



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

APPELLANT: Klairmont Investments LLC
DOCKET NO.: 12-26095.001-C-2 through 12-26095.002-C-2
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Klairmont Investments LLC, the appellant(s), by attorney Richard D. Worssek, of Worssek & Vihon in Chicago; the Cook County Board of Review by Cook County Assistant State's Attorney Cristin Duffy; and Des Plaines C.C.S.D #62 and Maine Twp. H.S.D. #207, the intervenors, by attorney Ares G. Dalianis of Franczek Radelet P.C. in Chicago.

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:

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
12-26095.001-C-2	09-20-203-011-0000	38,000	83,248	\$121,248
12-26095.002-C-2	09-20-203-012-0000	19,000	41,002	\$60,002

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Cook County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2010 tax year. The Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal.

Findings of Fact

The subject property consists of two parcels of land totaling 28,500 square feet and improved with an approximately 36-year old, two-story, masonry, commercial building. The property is located in Maine Township, Cook County and is a class 5 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted copies of: a purchase agreement with exhibits; an escrow trust disbursement statement; a leasing brochure for the subject; a 2010 income statement; and two rent rolls. These documents disclose the sale of the subject in March 2011 for \$725,000. The appellant also

included color photographs of the subject. The appellant requests an assessment based on 25% of the appraised value.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$309,400. The subject's assessment reflects a market value of \$1,237,600 using the Cook County Real Estate Classification Ordinance level of assessment for class 5 property of 25%.

In support of the assessment the board of review submitted five sales comparables.

The intervenors submitted a brief and eight sales comparables to support the current assessment.

At hearing, the appellant called Mr. Daniel Hyman. Mr. Hyman testified he has been employed in the real estate field for 38 years mainly as a real estate broker. He testified he has had his own company, Millennium Properties, for 20 years and that the duties of this company include brokerage, management, receivership, auctions, and consulting.

Mr. Hyman testified that he is familiar with the subject property in that he was the receiver for the property when it was under foreclosure. He stated that he was appointed as receiver by the courts in April 2009. Mr. Hyman described his duties as receiver and opined his duties were not to over-improve the property, but to maintain the asset. He testified that three bank lenders were involved in the foreclosure: American Chartered Bank, MB financial, and U.S. Bank. Mr. Hyman then described the ownership of the property prior to the foreclosure.

Mr. Hyman described the subject property as a 1970's era, atrium-style building with parking underneath the building, on ground level. He opined that heating and cooling the building were difficult due to the atrium and that there was insufficient parking under the building. Mr. Hyman also testified that the slit windows only allowed for a tiny amount of outside exposure. He testified that the property has one elevator in the corner. He described the distance of the subject to downtown Des Plaines. Mr. Hyman opined the subject was a C quality building. Mr. Hyman briefly described the rent roll and the tenancy of the building and how the receiver handled maintaining the building.

Mr. Hyman testified that his receivership ended in the last quarter of 2010 when the property was foreclosed on and ownership reverted to the lenders. He testified that the lenders then retained his firm to manage the property and sell it. Mr. Hyman testified that the subject was listed for sale on the open market sometime in 2010. Later in the hearing, Mr. Hyman recollected that the property was listed in September 2009. He testified that the subject had premarketing prior to its listing, but he could not remember the exact date the subject was listed. Mr. Hyman described what premarketing included. He testified that the subject was listed on the market for approximately one and one-half years.

As to the efforts to sell the subject, Mr. Hyman testified that he performed his usual activities of posting the property on all real estate marketing websites, prepared a brochure, sent emails to investors and brokers, and making the property available. He testified they advertise properties in the Wall Street Journal and Crane's. He testified that he and Susan Silver are the full time employees that worked on this property, but that all the employees knew of the subject's listing

and would offer it to their clients. Mr. Hyman testified that there was limited interest in the subject property with less than 10 people asking additional questions regarding the property. He testified that only Imperial Realty expressed a written interest in purchasing the property.

In describing Imperial Realty, Mr. Hyman testified that Al Klairmont acted on behalf of Imperial Realty and made the offer. He estimated that Mr. Klairmont made the offer in the fall of 2010. Mr. Hyman opined that Mr. Klairmont would be a good purchaser for the subject because Mr. Klairmont tends to purchase unusual types of properties that need work. He testified he provided more material to Mr. Klairmont and showed him the property. Mr. Hyman testified that the original offer was not the price at which the property sold, but that the lenders countered. He further testified that there were protracted negotiations and that the final sale price was \$725,000. Mr. Hyman testified that he was never given a deadline by the lenders as to when the property needed to be sold and he was never pressured by the lender to sell the property.

On cross-examination by the board of review, Mr. Hyman denied that he stated the subject was a distressed property, but acknowledged that it was in foreclosure. He acknowledged that as the receiver he submitted reports on the property to the court.

As to the subject's previous owner, Mr. Hyman testified that Mr. Montesano may have purchased the property in 2005 for approximately \$3,500,000. He further testified that he believed Mr. Montesano was running a "scam" and would buy properties at outrageous prices, get a master lease back from the seller, and then forgive the master lease at closing. He testified that Mr. Montesano would then get purchasing credits at closing for work he indicated would be done on the property. He opined that the purchase price was never the true market value. Mr. Hyman acknowledged he was the broker on four purchases with Mr. Montesano, but testified he was not involved in this "scam". He testified that he did not think the process was the right way to do things, but the banks were allowing Mr. Montesano to do this.

Mr. Hyman opined that it is not more difficult to lease a building in receivership. He testified that as the receiver, he can sign leases and would have funding to do any needed work and that this work will get done. When a property is in foreclosure with no receiver, there is no services being provided while a receiver is maintaining the building. He acknowledged he receives a fee to be the receiver. He also testified that he was being paid to testify at the hearing.

Mr. Hyman testified that he renewed several tenant leases as the receiver. He could not state the amount of commissions that his company received due to entering into leases for the subject. He testified that the information would be contained in the report to the courts, but that he did not have that report with him.

Mr. Hyman testified that his company produced the leasing brochure. He reaffirmed that the subject has limited parking, slit windows, little viability, and a single elevator. When reviewing the brochure and its description of the subject, Mr. Hyman testified that he was puffing in describing the subject. He testified he promotes the property in the best possible light to try to get the best results, but that he is not going to lie.

In response to questions about the receivership, Mr. Hyman testified that he does not recall the length of time he was the receiver, but that he was involved with the property from his

appointment as the receiver until the property sold in March 2011. He testified that his company's standard operating procedure is to advertise a property on the websites. He again reiterated that there was only one interested party. He testified that the bank made a counter offer to Mr. Klairmont based on the desire to increase the sale price. Mr. Hyman testified he was not provided any documents that valued the subject property. He acknowledged that he received a commission of 5% of the sale price when the subject sold.

On redirect, Mr. Hyman clarified that his tenure as the receiver ended when the sheriff's sale was approved by the court and that he immediately became the manager of the property so that there was a seamless transition.

The appellant then called its second witness, Alfred Klairmont. Mr. Klairmont testified he is a real estate owner, developer, and manager. He testified he owns Imperial Realty Company which owns, manages, and leases commercial and industrial properties. He testified that Imperial Realty manages 105 properties with almost all located within the Chicago area, but that ownership of about 100 of those properties is spread out between five or six different corporations that he owns. Mr. Klairmont estimated that his companies have been involved with buying and selling 150 properties. He testified he is not involved in the sale or purchase of properties for companies he does not own.

Subsequently, Mr. Klairmont was asked additional questions in regards to his qualifications. He testified that has been a licensed real estate broker since 1977. He testified that he has been involved in approximately 24 sales that do not involve his own properties. He opined that the market affects what buildings are bought and sold. Mr. Klairmont was denied as an expert in real estate.

Mr. Klairmont described the properties that his companies tend to purchase as upside potential value properties. He testified that these are properties that have problems with vacancy, inferior management, bad luck, or it's wavering and needs new ownership. He opined that buying a distressed property allows for a buy low/sell high mentality. He testified that he defines a distressed property in this context to refer to the property and not the seller. He stated that a property can be distressed and the seller not be distressed.

Mr. Klairmont testified he became familiar with the subject property when Dan Hyman with Millennium Properties contacted him to inform him that the property was for sale. He testified that he has been contacted previously by Mr. Hyman on other properties that were for sale. He testified he receives approximately 300 to 400 phone calls on properties each year. He testified that the pertinent information that he looks for is a photograph of the subject, a rent roll, and a sale price. Mr. Klairmont believed that Mr. Hyman's company was the court appointed receiver and familiar with the management of the property. He testified that he inspected the property and at first did not want to purchase the property based on its location, windows, parking, and insufficient designs.

Mr. Klairmont testified that the market conditions in 2005 were different than in 2010 and that the market had bottomed out in 2010. He testified it was easier to get financing in 2005 than in 2010 even for a property that was non-income producing in 2005.

Mr. Klairmont testified that he became more interested in the building when the broker kept contacting him and then lowered the price of the property. He testified that the lower price did “not ring his bell”, but that they came back again with a price that made him “lukewarm” to the property. He testified the negotiation process lasted five or six months. Mr. Klairmont could not remember if the \$725,000 sale price was offered by him or by the sellers. He testified the final purchase price was based on the economics of how much the price was, how much money needed to be invested into the building, and what might the building be worth at a future time if all goes as planned.

When asked why he would not pay more than \$725,000, Mr. Klairmont detailed the items that would need to be repaired, replaced or renovated once he purchased the property. He testified that he was not under any obligation to purchase the property. Mr. Klairmont briefly testified as to the actual vacancy of the subject in 2011.

On cross-examination, Mr. Klairmont acknowledged that he has worked with Mr. Hyman previously and has done approximately six deal with him. He testified that in two other instances Mr. Hyman was the receiver at the time of purchase. He testified that he believes Mr. Hyman knows that he likes upside potential value added buildings. He clarified that Mr. Hyman has only offered him properties that were listed on the open market. He did not remember if or when he received any physical marketing materials on this property.

Mr. Klairmont testified that he did not have the property appraised for the purchase and that he was not aware of any appraisals on the property. He testified that properties can close quickly when there is a reputable buyer. He acknowledged this was a cash purchase.

Conclusion of Law

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. 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. 86 Ill.Admin.Code §1910.65(c).

In determining the fair market value of the subject property, the Board examined the parties’ evidence and the witnesses’ testimony.

The Board finds the board of review's and the intervenors’ witnesses were not present or called to testify about their qualifications, identify their work, testify about the contents of the evidence and the conclusions, or be cross-examined by the appellant and the Property Tax Appeal Board. Without the ability to observe the demeanor of these individuals during the course of testimony, the Property Tax Appeal Board gives this evidence from the board of review and the intervenors no weight.

The Board finds the best evidence of market value to be the purchase of the subject property in March, 2011 for a price of \$725,000. The appellant provided evidence demonstrating the sale had the elements of an arm's length transaction. The witnesses testified that the property was listed on the open market, that there was not much interest in the property by anyone other than

the appellant, and that there were protracted negotiations to arrive at the purchase price of \$725,000.

The board of review argued that Mr. Hyman is not credible because he made money off the receivership and sale of the property, was paid to testify, and puffed up the property by advertised the subject in its best light while conversely testifying about the problems with the property. The Board gives these arguments little weight and finds Mr. Hyman's testimony in regards to the sale of the subject credible and consistent with Mr. Klairmont's testimony. Although both witnesses had trouble recalling dates and times of specific details involving the sale, the sale occurred six and one-half years prior to their testimony. Both witnesses' testimony in regard to the elements of fair cash value were consistent and supported the arm's length nature of the sale. The Board finds the purchase price is below the market value reflected by the assessment.

Based on this record the Board finds the subject property had a market value of \$725,000 as of January 1, 2010. Since market value has been determined the Cook County Real Property Assessment Classification Ordinance for class 5 property of 25% shall apply.

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.