

**THEODORE H. BECKER**

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**NO. 2003-CA-0631**

**VERSUS**

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**COURT OF APPEAL**

**ERROL G. WILLIAMS, THIRD  
MUNICIPAL DISTRICT, CITY  
OF NEW ORLEANS**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 2002-14963, DIVISION "J"  
HONORABLE NADINE M. RAMSEY, JUDGE

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**JAMES F. MCKAY III  
JUDGE**

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(Court composed of Judge Patricia Rivet Murray, Judge James F. McKay III,  
Judge David S. Gorbaty)

THEODORE H. BECKER  
New Orleans, Louisiana 70127  
In Proper Person, Plaintiff/Appellant

GREGORY D. GUTH  
LAW OFFICE OF GREGORY D. GUTH  
New Orleans, Louisiana 70119  
Attorney for Defendant/Appellee

## **AFFIRMED**

The plaintiff/appellant, Theodore H. Becker, appeals the judgment of the trial court affirming the assessment placed on his home by the Louisiana Tax Commission (LTC). For the reasons set forth below, we affirm.

The appellant resides at 5721 Kensington Blvd. in New Orleans East. In 2001 appellee/defendant, Erroll G. Williams, assessor, assessed the property at \$207,000.00. The assessment was considerably higher from previous years. The record reflects that from tax year 2000 to 2001, the value of the land remained at \$40,500.00, but the improvement assessment on the home increased from \$79,500.00 to \$159,500.

The Board of Review (Board) lowered the assessment to \$200,000.00, and the taxpayer appealed to the LTC. The assessment of the Board was affirmed, and a petition for judicial review was filed with the Civil District Court for the Parish of Orleans. On January 14, 2003, the trial court affirmed the decision of the LTC. This appeal timely followed.

The appellant does not specifically assign any errors. He does, however, argue that the trial court erred in upholding the assessment of his property. The appellant submits that the appraisal used by the appellee in formulating the assessed value contained an error. Specifically, the appellant points out that the appraisal lists the age of the home as 15 years

rather than 25 years. The appellant asserts that by underestimating the age of the house by ten years, the appraiser erroneously utilized an incorrect depreciation factor. The appellant further submits that despite the error, the trial court upheld the decision of the LTC. He seeks redress from this court and asks that the proceeding be remanded to the LTC with the instruction to recalculate the fair market value using the correct age of the home.

The appellee argues in defense of this appeal that the error referred to by the appellant was a harmless error. It is submitted that although the age of the home was incorrectly listed on the “cost approach” section of the appraisal, it was the “market approach” that was used to value the property. Specifically, the appellee contends that the depreciation schedule was not a factor in the market approach, and that the error found in the cost approach data was irrelevant.

It is asserted by the appellee that La. R.S. 47:2323 sets forth the criteria by which properties are to be assessed and provides for three approaches, i.e., the cost approach, the income approach or the market approach. The appellee points out that both the assessor and the LTC utilized the acceptable market approach in which comparable sales are reviewed to arrive at the fair market value of the property as the best method to value the property.

Judicial review of decisions of the Commission is authorized by La. R.S. 47:1998(A)(1); the extent of that review is governed by La. R.S. 49:964 (F) and (G) of the Administrative Procedure Act. Hotel de La Monnaie Owners Association, Inc. v. Louisiana Tax Commission, 95-1009 (La. App. 1 Cir. 12/15/95), 669 So.2d 455, 458. La. R.S. 49:964(F) confines judicial review to the record established before the Commission. La. R.S. 49:964(G) provides the following:

The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (6) Not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of this rule, where the agency has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.
- (7) In cases covered by R.S. 15:1171 through 1177, manifestly erroneous in view of the reliable, probative, and substantial evidence on the whole record. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by firsthand observation of demeanor on the

witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

Pursuant to constitutional authority found at La. Const. art. 7, Sec. 18, each assessor is charged with the responsibility of determining the fair market value of all property subject to taxation within his parish, at intervals of not more than four years. In addition, the Louisiana Constitution requires that the fair market value be determined in accordance with criteria, established by law and applied uniformly throughout the state. Hotel de la Monnaie Owners Association, Inc.

La. R.S. 47:2321 defines fair market value as follows:

Fair market value is the price for property which would be agreed upon between a willing and informed buyer and a willing and informed seller under usual and ordinary circumstances; it shall be the highest price estimated in terms of money which property will bring if exposed for sale on the open market with reasonable time allowed to find a purchaser who is buying with knowledge of all the uses and purposes to which the property is best adapted and for which it can be legally used.

LSA-R.S. 47:2323(C) provides as follows:

The fair market value of real and personal property shall be determined by the following generally recognized appraisal procedures: the market approach, the cost approach, and/or the

income approach.

- (1) In utilizing the market approach, the assessor shall use an appraisal technique in which the market value estimate is predicated upon prices paid in actual market transactions and current listings.
- (2) In utilizing the cost approach, the assessor shall use a method in which the value of a property is derived by estimating the replacement or reproduction cost of the improvements; deducting therefrom the estimated depreciation; and then adding the market value of the land, if any.
- (3) In utilizing the income approach, the assessor shall use an appraisal technique in which the anticipated net income is processed to indicate the capital amount of the investment which produces the net income.

In the present appeal, the findings of fact and determinations of the LTC are not evident from the record. What is evident from the record is that the LTC based its determination of the fair market value of the appellant's property on the appraisal that has been made a part of this record.

It is clear from the appraisal that the market approach, or sales comparison approach, was used in the valuation rather than the income approach or cost approach. It is also clear that the building data used in formulating the market approach, correctly lists the age of appellant's home as 25 years. We therefore agree with the appellee that the incorrect

designation of the home as 15 years old on the income approach data is harmless error, as that approach was not used.

This Court has the duty to review the reasonableness of the tax commission's conclusions and to ensure that a rational connection can be made between the facts presented by the parties and the tax commission's ultimate decision. We believe that the appraisal presented to the LTC contained the necessary data to support the assigned fair market value. Particularly, in the market approach analysis, the appraiser presented a detailed comparison of the appellant's property with similar properties located in the immediate neighborhood. The appraiser's computations took into account the age, condition, size and location of the properties surveyed. We further find that the use of the market approach, rather than the cost approach or income approach, was proper pursuant to La. R.S. 47:2323(C), as discussed hereinabove.

Accordingly, the judgment of the trial court upholding the decision of the LTC is affirmed.

**AFFIRMED**