

STATE OF MICHIGAN
COURT OF APPEALS

CHAND MARWAHA,

Petitioner-Appellant,

v

CITY OF ROSEVILLE,

Respondent-Appellee.

UNPUBLISHED
December 20, 2011

No. 299546
Tax Tribunal
LC No. 00-355031

Before: WILDER, P.J., and TALBOT and SERVITTO, JJ.

PER CURIAM.

Petitioner appeals as of right from the final opinion and judgment of the Michigan Tax Tribunal denying petitioner's small claims petition protesting a property's assessed true cash value (TCV) and taxable value (TV). We affirm.

Prior to the scheduled hearing on the petition, petitioner submitted his evidence to the tribunal and to respondent's agent, as required by tribunal rules. Respondent submitted its evidence to the tribunal and to petitioner himself but did not, however, submit any evidence to petitioner's counsel, who had been listed as petitioner's agent or counsel on petitioner's petition.

The hearing on the petition was held with petitioner present, but with respondent absent due to its request to be heard on the file. According to petitioner, his counsel objected at the hearing to the admission of respondent's evidence based on respondent's failure to submit a copy of the same to counsel. Also according to petitioner, the tribunal refused to hear this objection because respondent was not present to respond to it.

Ultimately, the tribunal found that petitioner had failed to meet his burden of proof because the appraisals he submitted "lack[ed] credibility, because all the comparables chosen were bank-owned, and Petitioner did not provide evidence to indicate that [the] sales were arm's-length and subject to normal market conditions." There was no explicit mention of petitioner's objection to the inclusion of respondent's evidence, but the final opinion and judgment does note that "[t]he Tribunal considered the other issues raised by Petitioner and did not consider them worthy of merit."

On appeal, petitioner first alleges that the tribunal abused its discretion by failing to exclude respondent's appraisal evidence. We disagree.

The trial court's decision to admit evidence is reviewed for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). An abuse of discretion occurs when a trial court selects an outcome falling outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

Under tribunal rules, parties are required to file and serve evidence on the opposing party. TTR 320(3). Further, any pleadings and documents filed with the tribunal must be served concurrently to the opposing party's authorized representatives, if a party has such an authorized representative. TTR 208(5).

Failure to comply with this subrule *may* result in the exclusion of the valuation disclosure or other written evidence at the time of the hearing because the opposing party or parties *may* have been denied the opportunity to adequately consider and evaluate the evidence before the date of the scheduled hearing. [Emphasis added.] TTR 320(3).

In this case, it is undisputed that respondent failed to deliver its appraisal evidence to petitioner's counsel as required by the tribunal rules. However, the clear and unambiguous language of TTR 320(3) makes the exclusion of evidence submitted to the tribunal in violation of TTR 320(3) permissible, but not mandatory.

Though petitioner's attorney was not personally served, the record shows that petitioner was not prejudiced by what appears to have been an inadvertent omission. The tribunal's final opinion and judgment recounts numerous challenges raised by petitioner's counsel to respondent's valuations. These challenges were focused on specifics of the various appraisals such as with square footage and recent remodeling of the homes, indicating a solid familiarity with the contents of those appraisals and sufficient time to prepare challenges to their reliability and accuracy before the tribunal. Given that counsel adequately considered and evaluated the evidence then posed numerous challenges to the same, despite not having been served with the evidence, the tribunal did not abuse its discretion in admitting the evidence.

Petitioner next argues that the tribunal erred by finding that his appraisal evidence was not reliable (i.e., that he did not meet his burden of proof) and by accepting respondent's valuation of petitioner's property rather than making an independent determination of true cash value. We disagree.

"In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation." Const 1963, art 6, § 28. A tax tribunal decision that is not supported by competent, material, and substantial evidence on the whole record is an "error of law" within the meaning of Const 1963, art 6, § 28. *Oldenburg v Dryden Twp*, 198 Mich App 696, 698; 499 NW2d 416 (1993). Substantial evidence must be more than a scintilla, although it may be substantially less than a preponderance of the evidence. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992). "Substantial" evidence is that which a reasonable mind would accept as sufficient to support the conclusion. *Kotmar, Ltd v Liquor Control Comm*, 207 Mich App 687, 689; 525 NW2d 921 (1994).

In a property value dispute, the taxpayer has the burden of proof to establish the TCV of the property. *Oldenburg*, 198 Mich App at 698-699. However, the tax tribunal is still required to make its own independent determination of the property's TCV. *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998). In doing so, the tax tribunal is not bound by the parties' valuation theories and "may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination of true cash value." *Id.* at 390. "The weight to be accorded to the evidence is within the Tax Tribunal's discretion." *Id.* at 404.

Petitioner first alleges that the tribunal erred by finding petitioner's appraisal evidence to not be persuasive because it was composed of bank-owned comparables.¹ According to petitioner, this constituted an error of law because the use of bank-owned properties in sales studies is approved by the State Tax Commission. However, the fact that bank-owned property sales may be used in sales studies does not mean that the tribunal must find those sales to be credible evidence of TCV in the absence of evidence showing those sales to have been conducted at arm's-length. In this case, the tribunal explicitly found that petitioner's comparable sales evidence was not convincing because petitioner failed to provide any evidence that those sales were made at arm's-length and were subject to normal market conditions. As such, because "[t]he weight to be accorded to the evidence is within the Tax Tribunal's discretion," the tribunal did not err. *Id.*

Petitioner next alleges that the tribunal erred as a matter of law by affirming respondent's valuation figure simply because it found unpersuasive petitioner's valuation figure and failing to make an independent finding regarding valuation. This allegation, however, is not supported by the record. In its final opinion and judgment, the tribunal specifically found that "[t]he valuation approach that is the most reliable indicator of the property's true cash value . . . is Respondent's market sales approach" (Final opinion and judgment, p 5). This conclusion clearly shows that the tribunal did not simply default to respondent's valuation in light of its conclusion that petitioner's valuation was not reliable. It instead found that the methodology used by respondent was sound and that the figures respondent arrived at were persuasive. The tribunal was not forbidden from accepting respondent's valuation as the basis of its determination of TCV.

Again, our review of a Tax Tribunal decision is limited, *Mount Pleasant v State Tax Comm*, 477 Mich 50, 53; 729 NW2d 833 (2007), and so long as the tribunal's findings of fact are supported by competent, material, and substantial evidence, as they were here, we will generally accept them as true. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App at 353. While the tribunal did not go into the specific reasoning behind its conclusion, "[b]rief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without

¹ Petitioner's suggested TCV, based upon his submitted appraisals, differed greatly from the TCV suggested by respondent, based upon its submitted appraisals. For example, petitioner's suggested TCV for 2008, 2009, and 2010 was \$64,000, \$21,000, and \$16,000. Respondent's suggested TCV for the same years was \$96,711, \$83,952, and \$61,736.

overelaboration of detail or particularization of facts.” MCR 2.517(A)(2). We find no error in the tribunal’s conclusion.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Michael J. Talbot
/s/ Deborah A. Servitto