

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

JOEL PENTLARGE

v.

BOARD OF ASSESSORS OF
THE TOWN OF WARE

Docket No. F315047

Promulgated:
June 21, 2013

This is an appeal under the formal procedure, pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the Town of Ware (the "appellee" or the "assessors") to abate a tax on certain real estate in the Town of Ware owned by and assessed to Joel Pentlarge (the "appellant") under G.L. c. 59, §§ 11 and 38, for fiscal year 2012.

Commissioner Mulhern (the "Presiding Commissioner") heard this appeal and issued a single-member decision for the appellee in accordance with under G.L. c. 58A, § 1A and 831 CMR 1.20.

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.

Joel Pentlarge, pro se, for the appellant.

Peter Harder, chair of the assessors, for the appellee.

FINDINGS OF FACT AND REPORT

Introduction and Jurisdiction

On January 1, 2011, the valuation and assessment date for fiscal year 2012, the fiscal year at issue in this appeal, the appellant was the assessed owner of a parcel of real estate, improved with a two-family dwelling, located at 46-48 Church Street in Ware (the "subject property"). The subject property's parcel contains approximately 0.23 acres of land, and it is labeled for assessing purposes as Map 61, Lot 226. For fiscal year 2012, the assessors valued the subject property at \$168,000 and assessed a tax thereon, at the rate of \$15.89 per thousand, in the amount of \$2,669.52. The assessors valued the land and building components of the subject property at \$48,500 and \$112,300, respectively.

On December 27, 2011, Ware's Collector of Taxes sent out the town's actual real estate tax notices.¹ The appellant timely paid the tax due without incurring interest.² On January 10, 2012, in accordance with G.L. c. 59, § 59, the appellant timely

¹ Ware's Collector of Taxes' affidavit of mailing states that the date of mailing was December 9, 2011. Both the date of notarization and the date stamp on the affidavit from the United States Postal Service state December 27, 2011. The assessors use December 27, 2011 as the date that the tax bills were mailed on their jurisdiction cover sheet. The Presiding Commissioner found and ruled that either date supports a finding and ruling of jurisdiction. See G.L. c. 59, §§ 59 and 57C.

² Because the total tax assessed on the subject property was \$3,000 or less, timely payment, without the incurring of any interest charges, was not a prerequisite to the Appellate Tax Board's jurisdiction. See G.L. c. 59, §§ 64 and 65 ("[I]f the tax due for the full fiscal year on a parcel of real estate is more than \$3,000, said tax shall not be abated unless the full amount of said tax due has been paid without the incurring of any interest charges on any part of said tax.").

filed with the assessors an abatement application. On March 6, 2012, the assessors granted the appellant a partial abatement, reducing the subject property's assessed value by \$49,000 to \$119,000. Not satisfied with this reduction in value and the commensurate \$778.61 abatement of tax, the appellant seasonably appealed to the Appellate Tax Board (the "Board") on April 2, 2012. On the basis of these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

Evidence

At the hearing of this appeal, the appellant, Joel Pentlarge, testified about the marketing, purchase, condition, and renovation of the subject property. Mr. Pentlarge also submitted into evidence several exhibits including: a packet of materials entitled "Memorandum," which contained a factual statement and argument in support of his request for abatement with five numbered exhibits appended; a group of four property record cards for what he considered to be comparable uninhabitable two-family properties in Ware that had sold between September, 2010 and March, 2012 for an average selling price of approximately \$36,000; and a second group of six property record cards for what he considered to be similar habitable two-family properties in Ware that had sold between June, 2010 and January, 2012 for an average selling price of

approximately \$115,500. The packet of materials appended to the appellant's Memorandum contained information and documentation pertaining to his purportedly comparable sales, the sale of the subject property to the appellant, the subject property's property record card, and the expenses that he incurred in rehabilitating the subject property.

The appellant contended that the subject property was overvalued primarily because the assessment, even as abated, did not adequately account for: (1) the November 28, 2011 sale of the subject property to the appellant for \$40,000; (2) the deplorable condition of the subject property; (3) the sale prices of purportedly similar two-family properties in Ware; and (4) the extensive repairs that were necessary to restore the subject property into a habitable and rentable condition.

Based on this information, the appellant estimated the value of the subject property at \$40,000 for the fiscal year at issue.

In their case-in-chief, Peter Harder, the chair of the assessors, testified for the assessors. He stated that the assessors viewed the subject property shortly after the sale to the appellant and, as a result, lowered its assessed value to account for its condition. Mr. Harder further offered that one of the units in the subject property was in good condition and was occupied at the time of the inspection. The assessors also

introduced into evidence the necessary jurisdictional documents, as well as the subject property's and one purportedly comparable property's property record card, plus a report enumerating sales of two-family properties in Ware from June, 2009 to June, 2011. The assessors claimed that the June 30, 2010 sale of the property located at 44 South Street for \$160,000 was the most comparable to the subject property and strongly supported the subject property's assessed value, as abated. The assessors maintained that the subject property's assessed value, as abated, which was more than \$40,000 less than the sale price of the 44 South Street property, sufficiently accounted for the condition and deficiencies in the subject property's dwelling as well as the costs incurred by the appellant for repairs. The assessors also claimed that the vast majority of sales introduced by the appellant were not comparable to the subject property and were primarily non-arm's-length transactions or ones consummated with one or both parties under duress. The assessors further maintained that the sale of the subject property from the Secretary of Housing and Urban Development ("HUD") to the appellant was similarly a non-arm's-length transaction involving a seller under duress that just wanted to "unload" the subject property. Moreover, the appellant's purchase of the subject property occurred almost a year after

the relevant valuation and assessment date for the fiscal year at issue.

Based on all of the evidence, the Board made the following findings of fact.

Description and Recent Sale History of the Subject Property

The subject property is composed of a 10,000-square-foot parcel that is improved with an approximately 2,988-square-foot, two-family dwelling. The duplex-style house is two stories and was built circa 1890. It contains a total of twelve rooms, including six bedrooms, as well as two full bathrooms. The house also has an unfinished basement and attic. The interior finishes include plaster walls and wood flooring. As of the relevant valuation and assessment date, the dwelling was in fair to poor condition. The evidence suggests that the house had been vandalized and some of its components, such as copper pipes, removed.

The dwelling's exterior walls are primarily clapboard, and its roof is covered with asphalt shingles. The basement walls are brick and stone. There is an enclosed porch on each side of the house and an open porch on the front. The house has gas heat. A \$12,000 building permit for renovations was issued on December 1, 2011, just a few days after the appellant had purchased the subject property for \$40,000 from HUD. HUD had acquired the subject property for \$1.00 approximately nine

months earlier from the Bank of New York Mellon, which had foreclosed on the subject property approximately nine months before that.

Board's Valuation Findings

The Presiding Commissioner ultimately found that the appellant failed to prove that the subject property's assessed value, as abated, exceeded its fair cash value for the fiscal year at issue. The Presiding Commissioner found that most of the appellant's purportedly comparable-sale properties were non-arm's-length transactions which were consummated with one or both of the parties under duress and involved sales by banks or at foreclosure. The sale of the subject property to the appellant was also a sale after foreclosure and was by a seller who was not in the business of owning, marketing, or selling two-family homes. The Presiding Commissioner determined that the sale of the subject property to the appellant was by a seller under duress.

The Presiding Commissioner further found that the appellant's mere submission of a list of purportedly comparable properties along with their property record cards, without some additional analysis, did little to affirmatively demonstrate that the subject property was overvalued for the fiscal year at issue. The appellant did not apply any adjustments to account for these properties' differences with the subject property or

show why adjustments may not have been warranted. The evidence was not sufficient in itself to allow the Presiding Commissioner to make those determinations for himself.

In addition, the Presiding Commissioner found that, while the receipts and compilation introduced by the appellant documented some deficiencies in and renovations to the subject property, the assessors credibly testified that these sub-standard features and repairs had been duly addressed in the partial abatement that they had granted. The assessors maintained that the sale of 44 South Street in June of 2010 for \$160,000, which the appellant also included as one of his comparable-sales, was the most proximate sale to the valuation and assessment date for fiscal year 2012 and the most similar property to the subject property. Taking that sale price and then subtracting the approximately \$35,000 that the appellant allegedly spent on renovations to the subject property, the Presiding Commissioner noted that the difference still resulted in a value higher than the subject property's \$119,000 assessment, as abated.

On this basis, the Presiding Commissioner found that the appellant failed to meet his burden of establishing that the subject property was overvalued for the fiscal at issue. The Presiding Commissioner further found that the assessors demonstrated that the subject property's fair cash value was not

less than its assessed value, as abated, for the fiscal year at issue. Therefore, the Presiding Commissioner decided this appeal for the appellee.

OPINION

The assessors are required to assess real estate at its fair cash value. G.L. c. 59, § 38. Fair cash value is defined as the price at which a willing seller and a willing buyer in a free and open market will agree if both of them are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

The appellant has the burden of proving that the property has a lower value than that assessed. "The burden of proof is upon the petitioner to make out [his] right as [a] matter of law to [an] abatement of the tax.'" ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974) (quoting ***Judson Freight Forwarding Co. v. Commonwealth***, 242 Mass. 47, 55 (1922)). "[T]he board is entitled to 'presume that the valuation made by the assessors [is] valid unless the taxpayers . . . prov[e] the contrary.'" ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (quoting ***Schlaiker***, 365 Mass. at 245)).

In appeals before this Board, a taxpayer "may present persuasive evidence of overvaluation either by exposing flaws or errors in the assessors' method of valuation, or by introducing

affirmative evidence of value which undermines the assessors' valuation." *General Electric Co.*, 393 Mass. at 600 (quoting *Donlon v. Assessors of Holliston*, 389 Mass. 848, 855 (1983)). In the present appeal, the appellant contended that the subject property was overvalued primarily because the assessment had not adequately accounted for: (1) the November 28, 2011 sale of the subject property to the appellant for \$40,000; (2) the deplorable condition of the subject property; (3) the sale prices of purportedly similar two-family properties in Ware; and (4) the extensive repairs that were necessary to restore the subject property to a habitable and rentable condition.

The appellant's Memorandum and other exhibits contained information on several sales of what he considered to be comparable properties. The appellant claimed that the sales of the purportedly comparable properties demonstrated that the subject property's assessment, even as abated, should have been significantly lower. The appellant further claimed that the receipts relating to repairs performed on the subject property showed that the dwelling was in need of substantial repair. The appellant also maintained that the sale of the subject property for \$40,000 less than a year after the valuation and assessment date should be the subject property's assessed value for fiscal year 2012. Based on these allegations, the appellant estimated the value of the subject property at \$40,000.

With respect to the appellant's purportedly comparable-sales data, the Presiding Commissioner found that the appellant failed to establish the comparability of his purportedly comparable properties to the subject property. While analyses of comparable properties' sales may form a basis for abatement, the proponents need to establish initial comparability. APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 301 (13th ed., 2008) ("The goal is to find a set of comparable sales as similar as possible to the subject property to ensure they reflect the actions of similar buyers."). Moreover, the Presiding Commissioner found that the appellant's comparable-sales data did not include any adjustments to account for differences between the subject property's characteristics and those of the purportedly comparable properties. "[R]eliance on unadjusted [sales] of assertedly comparable properties . . . [is] insufficient to justify a value lower than that assessed." **Antonio v. Assessors of Shutesbury**, Mass. ATB Findings of Fact and Reports 2008-54, 70. Furthermore, the Presiding Commissioner found that most of the comparable sales offered by the appellant were non-arm's-length transactions with evidence of compulsion. The Presiding Commissioner also found that the sale of the subject property to the appellant was a non-arm's-length transaction with evidence of compulsion.

Recent sales of comparable properties in the market generally "furnish strong evidence of market value, provided they are arm's-length transactions and thus fairly represent what a buyer has been willing to pay for the property to a willing seller." **Foxboro Associates v. Assessors of Foxborough**, 385 Mass. 679, 682 (1982); **New Boston Garden Corp. v. Assessors of Boston**, 383 Mass. 456, 469 (1981); **First National Stores, Inc. v. Assessors of Somerville**, 358 Mass. 554, 560 (1971). The burden of proof that the price was fixed fairly rests with the proponent of the sale. See **Epstein v. Boston Housing Authority**, 317 Mass. 297, 300-01 (1944). Further, evidence of sales may be considered "only if they are free and not under compulsion." **Congregation of the Mission of St. Vincent dePaul v. Commonwealth**, 336 Mass. 357, 360 (1957). "A foreclosure sale inherently suggests a compulsion to sell; a proponent of evidence of such sale must show circumstances rebutting the suggestion of compulsion." **DSM Realty, Inc. v. Assessors of Andover**, 391 Mass. 1014 (1984)(rescript). Similarly, a sale by a bank which acquired the property by foreclosure or a deed in lieu of foreclosure also carries indicia of compulsion. **G.F. Springfield Management v. Assessors of West Springfield**, Mass. ATB Findings of Fact and Reports 2000-228, 242, 251 (citations omitted).

On these bases, the Presiding Commissioner found and ruled that the appellant's purportedly comparable-sales data, which was composed primarily of unadjusted sales or transactions in which one or both of the parties were under duress, did not provide reliable indications of the subject property's fair cash value for the fiscal year at issue.

In addition, the Presiding Commissioner found that, while the receipts introduced by the appellants did document some deficiencies in the subject property, the assessors credibly testified that these sub-standard features had been duly accounted for in the subject property's assessment for the fiscal year at issue. See, e.g., **Miller v. Assessors of Sturbridge**, Mass. ATB Findings of Fact and Reports 2012-643, 652.

The Presiding Commissioner further found that the assessors not only credibly and successfully rebutted the appellant's evidence but they also introduced a comparable-sale property that, after adjustment for repair expenses, substantiated the subject property's assessment, as abated. Sales of comparable realty in the same geographic area and within a reasonable time of the assessment dates contain credible data and information for determining the value of the property at issue. **McCabe v. Chelsea**, 265 Mass. 494, 496 (1929). On this basis, the Presiding Commissioner found and ruled that the comparable-sale

property introduced by the assessors, once adjusted, provided credible data that supported the subject property's assessed value, as abated.

"The board [is] not required to believe the testimony of any particular witness but it [can] accept such portions of the evidence as appear to have the more convincing weight. *Assessors of Quincy v. Boston Consolidated Gas Co.*, 309 Mass. 60, 72 (1941). "The credibility of witnesses, the weight of evidence, and inferences to be drawn from the evidence are matters for the board." *Cumington School of the Arts, Inc. v. Assessors of Cumington*, 373 Mass. 597, 605 (1977). Based on all of the evidence presented in this appeal and his subsidiary findings and rulings, the Presiding Commissioner ultimately found and ruled that the appellant failed to prove that the subject property's assessed value, as abated, exceeded its fair cash value. Accordingly, the Presiding Commissioner decided this appeal for the appellee.

APPELLATE TAX BOARD

By: _____
Thomas J. Mulhern, Commissioner

A true copy,

Attest: _____
Clerk of the Board