



**FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD**

APPELLANT: Jonas DaSilva
DOCKET NO.: 11-28099.001-R-1
PARCEL NO.: 16-23-204-040-1001

The parties of record before the Property Tax Appeal Board are Jonas DaSilva, the appellant(s), by attorney Christopher B. Kaczynski, of Smith Hemmesch Burke & Kaczynski in Chicago; and the Cook County Board of Review.

Based on the facts and exhibits presented in this matter, 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: \$ 160
IMPR.: \$1,440
TOTAL: \$1,600

Subject only to the State multiplier as applicable.

ANALYSIS

The subject property is a condominium unit located with a two-year old, condominium building comprising three condominium units. The subject unit contains 1,100 square feet of living area and two bathrooms.

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

At hearing, the appellant's attorney presented a verbal opening argument which is reflected tangibly in the Appellant's Hearing Memorandum which also included a copy of the Board's 2010 decision regarding a different subject property, specifically docket #10-30784-R-1, identified as Appellant's Hearing Exhibit #1.

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; a sales comparison grid analysis; an affidavit by Jonas DaSilva; 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 December 30, 2010, for a price of \$10,000. 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 as reflected on the appellant's affidavit and settlement statement.

In addition, the appellant's pleadings included a sales comparable analysis comprising three sales which occurred from August, 2010, to January, 2011, for prices that ranged from \$7,850 to \$15,150 or from \$7.00 to \$14.00 per square foot. These condominium units ranged in size from 1,100 to 1,300 square feet, while located within a one-mile radius of the subject. In support of these sales, copies of each sale's settlement statement and/or Cook County Recorder of Deeds detail sheet were included in the pleadings.

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, four cases were cited 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 Board 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 Appellant 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, it was 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, she asserts that the appellant would be responsible for refuting the opposition's evidence challenging the arm's length nature of the subject's sale.

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 to either own or manage. He then listed the three main corporations that are overseeing real estate properties. He stated that he began purchasing and managing properties in approximately 1994 including from 150 to 200 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.

As to the subject's purchase, Da Silva testified that he personally purchased the subject in December, 2010 and that he is unrelated to the seller. He stated that he noticed this property for sale on the multiple-listing service and then he called the listing broker. He also testified that the subject is located in North Lawndale which is not a desirable area to live in. He indicated that there were abandoned buildings and foreclosures within this high crime area. In addition, he stated that he finally quit claimed the unit to one of his employees.

As to the subject's condition, Da Silva testified in this subject's neighborhood many properties suffer from missing plumbing, fixtures and appliances which are usually stolen by others. As to this subject, he stated that this property was a garden unit and that he had to replace the plumbing, appliances, and kitchen cabinets. He also indicated that he invested \$6,000 to renovate the subject after he purchased it. He stated that he believed he purchased the property at market value for the assessment date of January 1, 2011. Based on this evidence, the appellant requested the subject's assessment be reduced to reflect the subject's purchase price or a total assessment of \$1,000.

The board of review submitted its board of review Notes on Appeal indicating the subject's total 2011 assessment reflected a value of \$146,710 or \$133.37 per square foot. The board of review's evidence used two sales to develop an analysis asserting that the subject's market value should be \$183,530. The first sale was actually of the subject property, occurring on August 1, 2008 for a price of \$170,000. Moreover, this condominium analysis reflected that the subject's second sale on December 21, 2010 for a price of \$10,000. The second sale was identified as selling on April 25, 2008 for a price of \$238,000, but with the statement of "no sales information available".

At hearing, the board of review's representative requested that the Board take Judicial Notice of the Board's 2009 decision for a different subject, specifically docket #09-28240-R-1, a courtesy copy of which was marked for the record as BOR Hearing Exhibit #1. In addition, she rested on the written evidence submissions. She also indicated that she had no personal knowledge of whether the subject's sales were an arm's length transaction, she was only aware that the sale details came from the assessor's database.

In written rebuttal, the appellant submitted a brief arguing that the subject's December, 2010 purchase was the best reflection of market value; especially since the three sale comparables submitted into evidence support the subject's sale to be at market value. The brief also noted that both of the 2008 sales used by the board of review ultimately resulted in foreclosures. In support

of this assertion, the appellant submitted copies of the Lis Pendens for each property obtained from the Recorder of Deeds website.

Further, the appellant's attorney argued at hearing that the board of review's use of the subject's 2008 sale was less than applicable to the 2011 tax appeal year due to the subsequent 2010 sale of the subject. Thereby, asserting that the 2008 sales were too distant in time to be relevant to the 2011 tax year.

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.

When overvaluation is claimed the appellant has the burden of proving the value of the property 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); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (2nd Dist. 2000). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. 86 Ill.Admin.Code 1910.65(c). Having considered the market value evidence presented, the Board concludes that this evidence indicates a reduction is warranted.

In determining the fair market value of the subject property, the Board looks to the evidence presented by the parties. The Board finds that the appellant's recent sale along with supporting testimony as well as market sales is the best evidence of market value.

A "compulsory sale" is defined as

(i) the sale of real estate for less than the amount owed to the mortgage lender or mortgagor, if the lender or mortgagor has agreed to the sale, commonly referred to as a "short sale" and (ii) the first sale of real estate owned by a financial institution as a result of a judgment of foreclosure, transfer pursuant to a deed in lieu of foreclosure, or consent judgment, occurring after the foreclosure proceeding is complete.

35 ILCS 200/1-23. Real property in Illinois must be assessed at its fair cash value, which can only be estimated absent any compulsion on either party.

Illinois law requires that all real property be valued at its fair cash value, estimated at the price it would bring at a fair voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is likewise ready, willing, and able to buy, but is not forced to do so.

Board of Educ. of Meridian Community Unit School Dist. No. 223 v. Illinois Property Tax Appeal Board, 961 N.E.2d 794, 802, 356 Ill.Dec. 405, 413 (2d Dist. 2011) (citing Chrysler Corp. v. Illinois Property Tax Appeal Board, 69 Ill.App.3d 207, 211, 387 N.E.2d 351 (2d Dist. 1979)).

However, the Illinois General Assembly recently provided very clear guidance for the Board with regards to compulsory sales. Section 16-183 of the Illinois Property Tax Code states as follows:

The Property Tax Appeal Board shall consider compulsory sales of comparable properties for the purpose of revising and correcting assessments, including those compulsory sales of comparable properties submitted by the taxpayer.

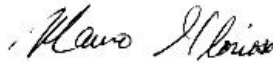
35 ILCS 200/16-183. Therefore, the Board is statutorily required to consider the compulsory sales of comparable properties, and the Board shall consider the suggested sales submitted by both parties.

In totality, the parties submitted unadjusted data on three sales, with limited data on the board of review's sale #2. Therefore, the Board places most weight on the appellant's three sales which occurred from August, 2010, to January, 2011, for prices that ranged from \$7,850 to \$10,000 or from \$7.00 to \$14.00 per square foot of living area. In comparison, the subject property's sale price reflects a market value of \$10,000 or \$9.00 per square foot of living area which is within the range established by the sale comparables in this record. However, the Board finds that the unrebutted testimony was that needed renovations were made immediately after the purchase amounting to \$6,000. Therefore, the Board finds that the actual sales price of the subject was \$16,000 resulting in a market value of \$14.55 per square foot which is slightly above the established market range. In contrast, the subject's current market value of \$146,710 or \$133.37 per square foot is drastically above the range established by these market sales.

The Board finds especially relevant the thorough, credible and unrebutted 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 the sale was an arm's length transaction; and that due to the subject's specific market area conditions that the subject's sale price was reflective of the 2011 market. After considering adjustments and the differences in the comparables when compared to the subject, the Board finds the subject's renovated sale price is supported and that a reduction is warranted.

Based on this evidence, the Property Tax Appeal Board finds the subject property had a market value of \$16,000 as of January 1, 2011. Since market value has been determined, the level of assessment as determined by the Cook County Classification Ordinance for class 2, residential property of 10% 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



Member



Acting Member



Member



Member

DISSENTING: _____

CERTIFICATION

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 18, 2017



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.