3, a document entitled "ADDITIONAL NOTIFICATION EFFORTS - Upset Sale: September 25, 2015." No other address for Shubeck was discovered from this search.

The Director also testified that notice of the tax sale was advertised in *The Times News*, a newspaper of general circulation in Carbon County, and in the *Carbon County Law Journal*. (N.T., pp.15-16). Copies of both of these advertisements were admitted into evidence. (County Exhibits Nos.8 and 9). Finally, the Director testified that upon return of the unclaimed Notice of

Return and Claim mailed to Shubeck on April 1, 2014, this notice was posted on the Property on July 25, 2014 (N.T., p.10); also that the Property was posted with the Notice of Sale on July 17, 2015. (N.T., pp.13-14). Both postings were made by Michael Zavagansky, a maintenance supervisor for Carbon County who also serves as a deputy sheriff in the Carbon County Sheriff's Office, by posting a bush or weed on the Property. (N.T., p.32; County Exhibit Nos. 2 and 5).¹

Shubeck first learned that the Property had been sold when he appeared at the Bureau's Office in October 2015 to pay the taxes due. (N.T., p.46). Upon learning of the sale, he filed objections to the tax sale on October 23, 2015, and amended exceptions and/or objections to the sale on November 9, 2015 (the "Objections"). In these objections, Shubeck claimed, *inter alia*, that the Bureau did not properly post notice of the upset sale on the Property and failed to make reasonable efforts to determine his correct mailing address and to notify him of the upset sale.

A hearing was held on Shubeck's objections on February 29, 2016. By order dated May 31, 2016, we granted the objections and invalidated the September 25, 2015, upset tax sale. The Bureau appealed our decision on June 23, 2016, and filed a

¹ Mr. Zavagansky used the terms "bushes" and "weeds" interchangeably, explaining there is no difference because "they're weeds and they're bushes." (N.T., p.37).

timely Concise Statement of the Matters Complained of on Appeal in response to our Rule 1925(b) order dated June 28, 2016.

DISCUSSION

The Real Estate Tax Sale Law ("Act"), Act of July 7, 1947, P.L. 1368, as amended, 72 P.S. §§ 5860.101-5860.803, requires in Section 602 three forms of notice be provided before a delinquent taxpayer's real estate can be sold for unpaid taxes: by publication, posting and certified mail. 72 P.S. § 5860.602. The notice provisions of the Act are strictly construed and strict compliance with each is required to guard against deprivation of property without due process of law.

"A fundamental requirement of due process is that notice be 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" Famageltto v. County of Erie Tax Claim Bureau, 133 A.3d 337, 345 (Pa.Cmwlth. 2016) (*en banc*) (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)). In the context of tax sales, this requires, at a minimum, that "an owner of land be actually notified by [the tax claim bureau], if reasonably possible, before [the] land is forfeited by the state." Tracy v. County of Chester, Tax Claim Bureau, 489 A.2d 1334, 1339 (Pa. 1985). This standard requires tax claim bureaus "to conduct reasonable investigations to ascertain the identity

and whereabouts of the latest owners of record of property subject to an upset sale for purposes of providing notice to that party.” Farro v. Tax Claim Bureau of Monroe County, 704 A.2d 1137, 1142 (Pa.Cmwlth. 1997). From an evidentiary perspective, once objections to a tax sale are filed averring the statutory notice provisions of the Act were not complied with, the burden shifts to the Bureau to prove that “it complied with all statutory notice provisions and applied common sense business practices in ascertaining proper addresses” where notice of the tax sale may be given. Farro, 704 A.2d at 1142; Rinier v. Tax Claim Bureau of Delaware County, 606 A.2d 635, 641-42 (Pa.Cmwlth. 1992).²

² The Act “impose[s] duties, not on owners, but on the agencies responsible for sales; and such of those duties as relate to the giving of notice to owners of [the] impending sales of their properties must be strictly complied with.” In re Return of Tax Sale by Indiana County, Tax Claim Bureau v. Clawson, 395 A.2d 703, 706 (Pa.Cmwlth. 1979). In In re Consolidated Reports and Return by the Tax Claim Bureau of Northumberland County (Appeal of Shari Neff), the Commonwealth Court stated:

The notice provisions of the [Act] are designed to “guard against deprivation of property without due process.” Donofrio v. Northampton County Tax Claim Bureau, 811 A.2d 1120, 1122 (Pa.Cmwlth. 2002). Because the government actor attempting to take property bears the constitutional duty to provide notice prior to a tax sale, our inquiry into whether adequate notice was provided must focus “not on the alleged neglect of the owner, which is often present in some degree, but on whether the activities of the Bureau comply with the requirements of the [Act].” Smith v. Tax Claim Bureau of Pike County, 834 A.2d 1247, 1251 (Pa.Cmwlth. 2003).

132 A.3d 637, 644 (Pa.Cmwlth. 2016) (*en banc*). In addition, the appellate courts of this Commonwealth have often noted that the primary purpose of the tax sale laws is to ensure the collection of taxes, not to strip away citizens’ property rights, Rivera v. Carbon County Tax Claim Bureau, 857 A.2d 208, 214 (Pa.Cmwlth. 2004), *appeal denied*, 878 A.2d 866 (Pa. 2005), and that “[t]he strict provisions of [the Act] were never meant to punish taxpayers who omitted through oversight or error . . . to pay their taxes.” In re Return of Sale of Tax Claim Bureau (Ross Appeal), 76 A.2d 749, 753 (Pa. 1950).

A. Adequacy of Posting

Section 602(e)(3) of the Act provides: "Each property scheduled for sale shall be posted at least ten (10) days prior to the sale." 72 P.S. § 5860.602(e)(3). The Act does not specify the location, size or manner of posting, however, each should be viewed in light of the purpose of the posting: to notify the general public, as well as the owner, of the tax sale. In re: Somerset County Tax Sale of Real Estate Assessed in the Name of Tub Mill Farms, Inc., 14 A.3d 180, 183 (Pa.Cmwlth. 2010) (quoting O'Brien v. Lackawanna County Tax Claim Bureau, 889 A.2d 127, 128 (Pa.Cmwlth. 2005)), *appeal denied*, 26 A.3d 484 (Pa. 2011).³ Accordingly, "the method of posting must be reasonable and likely to inform the taxpayer as well as the public at large of [the] intended real property sale." *Id.* at 184 (quoting Wiles v. Washington County Tax Claim Bureau, 972 A.2d 24, 28 (Pa.Cmwlth. 2009)). Further, "in order to constitute posting that [is] reasonable and likely to ensure notice . . . the posting must be conspicuous, attract attention, and be placed there for all to observe." *Id.* (quoting Ban v.

³ Because of this dual purpose, while actual notice of a pending tax sale is often said to waive strict compliance with the notice requirements of the Act, this is not generally true where the defect is one of posting the property. In In re: Somerset County Tax Sale of Real Estate Assessed in the Name of Tub Mill Farms, Inc., the Court stated:

[E]ven when a property owner receives actual notice of a tax sale, a defect in the posting may nevertheless require a court to overturn a tax sale. The reason for such a result is that the posting notice serves the function of notifying the general public, as well as the owner, of a tax sale.

14 A.3d 180, 183 (Pa.Cmwlth. 2010) (quoting O'Brien v. Lackawanna County Tax Claim Bureau, 889 A.2d 127, 128 (Pa.Cmwlth. 2005)).

Tax Claim Bureau of Washington County, 698 A.2d 1386, 1389 (Pa. Cmwlth. 1997)). In addition, the posted notice must be securely attached. Wiles, 972 A.2d at 28.

Here, Mr. Zavagansky testified that the Property was covered with tall weeds and that he posted the Property by making a tear in the paper Notice of Sale and then slipped this notice onto one of the weeds near the front of the Property by the sidewalk. (N.T., pp.33-34, 47-48). Mr. Zavagansky did not testify as to the type or size of the weed or how secure the posting was. He did not testify as to how sturdy the weed was, the dimensions of the notice, the size print on the notice, the height at which the notice was posted, how visible or legible the posting was from the front of the property, or whether the weed obstructed in anyway the visibility of the notice. Absent such evidence, particularly given the inevitable questions raised by posting notice on a weed, the Bureau failed to meet its burden of establishing that the notice was conspicuous, *i.e.*, reasonably likely to inform the taxpayer and public of the sale. *Cf. O'Brien v. Lackawanna County Tax Claim Bureau*, 889 A.2d 127 (Pa.Cmwlth. 2005) (holding that a notice that was printed on standard letter size paper, but which was folded into thirds and wrapped around a small branch on a tree next to a

road that was not passable, did not satisfy the reasonable notice standard).⁴

B. Additional Notification Efforts

Section 5860.602(e) (1) and (2) of the Act requires that at least thirty days before the date of sale, the Bureau provide notice of the sale to the owner "by United States Certified Mail, restricted delivery, return receipt requested, postage prepaid," and that if the return receipt is not received from the owner, then, at least ten days before the date of sale, notice of the sale be given to the owner 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 revision of taxes." 72 P.S. § 5860.602(e) (1), (2). Further, in the case of an unclaimed notice of sale sent by certified mail, "the bureau must exercise reasonable efforts to discover

⁴ Effective June 17, 2016, the Act was amended to include definitions for the words "posted" and "posting." See Act of December 20, 2015, P.L. 487. As defined in this amendment, for unimproved property the amendment provides:

(2) In the case of property containing no assessed improvements, affixing notices as required by this act:

(i) To a stake secured on or adjacent to the property, within approximately twenty-five (25) feet of any entrance to the property in a manner situated to be reasonably conspicuous to both the owner and the general public.

(ii) Adjacent to the property line, on a stake secured on or adjacent to the property in a manner reasonably conspicuous to the owner and the general public in cases in which subclause (i) does not apply.

72 P.S. § 5860.102 (Definitions).

the whereabouts of such person or entity and notify him.” 72 P.S. § 5860.607a(a). The additional efforts required to be made by the Bureau under Section 607.1(a) are in addition to the mailing, posting and publication notices required under Section 602. In re Tax Sale of Real Property Situated in Jefferson Twp., Somerset County, 828 A.2d 475, 477 n.5 (Pa.Cmwlth. 2003) (quoting 72 P.S. § 5860.607a(b)).

Section 607.1(a) (Additional Notification Efforts) of the Act provides:

When any notification of a pending tax sale or a tax sale subject to court confirmation is required to be mailed to any owner, mortgagee, lienholder or other person or entity whose property interests are likely to be significantly affected by such tax sale, and such mailed notification is either returned without the required receipted personal signature of the addressee or under other circumstances raising a significant doubt as to the actual receipt of such notification by the named addressee or is not returned or acknowledged at all, then, before the tax sale can be conducted or confirmed, the bureau must exercise reasonable efforts to discover the whereabouts of such person or entity and notify him. The bureau's efforts shall include, but not necessarily be restricted to, a search of current telephone directories for the county and of the dockets and indices of the county tax assessment offices, recorder of deeds office and prothonotary's office, as well as contacts made to any apparent alternate address or telephone number which may have been written on or in the file pertinent to such property. When such reasonable efforts have been exhausted, regardless of whether or not the notification efforts have been successful, a notation shall be placed in the property file describing the efforts made and the results thereof, and the

property may be rescheduled for sale or the sale may be confirmed as provided in this act.

72 P.S. § 5860.607a(a) (emphasis added).

As previously stated, the notice of sale sent to Shubeck by the Bureau on July 1, 2015, by certified mail addressed to 108 West Mill Street in Nesquehoning was returned unclaimed. Consequently, upon the return of this notice, the Bureau was required under Section 607.1(a) to conduct, at a minimum, a search of those sources of information enumerated therein, understanding that the statutory standard is a "reasonable search," one not necessarily limited to those sources itemized in the statute. 72 P.S. § 5860.607a(b); Famageltto, 133 A.3d at 344; Maya v. County of Erie Tax Claim Bureau, 59 A.3d 50, 55 (Pa.Cmwlth. 2013).

Thus, "even technical compliance with the statute may not always satisfy the demands of due process since the [Act] states the minimum effort to be done by a tax claim bureau." In re Consolidated Reports and Return by the Tax Claim Bureau of Northumberland County (Appeal of Shari Neff), 132 A.3d 637, 640 (Pa.Cmwlth. 2016) (*en banc*) (citation and quotation marks omitted). See also Geier v. Tax Claim Bureau of Schuylkill County, 588 A.2d 480, 483 (Pa. 1991) (holding that "even though the Bureau technically complied with the notice requirements of the tax sale statute, the Bureau failed to satisfy the demands of due process in conducting the sale"); Krawec v. Carbon County

Tax Claim Bureau, 842 A.2d 520, 523-25 (Pa.Cmwlth. 2004) (holding that a tax claim bureau failed to exercise reasonable efforts notwithstanding its search of the records required by Section 607.1(a) to be examined within the county where the property was located and declaring the tax sale of property in Carbon County void when the Bureau failed to make inquiry of the Register of Wills of Philadelphia County to determine whether a will had been probated for a deceased owner whose last known address was in Philadelphia and who the Bureau knew had died).

The search required by Section 607.1(a) must be conducted "regardless of the correctness of the address to which the Bureau sent the notices." Maya, 59 A.3d at 57 (quoting Grove v. Franklin County Tax Claim Bureau, 705 A.2d 162, 164 (Pa.Cmwlth. 1997)). Nor is the Bureau's obligation to conduct this search excused even though such efforts would have been futile "because it is the reasonableness of the effort that is important, not whether it would have led to the discovery of [another] address.'" *Id.* at 57 (citing Steinbacher v. Northumberland County Tax Claim Bureau, 996 A.2d 1095, 1099 (Pa.Cmwlth. 2010) and quoting Rice v. Compro Distributing, Inc., 901 A.2d 570, 577 (Pa.Cmwlth. 2006)); see also Jones v. Flowers, 547 U.S. 220, 231, 126 S.Ct. 1708, 1717, 164 L.Ed.2d 415 (reasoning that "the constitutionality of a particular procedure for notice is assessed *ex ante* rather than *post hoc*").

To establish what efforts were made to locate Shubeck after the certified mailing of the notice of sale was returned unclaimed, the Bureau placed in evidence a one page document entitled "ADDITIONAL NOTIFICATION EFFORTS - Upset Sale: September 25, 2015." (County Exhibit No.3, p.2). This document is divided into separate sections, one for each source of information listed in Section 607.1(a) to be searched, and with the exception of the Recorder of Deeds Office, each section provides a space to insert the date when the source was searched, a space for the initials of the person conducting the search, and a space for one of two results to be checked, selecting whether the source had the same address as that used by the Bureau in its certified mailing or had no listing. The form also contains space for the Bureau to document other sources it may have checked and to similarly disclose the results of each such search as is done for the sources listed in Section 607.1(a), as well as a final line which states simply: **"Rec. of Deeds:** researched on a monthly basis."

As completed, the results of the Bureau's search which appear on Exhibit 3 reflect that the same address for Shubeck was found by the Bureau in its search of the Assessment Office, Prothonotary's Office, review of its own records, and contact with the tax collector as that used in the Bureau's certified mailing. The form also indicates that no listing for Shubeck

existed in either the county or local telephone directory⁵ and that there were no notes in the Tax Claim Office to be checked. As pertains to the Recorder of Deeds Office, Exhibit 3 is silent as to who, if anyone, searched these records, when, and what the results were.

The Additional Notification Efforts checklist was introduced into evidence during the testimony of the Bureau's Director. Because the Director did not personally conduct any of the searches, she was unable to explain what dockets and indices were reviewed in the various recording offices; what, if anything, those records revealed; or whether any entries were actually located in either the county or local phone directories which may have assisted in locating Shubeck. (N.T., pp.18-20, 23-24). Specifically, the Director could not explain whether the search results of the Prothonotary's Office revealed that Shubeck's home was then being foreclosed upon and that service by the Sheriff had been made at Shubeck's place of employment, J&R Slaw.

With respect to the telephone directory, Shubeck testified that he did not have a listing since he used a cell phone, but that his father, with whom he resided in Nesquehoning, was

⁵ Contrary to Exhibit 3, the Bureau's Director testified that review of the county and local telephone directories contained listings for Shubeck and showed his address to be the same one used by the Bureau in its mailings. (N.T., p.12). On this point we believe the Director was clearly in error: Shubeck used a cell phone only and did not maintain a listing in any telephone directory. (N.T., p.40). Later, the Director corrected her testimony on this issue. (N.T., p.22).

listed under the name of either Robert Shubeck or Robert L. Shubeck. (N.T., pp.38, 40, 45). The Director testified that under either listing, no call would have been placed to check on Shubeck's address since neither listing contains Shubeck's middle initial "J" and the Act does not require that a call be made, only that the telephone directory be checked for an address. (N.T., pp.17, 19, 24). The Director also testified that if Shubeck's cell phone number had been written down and retained as Shubeck testified he was told would happen, this would be noted in the Bureau's file for the Property, yet not only was no telephone number written in the file, no notes whatsoever were discovered. (N.T., pp.17, 19-20).

In granting Shubeck's objections to the tax sale, we determined the Bureau had failed to exercise reasonable efforts to locate Shubeck after the certified mailing of the notice of sale was returned unclaimed. Section 607.1(a) requires that the dockets and indices of both the Recorder of Deeds and Prothonotary's Offices be examined and that a notation be placed in the property file describing the efforts made and the results thereof. As to the records in the Recorder of Deeds Office, the Bureau's records as evidenced by Exhibit 3, p.2, indicate, at most, that the Recorder of Deeds' records are to be researched on a monthly basis, however, they do not evidence that this was in fact done for Shubeck's property, when the most recent search

was made after the certified mail was returned unclaimed, or what the results of that search were.⁶ As to the Prothonotary's Office, what records were examined and what was found is not disclosed. (N.T., pp.18-19). Yet it is clear that had a reasonable search been done, the fact that Shubeck's former residence, i.e. 108 West Mill Street, was in foreclosure should have been discovered and the fact that the complaint in this suit was served on Shubeck at his place of employment would appear there and could have been investigated to track down Shubeck. Cf. Parkton Enterprise, Inc. v. Krulac, 865 A.2d 295 (Pa.Cmwlth. 2005) (affirming the trial court and holding that a reasonable investigation to find the current owner required the tax claim bureau to inquire into the identity of the purchaser of that property at a sheriff's sale conducted less than one month before the scheduled tax sale); In re Tax Claim Bureau of Beaver County (Appeal of Sheila Hicks), 600 A.2d 650, 667 (Pa.Cmwlth. 1991) (reversing the trial court and finding "reasonable efforts" to locate wife who continued to hold an interest with her ex-husband in the marital residence which was the subject of the upset tax sale and where her ex-husband still resided had not been made by the tax claim bureau, in part, because the bureau failed to find wife's current mailing address

⁶ Moreover, while testifying to the efforts it undertook to find Shubeck's current address, the Bureau's Director never testified that the records in the Recorder of Deeds Office were checked. (N.T., p.12).

in Florida in its Section 607.1(a) search of the records of the owners' divorce proceedings filed in the Prothonotary's Office). With respect to the telephone directories, whether the listing was for "Robert Shubeck" or "Robert L. Shubeck," common sense dictates that a reasonable investigation intent on ascertaining the accuracy of the address the Bureau maintained in its records for where Shubeck currently resided would have followed up on this lead.

The reasonableness of the Bureau's investigation is further called into question by the fact that the posting of the Property was done by Michael Zavagansky, a deputy sheriff in the same office that served Shubeck with the complaint in the mortgage foreclosure proceedings, and that Shubeck was then under supervision by the Carbon County Adult Probation Office for a crime committed in Carbon County, yet no check was made of any of these offices (*i.e.*, Sheriff, Adult Probation or Clerk of Courts), all of which, like the Prothonotary's Office, are located in the Carbon County Courthouse. (N.T., pp.20-21, 43-44). Further questioning the reasonableness and accuracy of the Bureau's search, is Shubeck's testimony, which we accepted as credible, that upon receiving the Bureau's reminder notice dated February 2, 2015, advising that unless the 2013 taxes were paid the Property would be sold, Shubeck telephoned the Bureau's office, spoke with a representative therein, provided his cell

phone number, and was assured his number would be retained, yet according to Exhibit 3, when the Bureau examined its own records, not only was no telephone number found, no notes of any nature existed. (County Exhibit No.3).

Because the reasonableness of the Bureau's additional efforts search was clearly suspect, we did not err in determining that reasonable efforts were not made and that the Bureau did not meet its burden of exercising common sense business practices in ascertaining a valid address at which to notify Shubeck of the pending tax sale. Cf. Maya, 59 A.3d at 56 (holding that the trial court properly exercised its discretion in rejecting the bureau's "Additional Notification Document" which was found to be unreliable and lacking in trustworthiness).⁷

CONCLUSION

Because the sale of property at tax sale transfers title to property, often at only a fraction of its value, due process

⁷ The Bureau's claim that Shubeck had actual notice of the tax upset sale by virtue of the reminder letter dated February 2, 2015, which Shubeck admitted he received and, therefore, strict compliance with the notification provisions of the Act was unnecessary, is without merit. This reminder letter did not state the time, date, location, or terms of the sale as required by Section 602(a) of the Act, 72 P.S. § 5860.602(a). The letter merely stated that the 2013 taxes were overdue and that if Shubeck failed to make payment by June 30, 2015, the Property would be scheduled for sale. Thus, Shubeck's receipt of this delinquency notice did not establish actual notice of the tax sale. In re: York County Tax Claim Bureau, 3 A.3d 765, 768 (Pa.Cmwlth. 2010) (citing Jones v. Flowers, 547 U.S. 220, 232-33, 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006) for the principle that "a property owner's actual notice of a tax delinquency is [insufficient] to establish actual notice of a tax sale"), *disapproved of on other grounds by* Horton v. Washington County Tax Claim Bureau, 81 A.3d 883, 892 (Pa. 2013).

requires that an owner be provided due notice of the pending sale and an opportunity to cure the delinquency before his ownership interest in the property can be terminated. It is with this goal in mind that the notice provisions of the Act are strictly enforced. In the upset tax sale of Shubeck's property, because the Bureau did not comply with the posting requirements of Section 602(e)(3) of the Act, 72 P.S. § 5860.602(e)(3), or make reasonable efforts to ascertain if there was another address at which Shubeck would be more likely to receive actual notice of the pending tax sale as required by Section 607.1(a) of the Act, 72 P.S. § 5860.607a(a), and due process, our decision to set aside this sale was not only an appropriate exercise of discretion, but one required by law.⁸

BY THE COURT:

P.J.

⁸ As a final matter, the Bureau claims we erred in granting Shubeck's objections because Shubeck failed to submit a post-hearing memorandum as directed by the court. This claim is based on a false predicate and misstates what occurred at the hearing.

After all evidence had been presented, the court questioned counsel about what the evidence established. During the course of this discussion, the court expressed its belief that the Bureau's Additional Notification Efforts checklist, Exhibit 3, did not evidence that the Recorder of Deeds Office had been contacted after the certified mailing of the Notice of Sale to Shubeck was returned unclaimed and that the only testimony presented about what additional efforts were made by the Bureau to locate Shubeck was that of the Bureau's Director who made no mention of any search of the Recorder of Deeds Office. (N.T., pp.65, 69). While not conceding this deficiency, the Bureau's counsel argued that even if this were the case, Shubeck's admission to having received the Bureau's reminder letter of February 2, 2015 (Court Exhibit No.1) evidenced actual notice such that strict compliance with the notification requirements of the Act was not required, even though this letter did not state when the tax sale would occur. (N.T., p.70).

After the court stated its intention to find that the evidence failed to support that a reasonable search of the Recorder of Deeds Office had been conducted as required by Section 607.1(a) of the Act and that Court Exhibit No.1 did not establish actual notice because it failed to provide notice of the date of the tax sale, the Bureau's counsel requested an opportunity to research whether Court Exhibit No.1 was sufficient to import actual notice of the tax sale to Shubeck. In granting this request, we also allowed Shubeck's counsel fifteen days to respond. A memoranda of law was submitted by the Bureau on March 9, 2016, however, no response was filed by Shubeck.

The Bureau has pointed to no rule, statute or case holding that when an objector to a tax sale fails to submit post-hearing legal authority in response to an issue raised by the court which the Bureau requested an opportunity to brief after being advised of the court's intention to rule against the Bureau, the objector somehow forfeits a ruling in his favor. The issue, we believe, when properly stated, answers itself and has no merit.