



D E C I S I O N O N R E M A N D
FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Jonas DaSilva
DOCKET NO.: 10-30790.001-R-1
PARCEL NO.: 16-01-313-012-0000

The parties of record before the Property Tax Appeal Board are Jonas DaSilva, the appellant, by attorney Christopher B. Kaczynski, of Smith Hemmesch Burke & Kaczynski in Chicago; and the Cook County Board of Review. The board of review was defaulted on April 24, 2013 for failure to timely submit evidence.

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds a reduction in the assessment of the property as established by the Cook County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$ 4,828
IMPR: \$ 7,241
TOTAL: \$ 12,069

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property is improved with a two-story, masonry, multi-family dwelling containing 3,222 square feet of living area and two units therein. The building is approximately 108 years old and is located on a 6,550 square foot site.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation.

Procedurally, the Board rendered an initial decision in this matter based upon the solitary evidence submission of the appellant on June 20, 2014. The board of review was defaulted on April 24, 2013. Upon receipt of the Board's initial decision, the appellant filed a Complaint in Administrative Review in the Circuit Court of Cook County, #2014-COPT-00005.

Pursuant to the Circuit Court's Order, this matter was remanded to the Board stating that:

- I. The Board's factual findings that the subject's sale was a compulsory sale is not against the manifest weight of the evidence.
- II. The First District Appellate Court's Holding in Calumet Transfer LLC v. Property Tax Appeal Board, 401 Ill. App. 3d 652(1st Dist.2010) is not controlling in that it does not mandate that the Plaintiff must present additional comparable properties showing that the sales price was representative of the subject property's fair cash value.
- III. Where the Plaintiff requested a hearing, PTAB erred as a matter of law in failing to provide the Plaintiff with a hearing pursuant to Section 1910.67(b) of the Illinois Administrative Code.
- IV. This cause is hereby remanded to the PTAB for hearing, and the hearing shall be conducted in accordance with all applicable PTAB rules.
- V. The board of review remains in default and is therefore prohibited from participating at the PTAB hearing.

At hearing, the appellant's attorney moved for a Default Judgment/Summary Judgment; thereby, requesting waiver of the hearing and a Board decision based upon the written evidence. Upon considering the appellant's argument, the Board denied this motion especially due to the Circuit Court's remand order directing a hearing.

In addition, the appellant's attorney presented a verbal opening argument which is reflected tangibly in the hearing's transcript as well as in the Appellant's Hearing Memorandum.

In support of this overvaluation argument, the appellant submitted: a short brief stating the issue; a copy of the subject's two-page settlement statement; and a copy of the Cook County Assessor's Office, First Quarter 2010 Foreclosure Update. The appellant's evidence reflects that the subject was purchased on September 29, 2009, for a price of \$135,000. The appellant's pleadings also indicated that the property was advertised for sale on the open market, and the sale was not between related parties.

At hearing, the appellant's attorney argued that just because the seller was a financial institution does not mean that the sale was not an arm's length transaction. The appellant's brief cites amendments to the Property Tax Code requiring various assessing bodies to include compulsory sales as reflective of the market. Specifically, whether a recent sale is evidence of fair market value is not dependent on the definition of compulsory sales in the Property Tax Code. The attorney argues that just because a sale fits the definition of a compulsory sale, does not mean that the transaction cannot be used to prove the fair market value of a piece of property. Moreover, the appellant's attorney stated that a review of the legislative history indicated that Illinois lawmakers were not attempting to amend the definition of fair cash value, but expand the type of evidence to be accepted and

considered by assessing officials when determining the fair market value of a piece of property so that assessed values would actually be consistent with current market values.

Further, the attorney cited four cases where the Board found that a recent sale of a subject property satisfied all the main elements of an arm's length transaction even though the purchase was from a financial institution. In each case, the Board stated that there was no evidence in the record that the seller was forced to sell the subject property to the appellants for the purchase price offered. Thus, the general public did have the same opportunity to purchase the subject property at any negotiated sale price and PTAB found each transaction to be arm's length while reducing the appellant's assessment accordingly.

The appellant's attorney also distinguished Calumet Transfer LLC v. Property Tax Appeal Board, 401 Ill.App.3d 652,656 (1st Dist. 2010), wherein the Appellate Court did not require an appellant to submit extrinsic evidence to support a recent sale unless evidence is presented by an opposing party challenging the arm's length nature of the offered purchase price. Moreover, the Appellate Court in that appeal rejected the argument that PTAB erred as a matter of law by considering evidence outside of the sale price to determine the property's fair cash value, the Court specifically stated that this argument "assumes the absence of evidence calling into question the arm's length nature of the transaction." Id.

Moreover on this point, the appellant's attorney asserted that the official rules of the Property Tax Appeal Board do not include any additional requirements for appellants when the evidence consists of a compulsory sale. Rather, he argued that Section 1910.65(c) allows opposing parties to challenge the arm's length nature of the transaction by offering evidence of comparable sales. Thereafter, he asserts that the appellant would be responsible for refuting the opposition's evidence challenging the arm's length nature of the subject's sale.

At hearing, the appellant's attorney also asserted that in this case that the appellant paid more than the advertised listing price due to a competitive bidding process for this subject property. He argued that this demonstrates that market forces were in effect in this purchase. Thereafter, the appellant, Jonas Da Silva, was called as a witness.

After being duly sworn, Da Silva testified that he has operated several corporations in order to purchase, rehabilitate, and rent residential properties. He then listed the three main corporations that are overseeing real estate properties. He stated that he began purchasing and managing properties approximately 22 years ago including over 150 properties. He indicated that he purchases condominiums, single-family homes and either two-unit or four-unit apartment buildings mainly located in the townships of: Lawndale, Humboldt Park, Bronzeville, and Washington Park. He testified that he picks these neighborhoods

because they are historically low income residences and purchase prices are much lower for properties in those neighborhoods. In addition, he stated that he normally rehabilitates the properties and then rents them to low income renters or section 8 voucher holders. As to section 8 voucher holders, Da Silva testified that there are problems collecting rent from market renters, because after three or four months the renters stopping paying the rent and he has had to go through more than 20 eviction proceedings. However, he stated with section 8 voucher holders he knows that the rent will be paid by the Chicago Housing Authority.

As to the subject's purchase, Da Silva testified that he personally purchased the subject in September, 2009 and that he is unrelated to the seller. After reviewing, Appellant's Hearing Exhibit #1, Da Silva confirmed that each party to this transaction was represented by real estate brokers and that the commissions were reflected on Exhibit #1. He also stated that the subject was advertised on the open market with a sign "for sale" on the front of the building, while the building was also on a real estate multiple-listing service with a listed price of either \$89,000 or \$99,000. He testified that when he made his purchase offer he was told that there were other higher offers and that he would have to increase his offer if he wanted to purchase the property. He stated that he increased his offers three times before he actually purchased the property for his family to live in. He stated that this property is located in Humboldt Park and after some rehabilitation work, he moved his family into the property a few years after the purchase.

As to the subject's condition, Da Silva stated that the subject was a two-unit, gray stone building with a finished basement. He indicated that he even though it was a legal, two-unit building that someone had further divided it into more units and were previously renting the building as five separate small units. However, at the time he purchased the building, it was vacant without kitchen areas in some 'units' and without appliances in the others. He stated that he believed he purchased the property at market value for the assessment date of January 1, 2010. Based on this evidence, the appellant requested the subject's assessment be reduced to reflect the subject's purchase price.

The board of review did not submit board of review did not submit any evidence in support of its assessment of the subject property or to refute the appellant's argument as required by section 1910.40(a) of the rules of the Property Tax Appeal Board. On April 24, 2013, the Board found the board of review to be in default pursuant to section 1910.69(a) of the rules of the Property Tax Appeal Board.

After considering the arguments and testimony at hearing as well as considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). Proof of the market value of the subject property may consist of an appraisal of the subject property as of the assessment date at issue. (86 Ill.Admin.Code 1910.65(c)(1)). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

The Board finds the best evidence of market value is the subject's September, 2009, purchase at \$135,000 as well as supporting testimony of the appellant. The thorough, credible and un rebutted testimony of the appellant indicated: that the subject property was advertised for sale on the open market; that the parties were unrelated; that the parties were represented by real estate brokers; that there were numerous bids submitted by other interested purchasers on this property; that the sale was an arm's length transaction; and that due to the subject's market area conditions that the subject's sale price was reflective of the market.

The Board further finds that the board of review did not submit any evidence in support of its assessment of the subject property or to refute the appellant's argument as required by section 1910.40(a) of the rules of the Property Tax Appeal Board and is found to be in default pursuant to section 1910.69(a) of the rules of the Property Tax Appeal Board.

Based on this evidence, the Property Tax Appeal Board finds the subject property had a market value of \$135,000 as of January 1, 2010. Since market value has been determined, the median level of assessment as determined by the Illinois Department of Revenue for class 2, residential property of 8.94% shall apply. 86 Ill.Admin.Code 1910.50(c)(3).

This is a final administrative decision of the Property Tax Appeal Board which is subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.

Chairman

K. L. Ferr

Member

JR

Member

Mark Morris

Member

Jerry White

Acting Member

DISSENTING: _____

C E R T I F I C A T I O N

As Clerk of the Illinois Property Tax Appeal Board and the keeper of the Records thereof, I do hereby certify that the foregoing is a true, full and complete Final Administrative Decision of the Illinois Property Tax Appeal Board issued this date in the above entitled appeal, now of record in this said office.

Date: August 21, 2015

A. Proctor

Clerk of the Property Tax Appeal Board

IMPORTANT NOTICE

Section 16-185 of the Property Tax Code provides in part:

"If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing

complaints with the Board of Review or after adjournment of the session of the Board of Review at which assessments for the subsequent year are being considered, the taxpayer may, within 30 days after the date of written notice of the Property Tax Appeal Board's decision, appeal the assessment for the subsequent year directly to the Property Tax Appeal Board."

In order to comply with the above provision, YOU MUST FILE A PETITION AND EVIDENCE WITH THE PROPERTY TAX APPEAL BOARD WITHIN 30 DAYS OF THE DATE OF THE ENCLOSED DECISION IN ORDER TO APPEAL THE ASSESSMENT OF THE PROPERTY FOR THE SUBSEQUENT YEAR.

Based upon the issuance of a lowered assessment by the Property Tax Appeal Board, the refund of paid property taxes is the responsibility of your County Treasurer. Please contact that office with any questions you may have regarding the refund of paid property taxes.