

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

LEOKADYA CHMIELINSKI

v.

**BOARD OF ASSESSORS OF
THE TOWN OF BROOKLINE**

Docket Nos.: F240008, F247867

Promulgated:
February 2, 2001

These are appeals under the formal procedure, pursuant to G.L. c. 59, §§ 64 and 65, from the refusal of the appellee to abate taxes on certain real estate in the Town of Brookline owned by and assessed to the appellant under G.L. c. 59, § 38, for fiscal years 1997 and 1998.

Chairman Burns heard these appeals. Former Chairman Gurge and Commissioners Scharaffa and Gorton joined her in the decisions for the appellee.

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.

Richard G. Chmielinski, Esq. for the appellant.

Jennifer Dopazo, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

On January 1, 1996 and January 1, 1997, the appellant, Leokadya Chmielinski, was the assessed owner of a 5,959-square-foot parcel of real estate, improved with a single-family home, located at 67 Crowninshield Road in the Town of Brookline ("Brookline"). For fiscal years 1997 and 1998, the Brookline Board of Assessors ("Assessors") valued the subject property at \$374,000 and \$400,200, respectively. For fiscal year 1997, the Assessors assessed a tax, at the rate of \$18.13 per thousand, in the amount of \$6,780.62, less a \$1,109.01 residential exemption, for a total amount of \$5,671.61. For fiscal year 1998, the Assessors assessed a tax, at the rate of \$17.55 per thousand, in the amount of \$7,023.51, less a \$1,153.56 residential exemption, for a total amount of \$5,869.95. According to an affidavit submitted by Brookline's Treasurer/Collector, the appellant timely paid both fiscal years' real estate taxes.

On January 10, 1997, within thirty days of the sending of the tax bill, and January 26, 1998, before the February 1, 1998 deadline, the appellant timely filed applications for abatement contesting the fiscal year 1997 assessment on the earlier date and the fiscal year 1998

assessment on the later.¹ The Assessors denied the fiscal year 1997 application on February 11, 1997, and denied the fiscal year 1998 application on April 7, 1998. On March 11, 1997 and June 15, 1998, the appellant seasonably appealed to the Appellate Tax Board ("Board") from the Assessors' denials of the appellant's respective fiscal years 1997 and 1998 abatement requests. On this basis, the Board found that it had jurisdiction to hear and decide these appeals in which the appellant alleged over-valuation and disproportionate assessment.

At the hearing of these appeals, two witnesses, the appellant and Linda McDonald, the Assistant Assessor for Brookline, testified. In addition, the Board admitted numerous exhibits into evidence. Based on this evidence, the Board made the following findings of fact.

At the time of the hearing, Mrs. Chmielinski had lived in the subject house for over forty-six years. Her husband, now deceased, was born in the house and lived there all of his life. The property is located between

¹ St. 1996, c.426, § 2, effective for fiscal year 1998 and thereafter, amended G.L. c. 59, § 59 by changing the time when applications for abatement must be filed with the assessors. As of fiscal year 1998, applications for abatement are required to be filed "on or before the last day for payment, without incurring interest . . . of the first installment of the actual tax bill issued upon the establishment of the tax rate for the fiscal year to which the tax relates." Ordinarily, that day will be February 1st of the particular fiscal year to which the tax relates.

Commonwealth Avenue and Beacon Street, near Coolidge Corner in a neighborhood of primarily two- and three-family houses.

The two-story building has a Colonial stucco exterior with an orange Spanish-style tile roof with some visible defects. Certain sections of the exterior are in need of painting but, overall, it is in average condition. The first floor contains a living room with a fireplace, wood paneling, and a beamed ceiling. There is also a dining room, a butler's pantry, and a 1950s-style kitchen without a dishwasher and with a linoleum floor. There is hardwood flooring throughout the remainder of the two main levels of the house.

The second floor contains four bedrooms and two full bathrooms, with one bathroom serving the master bedroom. The semi-finished attic contains two additional bedrooms and a full bath. Similar to the kitchen, the bathrooms are circa 1940s to 1950s. There is a three-season sun parlor attached to the rear of the structure. The laundry room is in the unfinished cellar, which according to the appellant, is prone to water seepage due to seasonal flooding. Neither the subject's electrical nor its plumbing systems have been recently updated. The property also contains a single-car detached garage that is in need of some repairs.

The Assessors noted a screened porch at the rear of the property. The property has not been remodeled since the 1940s or 50s, which, the Assessors relate, is fairly typical of other older homes in this and other older neighborhoods in Brookline.

Abutting the rear of the subject property is a multi-family residential property that, for the past twenty to thirty years, has had its yard paved over to accommodate eighteen to twenty parking spaces. Mrs. Chmielinski testified that the automobiles that frequent these spaces create noise, exhaust, and other annoyances that detract from the appellant's enjoyment of her property. She recounted several other problems with her property including occasional rodent infestations and small quantities of water that leak from her roof into her semi-finished attic. She further related that some of the attic leaks have flowed down into the second-floor bedrooms and damaged the wallpaper. She considered the attic bathroom unusable because of leaks in the plumbing connections to the tub and toilet.

Since 1992, the appellant has paid for various capital improvements to the property. She installed a new fireplace in 1992 for \$3,000 and replaced the gutters in 1996 for \$4,000. She replaced the water heater in 1997 for

\$800, and she patched the roof in 1997 for \$1,000. Except for these improvements, Mrs. Chmielinski did not expend any additional funds for improvements to her property.

To support her contention that her property was disproportionately assessed during the years at issue, the appellant testified that she investigated the assessments of some old-style stucco properties throughout Brookline that she considered reasonably comparable to her own. From her investigation, she determined that her property's assessment had increased fifteen percent from fiscal year 1996 to 1997, while her comparable properties' assessments had either decreased, stayed the same, or increased only a small amount. She admitted in cross-examination that her property's final assessment for fiscal year 1996 resulted from a negotiated settlement with the Assessors of an abatement claim. She had no knowledge regarding any abatement requests or settlements with the Assessors pertaining to her comparable properties.

Mrs. Chmielinski also offered her opinion of the fair market value of her property during the fiscal years at issue. According to Mrs. Chmielinski, her property was worth \$290,000 on January 1, 1996 and five percent more, or \$304,000, on January 1, 1997. She also estimated the cost of updating her property at \$50,000 to \$100,000. In

response to a question from the hearing officer, Mrs. Chmielinski admitted that if her property were updated, its value would be reasonably comparable to the property next door at 71 Crowninshield Road.

The Assessors relied on the recent sales of three comparable properties to demonstrate the appropriateness of their assessment on the subject property for fiscal years 1997 and 1998. All three of their comparable properties are located on Crowninshield Road, including one next door to the subject. The dates, sale prices, and relevant assessments are summarized in the following table.

	35 Crowninshield	98 Crowninshield	71 Crowninshield
Date of Sale	August 1996	March 1995	August 1996
Purchase Price	\$491,000	\$420,000	\$465,000
FY 1997 Assessment	\$393,200	\$455,900	Exempt
FY 1998 Assessment	\$434,400	\$487,800	\$446,300

The Board found that the property located at 35 Crowninshield Road is slightly larger than the subject property but has fewer bedrooms. The condition, age, older style, and lot size of the two properties are similar. Accordingly, the Board found that this property and the subject were reasonably comparable to one another. The Board further found that the recent sale price of the 35 Crowninshield Road property, when adjusted for time and certain differences with the subject, was indicative of the

value of the subject property on January 1, 1996, and January 1, 1997.

The Board further found that the property located at 98 Crowninshield Road has considerably more land than the subject, but has a smaller house with fewer rooms. The condition, age, and style of the two properties are similar. There is even a church parking lot nearby that presents problems for this property equivalent to those affecting the subject because of the parking lot adjacent to it. Accordingly, the Board found that this property also was reasonably comparable to the subject. Its purchase price, when properly adjusted, was instructive with respect to the value of the subject property on the relevant assessment dates.

Finally, the Board found that the neighboring property at 71 Crowninshield Road, which is a tax-exempt property that needed extensive repairs and updating at the time of its sale in August 1996, was very similar and comparable to the subject property. Ms. MacDonald considered it to be virtually identical to the subject in style, size, age, condition, layout, lot size, and essentially any other respect. The Board determined that this comparable property's sale price, trended down ten percent, as suggested by Ms. MacDonald, to account for the difference

between the January 1, 1996, assessment date and the sale eight months later, was very probative of the value of the subject property on January 1, 1996. The Board further determined that the sale price, even without any upward trending to account for its sale date several months before the January 1, 1997, assessment date for fiscal year 1998, was equally probative of the value of the subject property on January 1, 1997. After January 1, 1998, this comparable property underwent substantial renovations including its heating, electrical, and plumbing systems as well as its kitchen, bedrooms, and exterior.

Ms. MacDonald also explained that the fifteen percent increase in the subject property's fiscal year 1997 assessment from its fiscal year 1996 value resulted from a negotiated settlement between Mrs. Chmielinski and the Assessors that may have placed a lower than fair cash value on the subject property in fiscal year 1996. She further testified that the Brookline market for these older types of properties increased approximately twelve percent from January 1, 1996, to January 1, 1997, and seven percent the following year.

On the basis of all of the evidence and its previous subsidiary findings, the Board found that the appellant failed to prove that her property was overvalued or

disproportionately assessed. More specifically, the Board found that the sales of and assessments on the three comparable properties on Crowninshield Road, and, in particular, the adjacent property, supported the assessments on the subject property for the fiscal years at issue. The Board further found that, while the deferred maintenance in the subject property identified by the appellant adversely affected its value, the subject's defects were not substantially worse than those identified in the adjacent comparable property and did not cause the fair cash value of the subject property to fall below the assessed value on either January 1, 1996, or January 1, 1997.

Furthermore, the Board found that the appellant failed to prove that a pattern of disproportionate assessment existed in Brookline or that there was any intentional or deliberate scheme by the Assessors to over-assess the appellant's property and other properties in Brookline that may have been similar to hers. The appellant did not introduce any evidence that indicated a pattern of disproportionate assessment or any evidence that supported an intent on the Assessors to assess in a discriminatory way. The evidence that was submitted, particularly the three comparable properties on Crowninshield Road, showed

that the subject's assessment was in line with other nearby older properties in Brookline. The evidence also revealed that any greater percentage increase in the subject's assessment from the prior fiscal year, when compared to other older properties' assessments in Brookline, was simply because the subject was probably undervalued in fiscal year 1996. At any rate, the subject's assessment did not increase appreciably more than the comparable Crowninshield Road properties' during the relevant time period (with the exception of the 71 Crowninshield Road property, which was exempt in fiscal year 1997). Accordingly, the Board found that the appellant failed to demonstrate any pattern of disproportionate assessment in Brookline during the fiscal years at issue and failed to show any intent on the part of the Assessors to discriminate against any class of properties or against the appellant herself.

For all of these reasons, the Board found that the appellant failed to prove that her property was over-valued or disproportionately assessed in fiscal years 1997 and 1998. Therefore, the Board decided these appeals for the appellee.

OPINION

The assessors have a statutory and constitutional obligation to assess all real property at its full and fair cash value. Part II, c. 1, § 1, art. 4, of the Constitution of the Commonwealth; art. 10 of the Declaration of Rights; G.L. c. 59, §§ 38, 52. See **Coomey v. Assessors of Sandwich**, 367 Mass. 836, 837 (1975) (citations omitted). Fair cash value means fair market value, which is defined as the price on which a willing seller and a willing buyer 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 burden of proof is upon the taxpayer to make out her right as a matter of law to an abatement of the tax. **Schlaiker v. Board of Assessors of Great Barrington**, 365 Mass. 243, 245 (1974). The taxpayer must show that the assessed valuation of her property was improper. See **Foxboro Associates v. Board of Assessors of Foxborough**, 385 Mass. 679, 691 (1982). The assessment is presumed valid until the taxpayer sustains her burden of proving otherwise. **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. v. Assessors of Lynn**, 393 Mass. 591, 600 (1984), quoting **Donlon v. Assessors of Holliston**, 389 Mass. 848, 855 (1983). Generally, real estate valuation experts, the Massachusetts courts, and this Board rely upon three approaches to determine the fair cash value of property: income capitalization, sales comparison, and cost reproduction. **Correia v. New Bedford Redevelopment Authority**, 375 Mass. 360, 362 (1978). "[S]ales of property usually 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. Board of Assessors of Foxborough**, 385 Mass. at 682.

In the present appeals, the appellant attempted to prove that her property was over-valued because it was defective in several ways, including its antiquated plumbing and electrical systems, its leaky roof and faded exterior, its outmoded interior, and its proximity to a nuisance. The Board found, however, that, while these defects did detract from the value of the subject, they did not prove, in and of themselves, that the property was over-assessed. In fact, the Assessors' demonstrated that

the condition and age of these components were considered in their assessment of the subject. The comparable properties introduced into evidence by the Assessors verified the values that they placed on the subject for the fiscal years at issue. The comparable property from next door provided compelling evidence in support of the assessments. Accordingly, the Board ruled that the appellant failed to meet her burden in proving that the assessors had erred in valuing the subject property during the fiscal years at issue in these appeals.

The appellant also tried to show that her property was disproportionately assessed during fiscal years 1997 and 1998. "If the taxpayer can demonstrate in an appeal to the Board that he has been the victim of a scheme of discriminatory, disproportionate assessment, he 'may be granted an abatement . . . which will make . . . [his] assessment proportional to other assessments, on a basis which reaches results as close as is practicable to those which would have followed application by the assessors of the proper statutory assessment principles.'" **Coomey v. Assessors of Sandwich**, 367 Mass. at 836, quoting **Shoppers' World, Inc. v. Assessors of Framingham**, 348 Mass. 366, 377-78 (1971). The burden of proof as to the existence of a "scheme of discriminatory, disproportionate assessment" is

on the taxpayer. **First National Stores, Inc. v. Assessors of Somerville**, 358 Mass. 554, 559 (1971); see **Schlaiker v. Assessors of Great Barrington**, 365 Mass. at 245. If a taxpayer successfully demonstrates improper assessment of such a number of properties to establish an inference that such a scheme exists, the burden of going forward to disprove such a scheme shifts to the assessors. **Shoppers' World, Inc. v. Assessors of Framingham**, 348 Mass. at 377. "The ultimate burden of persuasion, of course, will remain upon the taxpayer." **First National Stores, Inc. v. Assessors of Somerville**, 358 Mass. at 562.

In the present appeals, the appellant failed to meet her burden of proving and persuading the Board that a deliberate scheme of disproportionate assessment ever existed. The evidence submitted was simply inadequate to prove that the assessors engaged in an "intentional widespread scheme of discrimination." **Stilson v. Assessors of Gloucester**, 385 Mass. 724. 727-28 (1982). In the present appeal, the appellant only analyzed a minimal number of properties, sales, and assessments for the fiscal years at issue. The finding of a widespread scheme would require far more data and analysis between classes of property or groups of taxpayers than that supplied by the appellant. The Board found no evidence or inference of an

intentional or deliberate scheme of disproportionate assessment on the part of the Assessors directed against any class of taxpayer or directed against this taxpayer, herself. Accordingly, the Board ruled that the appellant had failed to meet her burden of showing that a deliberate scheme of disproportionate assessment existed in these appeals. Where assessments, even if wrong, are "consistent with honest mistake or oversight on the part of assessors" as opposed to a "deliberate scheme of disproportionate assessment" no relief for disproportionate assessment is appropriate. ***Brown v. Assessors of Brookline***, 18 App. Tax Bd. Rep. 83, 92 (Docket Nos. 145188, etc., February 9, 1996), *affirmed* 43 Mass. App. Ct. 327 (1997), quoting ***Stilson v. Assessors of Gloucester***, 385 Mass. at 728. In this appeal, the Board found and ruled that the assessments for fiscal years 1997 and 1998 were reasonable under the circumstances and supported by the evidence.

On this basis, the Board found and ruled that the appellant's property was not overvalued or disproportionately assessed during the fiscal years at issue. Therefore, the Board decided these appeals for the Assessors.

THE APPELLATE TAX BOARD

By: _____
Abigail A. Burns, Chairman

A true copy:

Attest: _____
Clerk of the Board