

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

JOHN J. GIURLEO

v.

BOARD OF ASSESSORS OF  
THE TOWN OF RAYNHAM

Docket No. F286275

Promulgated:  
June 28, 2007

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 appellee to abate a tax on real estate in the Town of Raynham assessed under G.L. c. 59, §§ 11 and 38, for fiscal year 2006.

Chairman Hammond heard the appellee's Motion to Dismiss for failure to comply with an Order of the Appellate Tax Board ("Board"). He was joined in the decision for the appellee by Commissioners Scharaffa, Egan, Rose and Mulhern.

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

*John J. Giurleo, pro se, for the appellant.*

*Gordon D. Luciano, Assessor, for the appellee.*

## FINDINGS OF FACT AND REPORT

On the basis of the uncontroverted facts contained in the pleadings, the Board made the following findings of fact. The appellant, John J. Giurleo ("Mr. Giurleo") was the assessed owner of a parcel of real estate, improved with a single-family dwelling, located at 200 Wilbur Street in the Town of Raynham ("subject property"). For fiscal year 2006, the Board of Assessors of the Town of Raynham ("assessors") valued the subject property at \$275,400 and assessed a real estate tax, at the rate of \$9.45 per thousand, in the amount of \$2,602.53. Mr. Giurleo timely paid the tax.

On January 24, 2006, Mr. Giurleo timely filed an application for abatement with the assessors, which the assessors denied on February 28, 2006. On July 7, 2006, more than three months from the date of the assessors' action on his application for abatement, Mr. Giurleo filed his appeal with the Board. Accordingly, on the basis of the present record, the Board has no jurisdiction over this appeal.

The assessors did not file a motion to dismiss based on Mr. Guirleo's late-filed petition and did not otherwise bring to the Board's attention this jurisdictional defect. Rather, the assessors moved to dismiss the appeal based on

Mr. Guirleo's failure to allow an interior inspection of his property pursuant to G.L. c. 58A, § 8A. The Board issued four separate Orders - on February 27, 2007, March 13, 2007, April 3, 2007, and April 19, 2007 - ordering Mr. Guirleo to allow inspection of the subject property. Mr. Guirleo failed to comply with the Board's Orders, choosing instead to seek clarification, modification, and limitation of the Orders, and to impose conditions on the inspection, all of which the Board denied.

Accordingly, on May 30, 2007, the Board dismissed the subject appeal for failure to comply with the Board's Orders.

#### **OPINION**

Assessors have a statutory right to inspect property that is the subject of an appeal to the Board. G.L. c. 58A, § 8A. Section 8A provides in pertinent part as follows:

Before the hearing of a petition for the abatement of a tax upon real estate . . . the appellant shall permit the appellee personally or by attorneys, experts or other agents, to enter upon such real estate . . . and inspect such real estate. . . . In the event the appellant refuses to permit the appellee to inspect said property, the board may dismiss the appeal.

Adopting the same posture he took for his fiscal year 2005 appeal before this Board, Mr. Giurleo refused to allow the assessors to inspect the subject property, and refused to comply with multiple Orders of the Board requiring such an inspection. See **Giurleo v. Assessors of Raynham**, ATB Findings of Fact and Report 2006-449 ("**Giurleo I**"). For the reasons explained in **Giurleo I**, the blatant disregard of the Board's Orders is grounds for dismissal of this appeal. The dismissal in the present appeal is further supported by the Appeals Court's summary affirmance of the Board in **Giurleo I. Giurleo v. Assessors of Raynham**, 69 Mass. App. Ct. 1102 (2007).

The Board further notes that a jurisdictional defect is apparent on the face of Mr. Giurleo's petition. He alleges that his application for abatement was denied on February 28, 2006, but his petition was not filed with the Board until July 7, 2006. Pursuant to G.L. c. 59, §§ 64 and 65, his petition was due within three months of the date of the assessors' decision on his application, in this case the next business day following Sunday, May 28, 2006.

The Board has only that jurisdiction conferred on it by statute. **Stilson v. Assessors of Gloucester**, 385 Mass. 724, 732 (1982). "Since the remedy of abatement is created by statute, the [B]oard lacks jurisdiction over the subject

matter of proceedings that are commenced at a later time or prosecuted in a different manner from that prescribed by statute." **Nature Church v. Assessors of Belchertown**, 384 Mass. 811, 812 (1981) (citing **Assessors of Boston v. Suffolk Law School**, 295 Mass. 489, 495 (1936)). Adherence to the statutory prerequisites is essential "to prosecution of appeal from refusals to abate taxes." **New Bedford Gas & Edison Light Co. v. Assessors of Dartmouth**, 368 Mass. 745, 747 (1975). "[A] statutory prerequisite to jurisdiction cannot be waived by any act of the assessors." **Assessors of Boston v. Suffolk Law School**, 295 Mass. at 494; **Old Colony R. Co. v. Assessors of Quincy**, 305 Mass. 509, 511-12 (1940). Like the assessors, the Board also cannot waive jurisdictional requirements. *Id.* Accordingly, the time limit provided for filing the petition is jurisdictional and a failure to comply with it must result in dismissal of the appeal. **Doherty v. Assessors of Northborough**, Mass. ATB Findings of Fact and Reports 1990-372, 373 (citing **Cheney v. Inhabitants of Dover**, 205 Mass. 501 (1910); **Assessors of Boston v. Suffolk Law School**, 295 Mass. 489 (1936)); see also **Berkshire Gas Co. v. Assessors of Williamstown**, 361 Mass. 873 (1972).

The issue of a jurisdictional defect was not brought to the Board's attention prior to its decision in this

appeal and neither party offered evidence on this issue, such as a copy of the assessors' notice of denial. Because Mr. Guirleo's failure to comply with the Board's Orders constitutes a sufficient ground for dismissing the appeal, the Board need not reach the jurisdictional issue in this appeal.

For all of the foregoing reasons, the Board dismissed the appeal and issued a decision for the appellee.

**APPELLATE TAX BOARD**

By: \_\_\_\_\_  
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: \_\_\_\_\_  
Assistant Clerk of the Board