



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

APPELLANT: NAI Hiffman
DOCKET NO.: 16-23008.001-C-3 through 16-23008.004-C-3
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are NAI Hiffman, the appellant, by attorney Brian P. Liston, of the Law Offices of Liston & Tsantilis, P.C. in Chicago; the Cook County Board of Review; and the Village of Hoffman Estates, intervenor, by attorney Douglas LaSota, Associate Corporation Counsel, in Hoffman Estates.

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds it **lacks jurisdiction** in this matter and, therefore, the **case is dismissed**, the Intervenor's Motion to Dismiss For Lack of Standing is **granted**. The assessment of the property as established by the **Cook** County Board of Review is:

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
16-23008.001-C-3	01-36-301-013-0000	2,718,720	12,864,534	\$15,583,254
16-23008.002-C-3	01-36-401-005-0000	101,164	25,605	\$126,769
16-23008.003-C-3	01-36-401-006-0000	167,314	25,605	\$192,919
16-23008.004-C-3	01-36-402-014-0000	1,299,422	1,358,889	\$2,658,311

Subject only to the State multiplier as applicable.

Findings of Fact

The subject parcels with a combined land area of approximately 152.73-acres have been improved with three buildings containing a gross building area of 1,690,214 square feet and a net rentable area of 1,468,200 square feet. The main headquarters building (2000 Building) is a four-story, multi-wing structure containing an estimated 1.3 million square feet of gross building area and was constructed in 1991 with renovations performed in 2005. The 2001 Building (2001 Lakewood) is a six-story suburban office building containing approximately 287,000 rentable square feet which was constructed in 1993. The Institute Building is a one-story structure that contains approximately 43,700 square feet including a 150-person auditorium, various conference rooms and meeting spaces and was built in 1989. The combined property is the former AT&T Center which had originally been developed as the corporate headquarters campus for Ameritech, which was subsequently acquired by SBC Global Communications, which was later acquired and took the name of AT&T. The property was vacated as of August 2016. The property is classified as a class 5-91 property under the Cook County Real Property Assessment Classification Ordinance.

The appellant, NAI Hiffman, timely filed the Commercial Appeal petition following a Final Decision issued by the Cook County Board of Review. The appeal was filed through legal counsel concerning the four above-referenced parcel numbers. Both the Commercial Appeal petition and counsel's cover letter were postmarked on December 27, 2016. The letter requested a 60-day extension of time to submit evidence in support of the appeal. On October 19, 2017, an Incomplete Checklist along with a letter was issued to appellant's counsel advising that the appellant was granted 30-days to provide certain missing data along with the appellant's evidence.

When timely responding to the incomplete checklist on November 17, 2017, the appellant through counsel modified the appellant's name in the Commercial Appeal petition to "in the care of NAI Hiffman" and contended overvaluation based upon two recent appraisal reports that were also simultaneously filed. The first appraisal report prepared by LaSalle Appraisal Group, Inc. opined an estimated market value of the subject property of \$25,750,000 as of January 1, 2016. The second appraisal report prepared by CBRE Valuation and Advisory Services opined an estimated market value of the subject property of \$19,500,000 as of January 1, 2017.

By a letter dated February 22, 2018, the Property Tax Appeal Board notified the Cook County Board of Review of the pendency of this appeal and granted the board of review until May 23, 2018 to file its responsive evidence or a written request for an extension of time to submit evidence. Also, due to the amount in controversy in this appeal, in that same letter the board of review was required to notify all affected taxing districts as shown on the last available tax bill. The "Certificate" reflecting that notification was due to be filed with the Property Tax Appeal Board by March 24, 2018.

The Cook County Board of Review timely requested an extension of time to respond to this pending appeal. On May 16, 2018, the Property Tax Appeal Board granted a FINAL 60-day extension of time to submit evidence. Thereafter, the Cook County Board of Review timely filed its "Board of Review – Notes on Appeal" and responsive evidence.

On October 1, 2018, the Cook County Board of Review filed its "Certificate" reflecting that on September 28, 2018 all taxing districts were notified of this pending appeal.

On or about November 12, 2018, the Village of Hoffman Estates filed its Request to Intervene in this proceeding through in-house counsel. Along with the intervention, the Village of Hoffman Estates filed its Motion to Dismiss for Lack of Standing.

Although counsel for the intervenor served the motion both upon the appellant's counsel of record and the Cook County Board of Review, by letter dated January 10, 2019 in accordance with applicable procedural rules, the Property Tax Appeal Board served the dismissal motion upon counsel for the appellant and required a response by January 25, 2019. The appellant timely responded to the motion and the intervenor replied. The pending motion is ripe for ruling.

Intervenor's Motion to Dismiss

In accordance with section 1910.64 of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.64), the intervenor Village of Hoffman Estates seeks to have the appellant NAI Hiffman dismissed with prejudice. The dismissal motion recognizes that the appeal was

initially filed in the name of "NAI Hiffman" and when the evidence was filed by the appellant, the name on the appeal petition was modified to be "in the care of NAI Hiffman." The intervenor asserts in its motion that both "NAI Hiffman" and "in the care of NAI Hiffman" were neither the owner(s) nor the taxpayer(s) of the subject property.

The intervenor affirmatively states that at all times relevant to this proceeding, MB Hoffman Estates, L.L.C. was the owner and taxpayer of the subject property, not NIA Hiffman. The intervenor argues that the relevant portion of section 16-160 of the Property Tax Code (35 ILCS 200/16-160) provides as follows:

In counties with 3,000,000 or more inhabitants, . . . any taxpayer dissatisfied with the decision of a board of review or board of appeals as such decision pertains to the assessment of his or her property for taxation purposes, . . . may . . . appeal the decision to the Property Tax Appeal Board for review. [Emphasis added.]

Furthermore, the applicable procedural rules of the Property Tax Appeal Board at section 1910.10(c) (86 Ill.Admin.Code §1910.10(c)) provides:

Only a taxpayer or owner of property dissatisfied with the decision of a board of review as such decision pertains to the assessment of his property for taxation purposes . . . may file an appeal with the Board. [Emphasis added.]

The intervenor also noted in its motion that the procedural rule applicable to "intervention" similarly defines a taxpayer/owner of property as provided in section 1910.60 of the Board's rules (86 Ill.Admin.Code §1910.60(a)). Finally, the intervenor's dismissal motion cited to the prior Property Tax Appeal Board decision issued in Hickory Rowhomes Homeowners Association, Docket Nos. 13-29612.001-R-2 through 13-29612.011-R-2 (September 18, 2015) for the proposition that only taxpayers and those granted statutory authority may pursue an appeal before the Property Tax Appeal Board.

Since the named appellant is neither an owner nor a taxpayer, the intervenor contends the purported appellant does not have standing to pursue this appeal under the Property Tax Code or applicable case precedent. As neither "NAI Hiffman" nor "in the care of NAI Hiffman" have standing to pursue this appeal, the matter should be dismissed.

Appellant's Response

In the response filed by counsel, "Now comes the Appellant, NAI Hiffman (hereinafter Appellant)"¹ contending that the subject property was developed as the corporate headquarters for Ameritech and sold to Highland REIT in 2005 in a sale-leaseback agreement. The response further contends that after AT&T vacated the property in August 2016, foreclosure proceedings began in September 2016 which resulted in the property being in receivership as of the date of the instant appeal.

¹ See Appellant's Response to Intervenor's Motion to Dismiss for Lack of Standing which does not refer to the appellant as "in the care of NAI Hiffman" until responsive paragraph #6 despite the Commercial Appeal petition filed with the appellant's evidence.

At Paragraph 5 of the response to the dismissal motion, the appellant reported:

Per Information Statement of Highlands REIT, Inc. dated April 25, 2016, filed with the SEC as Exhibit 99.1 to Highlands REIT's publicly available April 25, 2016 8-K, "we anticipate that it will be difficult to lease this property"

In support of the appellant's standing to pursue this appeal, counsel submitted Exhibit A identified as an except of the Service Contract "that defines terms for assessment appeals of the subject property" which consists of one page with some redactions. Exhibit A defines "agent" as NAI Hiffman Asset Management LLC, an Illinois limited liability company and "owner" as Robert Assoian, Court Appointed Receiver per order dated September 12, 2016 in U.S. Bank National Association, successor in interest to Bank of America, National Association, as successor by merger to LaSalle Bank National Association, as Trustee for Morgan Stanley Capital I, Inc., Commercial Mortgage Pass-Through Certificates, Series 2006-TOP21 v. MB Hoffman Estates, L.L.C., a Delaware limited liability company; Unknown Owners; and Non-Record Claimants, Case No. 16 CH 10977 pending in the Circuit Court of Cook County, Illinois, Department Chancery Division, Mortgage Foreclosure/Mechanics Lien Section, appointed by order therein effective September 19, 2016.

The response contends that the "appellant has properly completed its assessment complaint by describing the taxpayer as 'in the care of NAI Hiffman,' which serves as agent for the owner." (See Paragraph 11 of response). Based on the foregoing, the appellant's response contends that the dismissal motion is flawed as it fails to consider that the subject property is in receivership due to a default on mortgage payments by prior ownership. The response argues that the dismissal motion's theory would be that "no property in receivership would be able to contest real property assessments before the Property Tax Appeal Board."

Therefore, the appellant requests denial of the dismissal motion, or, in the alternative, if it is determined that the complaint does not adequately describe the owner of the property, that the appellant be granted leave to file an amended complaint.

Intervenor's Reply

Contrary to the appellant's assertions in response to the pending dismissal motion filed by the intervenor, the intervening taxing district contends that at the time the instant appeal was filed, the owner of the subject property was MB Hoffman Estates, L.L.C. (MB Hoffman) and not the Receiver. Furthermore, at no time have either the Receiver nor the appellant NAI Hiffman been the "owner" of the subject property.

Exhibit A attached to the reply is a copy of a Special Warranty Deed recorded on November 17, 2005 in which MB Hoffman became the owner of the subject property. The reply further asserts that "Highlands REIT" never was the owner of the subject property. The intervenor contends that in accordance with Exhibit B, MB Hoffman remained the owner of record up through May 18, 2017 when Judge Simko confirmed the sale of the subject property to U.S. Bank National Association, successor in interest to Bank of America, National Association, as successor by merger to LaSalle Bank National Association, as Trustee for the Morgan Stanley Capital I Inc.,

Commercial Mortgage Pass-Through Certificates, Series 2006-TOP21 (hereinafter referred to as U.S. Bank).

The intervenor further agrees with the appellant that a foreclosure proceeding was brought by U.S. Bank against MB Hoffman, et al., on August 19, 2016 in Cook County Circuit Court as case number 2016 CH 10977 (the foreclosure action). Attached to the intervenor's response is Exhibit C, a copy of the order of September 12, 2016 (Receivership Order) entered by Judge Simko who appointed Robert Assoian of NAI Hiffman Asset Management LLC to act as receiver of the subject property. The intervenor contends that the Receivership Order did not transfer ownership of the property from MB Hoffman to the Receiver. The intervenor further noted at Paragraph 9 of the Receivership Order, but for explicit court approval, the receiver was not to employ attorneys. [Emphasis added.] The intervenor further reports that nothing in the court record on the foreclosure action reveals any authorization to engage legal services for the filing of an appeal before the Property Tax Appeal Board. Exhibit D is a copy of a motion the Receiver did file on November 1, 2016 to retain legal counsel, but nothing requests leave to hire counsel for the filing of an appeal before the Property Tax Appeal Board. Exhibit E reflects the court order authorizing the motion to retain legal counsel as requested by the Receiver, but no other authorizations.

The intervenor contends that, since the Receiver is not the actual owner, it was MB Hoffman that continued as the owner of the subject property until conveyance by a Sheriff's Deed (Exhibit F) which conveyed title to U.S. Bank on or about June 19, 2017.

The intervening taxing district further contends that NAI Hiffman was not authorized by the court under the Receivership Order to pursue an appeal of the assessment before the Property Tax Appeal Board. Moreover, as depicted in Exhibit H, on July 6, 2017, more than four months prior to the filing of the appellant's 'amended' Commercial Appeal petition, the Receiver was discharged of his duties and his bond was terminated by court order (Termination Order). As such, the intervenor contends that neither the Receiver nor the appellant had authority by court order to file the instant appeal petition or continue with the litigation.

In summary, the intervenor requests dismissal of this pending appeal as the appeal was not filed by an "owner" of the subject property and/or the agent of the receiver did not have court authority to file this appeal before the Property Tax Appeal Board.

Conclusion of Law

The question posed in this pending appeal is whether the appellant has standing to pursue this appeal before the Property Tax Appeal Board. Section 16-160 of the Property Tax Code (35 ILCS 200/16-160) provides in part that:

In counties with 3,000,000 or more inhabitants, beginning with assessments made for the 1996 assessment year for residential property of 6 units or less and beginning with assessments made for the 1997 assessment year for all other property, and for all property in any county other than a county with 3,000,000 or more inhabitants, any *taxpayer* dissatisfied with the decision of a board of review. . . as such decision pertains to the assessment of his or her property for taxation purposes, or any taxing body that has an interest in the decision of the board of review . . . may, . . . (ii) . . .

in counties with 3,000,000 or more inhabitants within 30 days after the date of the board of review notice or within 30 days after the date that the board of review transmits to the county assessor pursuant to Section 16-125 its final action on the township in which the property is located, whichever is later, appeal the decision to the Property Tax Appeal Board for review. . . . [Emphasis added.]

In accordance with this statutory authority, section 1910.10(c) of the rules of the Property Tax Appeal Board further provides in part that:

Only a ***taxpayer or owner of property*** [emphasis added] dissatisfied with the decision of a board of review as such decision pertains to the assessment of his property for taxation purposes . . . may file an appeal with the [Property Tax Appeal] Board. (86 Ill.Admin.Code §1910.10(c)).

These provisions clearly provide that only a taxpayer, owner or taxing body with a tax revenue interest may initiate an appeal before the Property Tax Appeal Board to challenge a decision of the board of review relating to the assessment of the property.

In response to the dismissal motion, the appellant has argued that a Service Contract between the Receiver (Robert Assoian, et al.) and the "Agent" NAI Hiffman is sufficient to authorize the appellant to file the instant appeal. The intervenor cited in its pleadings to the case of Wiswall v. Kunz, 173 Ill. 110 (1898) for the following finding:

A receiver is a person appointed by the court, as an officer of the court, whose function it is to hold possession and control of property which is the subject-matter of litigation, and to dispose of the same, or deliver it to such person or persons, as may be directed by the court. Ordinarily he is a person who is indifferent as between the parties to the cause, and who is to hold possession of the property or funds in litigation *pendente lite*, when it does not seem reasonable to the court that either party should hold it. He is not the owner of the property so in his possession. Property held by a receiver is liable to assessment for taxation. While it should be assessed to the receiver, yet the fact that it is assessed in the name of the party for whom the receiver holds possession does not affect the validity of the tax; and it is within the power of the court appointing the receiver to allow the amount of the tax, as a claim against the receiver, and order the same paid by the receiver to the tax collector. The taxes upon this property in the hands of the receiver, assessed after his appointment, may properly be regarded as part of the costs and expenses of the receivership, and may be ordered paid in full, as other costs and expenses. (Id. at 111)

The intervenor's responsive pleading further cited to provisions of Illinois law concerning possession during foreclosure (735 ILCS 5/15-1704(b) concerning the authority of receivers. "Under Illinois law, title to land sold under a mortgage foreclosure remains in the mortgagor until conveyance of the deed to the purchasers." Agribank, FCB v. Rodel Farms, Inc., 251 Ill.App.3d 1050 (3d Dist. 1993).

Additional assistance in determining ownership has been found by the Property Tax Appeal Board by reviewing the appellant's appraisal evidence filed in this proceeding. On page 11 of the LaSalle Appraisal Group report it was stated concerning the "intended user of the appraisal" as follows:

The appraisal report is intended to be used by MB Hoffman Estates, LLC and their legal counsel. Ms. Jennifer Gilbert ordered the appraisal on the behalf of ownership. [Emphasis added.]

Similarly, in the CBRE appraisal report on page 1, the appraisers stated, "Per the title report provided, title to the property is currently vested in the name of MB Hoffman Estates, L.L.C., who acquired title to the property in November 2005, as improved for a reported acquisition price of approximately \$305MM." [Emphasis added.] The CBRE report proceeds to depict based on published reports that MB Hoffman is an entity related to Inland Real Estate, now known as InvenTrust Properties; this latter entity transferred its membership interest in the LLC to an affiliated REIT known as Highlands REIT, an apparent strategy to shift underperforming assets into a separate REIT in order to bolster/protect/maintain the reported returns on the performing REIT assets. The CBRE appraisal further indicates there have been no transfers of property ownership during the previous three years. This report also states, "**The property is to be marketed for sale or lease by NAI Hiffman.**" [Emphasis added.] (Id.)

In conclusion, the Property Tax Appeal Board finds the evidence in this record disclosed the appellant named in the petition, either as "NAI Hiffman" or "in the care of NAI Hiffman," was never the owner of the subject property. No evidence was presented by the appellant that would indicate either "NAI Hiffman" or "in the care of NAI Hiffman," was a taxpayer. There is also no argument or indication that either of these named appellants was a taxing body with a tax revenue interest that would have standing to initiate this appeal before the Property Tax Appeal Board to challenge the decision of the Cook County Board of Review as it pertains to the assessment of the subject property.

For these reasons the Property Tax Appeal Board finds the appellant initially named in the appeal as NAI Hiffman and subsequently named when the evidence was filed as "in care of NAI Hiffman" in the appeal do not have standing to file the instant appeal and hereby **dismisses** the pending appeal.

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. Pursuant to Section 1910.50(d) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.50(d)) the proceeding before the Property Tax Appeal Board is terminated when the decision is rendered. The Property Tax Appeal Board does not require any motion or request for reconsideration.

Chairman



Member



Member



Member

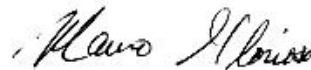
Member

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: November 19, 2019



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 or years of the same general assessment period, as provided in Sections 9-125 through 9-225, 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 such subsequent year or years 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 OR YEARS. A separate petition and evidence must be filed for each of the remaining years of the general assessment period.

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.

PARTIES OF RECORD

AGENCY

State of Illinois
Property Tax Appeal Board
William G. Stratton Building, Room 402
401 South Spring Street
Springfield, IL 62706-4001

APPELLANT

NAI Hiffman, by attorney:
Brian P. Liston
Law Offices of Liston & Tsantilis, P.C.
33 North LaSalle Street
28th Floor
Chicago, IL 60602

COUNTY

Cook County Board of Review
County Building, Room 601
118 North Clark Street
Chicago, IL 60602

INTERVENOR

Village of Hoffman Estates, by attorney:
Douglas LaSota
Associate Corporation Counsel
1900 Hassell Road
Hoffman Estates, IL 60169