

RENDERED: AUGUST 8, 2008; 10:00 A.M.
NOT TO BE PUBLISHED

SUPREME COURT GRANTED DISCRETIONARY REVIEW: MAY 13, 2009
(FILE NO. 2008-SC-000644-DG)

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-001128-MR

COMMONWEALTH OF KENTUCKY,
JEFFERSON COUNTY PROPERTY
VALUATION ADMINISTRATOR

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MITCHELL PERRY, JUDGE
ACTION NO. 05-CI-002545

CROMWELL LOUISVILLE ASSOCIATES,
LIMITED PARTNERSHIP AND KENTUCKY
BOARD OF TAX APPEALS

APPELLEES

OPINION
REVERSING AND REMANDING

** ** *

BEFORE: COMBS, CHIEF JUDGE; KELLER, JUDGE; HENRY,¹ SENIOR
JUDGE.

COMBS, CHIEF JUDGE: The Louisville/Jefferson County Property Valuation
Administrator (PVA) appeals from a judgment of the Jefferson Circuit Court that

¹ Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

upheld the challenge of Cromwell Louisville Associates, Limited Partnership (Cromwell), to a decision of the Kentucky Board of Tax Appeals (the Board).

Cromwell had contested a 2001 real property tax valuation. The Board concluded that Cromwell had failed to comply with the provisions of Kentucky Revised Statutes (KRS) 133.120 and KRS 133.045 because he had not filed his challenge in the same year that the property valuation occurred. The circuit court disagreed and concluded that the Board erred in dismissing Cromwell's case. We disagree with the court's finding of error by the Board. Therefore, we reverse and remand with instructions for the court to dismiss this action in accordance with the decision of the Board of Tax Appeals.

The parties have stipulated to most of the relevant facts of this case. Cromwell owned and operated a parking garage located at 711 Magazine Street in Louisville, Kentucky, during the tax years 2001, 2002, and 2003. The property was composed of two parcels identified as District 3, Block 13J, Lot 118 (Lot 1) and District 3, Block 13J, Lot 121 (Lot 2).

The PVA has the duty to assess the fair cash value of real and personal property for the Louisville/Jefferson County Metro Government. For the assessment date of January 1, 2001, the Jefferson County PVA assessed the value of Lot 1 at \$1,617,050 and the value of Lot 2 at \$6,116,590 – for a total assessed property value of \$7,733,640. This amount represented an increase from the assessments of January 1, 2000, which were in the amounts of \$881,770 for Lot 1

and \$2,158,830 for Lot 2. The assessments for both 2002 and 2003 maintained and reiterated the 2001 assessment for a total value of \$7,733,640.

The property went into receivership in 2001. In January 2002, CB Commercial-Nicklies, Inc., as receiver of the property and on behalf of Cromwell, paid property tax in the amount of \$94,153.20 to the Jefferson County Sheriff for the 2001 tax year.

On or about April 30, 2002, Cromwell, through counsel, contested and challenged the PVA's assessments of January 1, 2001, and of January 1, 2002. Cromwell contended that the PVA's opinion of the fair cash value of the property was excessive. Cromwell requested a conference with a representative of the PVA. On or about May 20, 2002, Cromwell's counsel met with a representative of the PVA and presented information about the income produced by the property as well as the vacancies that had occurred resulting in loss of income. The conference did not produce a resolution of the dispute. The record reflects that Cromwell's counsel presented evidence about the fair cash value of the lots for both the 2001 and the 2002 tax years.

Cromwell subsequently filed an appeal with the Jefferson County Board of Assessment Appeals (the Assessment Board) for the tax years 2001 and 2002. A hearing was held before the Assessment Board on July 25, 2002.

Cromwell requested a determination of the fair cash value of the property as of January 1, 2001, and January 1, 2002. On August 2, 2002, the Assessment Board notified the parties that it had re-assessed the value of both lots as of January 1,

2002, reducing the value of Lot 1 to \$1,199,100 and the value of Lot 2 to \$4,510,900. The Assessment Board apparently declined to rule on the assessed value of the property as of January 1, 2001. However, for reasons not disclosed within the record, Cromwell appealed the decision to Kentucky Board of Tax Appeals on September 30, 2002.

The parties subsequently reached a settlement agreement stipulating that the total 2002 fair cash value of both lots of the subject property was \$2,100,000.² However, the 2001 valuation of the property remained contested. The parties agreed that if the Board of Tax Appeals decided to consider Cromwell's arguments concerning the 2001 tax year, the assessed value of the property as of January 1, 2001, would also be stipulated to be \$2,100,000; they also stipulated that the amount of the state and local tax liability overpaid by Cromwell for 2001 would be \$67,327.80.

On February 17, 2005, the Board of Tax Appeals issued Order No. K-19265, finding that Cromwell's appeal concerning the 2001 tax year was untimely pursuant to KRS 133.120. Accordingly, it declined to rule on Cromwell's challenge to the 2001 property valuation assessment and dismissed the appeal. The Board determined that KRS 133.120 required Cromwell to have challenged the 2001 tax assessment during the 2001 inspection period. Because Cromwell did not request a conference or a review of the 2001 assessment until the following year

² The parties also reached an agreement that the 2003 fair cash value of the property was \$2,100,000. This dispute had been the subject of a separate proceeding that had been consolidated with the underlying case on December 31, 2003.

(well after the inspection period for the 2001 tax rolls had closed), the Board found that the appeal was fatally flawed and that dismissal was mandated.

Pursuant to KRS 131.370 and KRS Chapter 13B, Cromwell filed an appeal in the Jefferson Circuit Court on March 18, 2005. His petition alleged: (1) that the Board of Tax Appeals had erred in determining that Cromwell's appeal of the 2001 assessment was untimely under KRS 133.120 and (2) that he was entitled to a refund of any excess 2001 property taxes he had paid – plus interest – pursuant to KRS 134.590 and KRS 131.183.

On May 17, 2007, the circuit court entered an order reversing the decision of the Board of Tax Appeals. That order provided as follows:

The Board found that Cromwell did not properly follow the administrative remedy provisions in KRS 133.120 because Cromwell's conference and board of assessment appeal for his 2001 property taxes occurred within the 2002 inspection period, as opposed to the 2001 inspection period. However, there is no specific requirement in the language of KRS 133.120 or KRS 133.045 that the conference and appeal must occur within the inspection period of the identical year as the year of the assessment. KRS 133.120 only requires that the conference and appeal must occur within an inspection period; and Cromwell met this requirement by having his conference and filing his appeal within the 2002 inspection period. In addition, the record indicates that Cromwell complied with the other administrative requirements in KRS 133.120. Finally, even if there had been a valid timeliness objection, the Respondents effectively waived it by fully participating in the conference and board of assessment appeals levels of the administrative process without any timeliness objection.

Based on the above, the Court finds that the Board erred when it determined that Cromwell had not properly

followed the administrative remedy provisions in KRS 133.120. Accordingly, the Court reverses the Board's February 17, 2005 Order; and remands the case to the Board for a ruling on the issue of whether KRS 134.590(1) allows refunds for the overpayment of ad valorem taxes. The Court notes that it did not consider the Respondents' refund application argument because the Respondents failed to raise this issue before the Board.

This appeal followed. The PVA challenges the conclusion of the circuit court that Cromwell properly followed the administrative remedy provisions of KRS 133.120.

We must review the statute without reference or deference to the statutory interpretation of the circuit court. *Cinelli v. Ward*, 997 S.W.2d 474, 476 (Ky.App. 1998). In considering this challenge, we must examine the language of the statute. "The construction and application of statutes is a matter of law and may be reviewed *de novo*." *Bob Hook Chevrolet Isuzu, Inc. v. Com. Transp. Cabinet*, 983 S.W.2d 488, 490 (Ky. 1998).

KRS 133.120 addresses the mandatory administrative appeals procedure for any party wishing to challenge a PVA's real property value assessment by a PVA. KRS 133.120(1) provides:

Any taxpayer desiring to appeal an assessment on real property made by the property valuation administrator shall first request a conference with the property valuation administrator or his designated deputy. **The conference shall be held prior to or during the inspection period provided for in KRS 133.045. . . .**

(Emphasis added). KRS 133.120(2) provides:

Any taxpayer still aggrieved by an assessment on real property made by the property valuation administrator after complying with the provisions of subsection (1) of this section may appeal to the board of assessment appeals. The taxpayer shall appeal his assessment by filing in person or sending a letter or other written petition stating the reasons for appeal, identifying the property for which the appeal is filed, and stating to the county clerk the taxpayer's opinion of the fair cash value of the property. **The appeal shall be filed no later than one (1) workday following the conclusion of the inspection period provided for in KRS 133.045. . . .**

(Emphasis added). Taxpayers wishing to challenge decisions of the Board of Assessment Appeals must appeal to the Kentucky Board of Tax Appeals. KRS 133.120(10). By affidavit, the director of commercial assessment for the PVA indicated that the 2001 inspection period ran from May 7, 2001, until June 29, 2001. The parties have stipulated that a conference with the PVA regarding the 2001 property assessment was not conducted until May 20, 2002.

Critical to our analysis is the issue of what constitutes an “inspection period” as defined by KRS 133.045. That statute sets forth the elements of timeliness as applied to Cromwell’s administrative appeal. KRS 133.045(1) provides that:

The real property tax roll being prepared by the property valuation administrator for the current year, shall be open for inspection in the property valuation administrator's office for thirteen (13) days beginning on the first Monday in May of each year and shall be open for inspection for six (6) days each week, one (1) of which shall be Saturday. In case of necessity, the department may order a reasonable extension of time for the inspection period of the tax roll or it may order that the inspection period be at a different time than that provided

in this section. However, the final day of the inspection period shall not be Saturday, Sunday, or a legal holiday.

The PVA argues that the language of KRS 133.045(1) referring to “current year” required that Cromwell file any objection concerning the 2001 valuation **during the 2001 inspection period**. However, Cromwell did not file such an action **until the following year**. Thus, the PVA contends because of the failure to comply with KRS 133.120, Cromwell is not entitled to a refund for any overpayment of taxes for 2001.

Cromwell believes that the language of KRS 133.045 and KRS 133.120 does not require a party aggrieved by a real property assessment to challenge the assessment during that same year. Instead, Cromwell contends that a taxpayer need only challenge a property tax assessment and seek a refund within the two-year limitations period set forth in KRS 134.590 (which outlines the procedure for seeking a refund of overpayment of *ad valorem* taxes). Cromwell argues that it complied with the requirements of KRS 133.120(1) because it met with the PVA and presented its case as to the 2001 property valuation during the 2002 inspection period; Cromwell also contends that it complied with the requirements of KRS 133.120(2) because it filed its appeal with the Jefferson County Board of Assessment Appeals only one day following the 2002 inspection period.

KRS 133.120(1) and (2) both recite that the appropriate time for a party to request a real property assessment conference or to file a subsequent

appeal to the Board of Assessment Appeals is to be governed by “the inspection period provided for in KRS 133.045.” KRS 133.045(1) unequivocally limits its applicability to “[t]he real property tax roll being prepared by the property valuation administrator for **the current year**[.]” (Emphasis added). Accordingly, we conclude that the time frame for the administrative procedures set forth in KRS 133.120 must be similarly limited to “the current year.” No other reading of the statutes could harmonize them with one another.

The right to appeal the decision of an administrative agency is a matter of legislative grace. Thus, “the statutory conditions for invoking the power of the court to hear such an appeal are strictly construed.” *Hutchins v. General Elec. Co.*, 190 S.W.3d 333, 336-37 (Ky. 2006). A failure to follow the statutory guidelines for an administrative action and appeal is usually fatal to an appeal. *Triad Development/Alta Glyne, Inc. v. Gellhaus*, 150 S.W.3d 43, 47 (Ky. 2004); *Rosary Catholic Parish of Paducah v. Whitfield*, 729 S.W.2d 27, 29 (Ky.App. 1987).

It is undisputed that Cromwell did not request a KRS 133.120(1) conference as to the 2001 property valuation – nor did it pursue a KRS 133.120(2) appeal to the Jefferson County Board of Assessment Appeals – until 2002. The Board of Tax Appeals consequently – and correctly – refused to entertain Cromwell’s appeal because of its failure to comply with the requirements of the statute; *i.e.*, **the filing of its protest during “the current year” of 2001**. Failure to comply fully with KRS 133.120 prevented Cromwell from seeking a tax refund

of an overpayment under the provisions of KRS 134.590. KRS 134.590(6) “No refund for ad valorem taxes . . . shall be made unless the taxpayer has properly followed the administrative remedy procedures established through . . . the appeal provisions of KRS 133.120[.]” Therefore, we are persuaded that the circuit court erred by reversing the Board’s order dismissing Cromwell’s appeal.

The judgment of the Jefferson Circuit Court is reversed, and this matter is remanded with instructions that the court dismiss this action in accordance with the decision of the Board of Tax Appeals.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT
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