

STATE OF MICHIGAN
COURT OF APPEALS

BEN ALLI,

Petitioner-Appellant,

v

CITY OF DETROIT,

Respondent-Appellee.

UNPUBLISHED
December 20, 2011

No. 301395
Tax Tribunal
LC No. 00-343015

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

PER CURIAM.

Petitioner, proceeding in propria persona, appeals as of right from a Tax Tribunal judgment adopting and incorporating the proposed findings of fact and conclusions of law of a hearing referee who in turn upheld the true cash value, assessed value, and taxable value of a parcel of real property as established by the Board of Review. Because the Tax Tribunal failed to make an independent determination of true cash value (TCV), we reverse its decision regarding TCV and remand for further proceedings.

This Court reviews the decisions of the Tax Tribunal, in the absence of fraud, to determine “whether the tribunal made an error of law or adopted a wrong principle; the factual findings of the tribunal are final, provided that they are supported by competent and substantial evidence.” *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984).

In *President Inn Props, LLC v City of Grand Rapids*, ___ Mich App ___; ___ NW2d ___ (Docket No. 294452, issued February 17, 2011), slip op at 3, lv pending, this Court summarized the Tax Tribunal’s role when presented with a property valuation dispute:

With respect to general valuation principles in the Tax Tribunal, the petitioner has the burden to establish the true cash value of property. MCL 205.737(3); *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998). The burden of proof encompasses two concepts: “(1) the burden of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party.” *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 354–355; 483 NW2d 416 (1992). Nevertheless, because Tax Tribunal proceedings are de novo in nature, the Tax Tribunal has a duty to make an independent determination of true cash value. *Great Lakes Div of Nat'l Steel*

Corp, 227 Mich App at 409. Thus, even when a petitioner fails to prove by the greater weight of the evidence that the challenged assessment is wrong, the Tax Tribunal may not automatically accept the valuation on the tax rolls. *Id.* at 409. Regardless of the methodology employed, the Tax Tribunal has the overall duty to determine the most accurate valuation under the individual circumstances of the case. *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 485-486, 502; 473 NW2d 636 (1991).

Citing *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984), the Court explained that “the Tax Tribunal may adopt the assessed valuation on the tax rolls as its independent finding of TCV when competent and substantial evidence supports doing so.” *President Inn Props*, slip op at 8.

In this case, we agree with petitioner that the Tax Tribunal failed to make an independent determination of TCV. The hearing referee stated, “The valuation approach that is the most reliable indicator of the property’s true cash value for the tax year(s) at issue is the sales comparison approach.” But the referee found that the parties failed to offer adequate evidence regarding sales. The referee explained her reasons for adopting the valuation in the assessment record as follows:

Consequently, the Tribunal Court [sic] finds that Petitioner has failed in his burden of proof to present convincing evidence of value and Respondent’s contention as to value cannot be automatically adopted due to the fact that such data is outdated and Respondent has failed to demonstrate the application of this data to the subject property tax assessment. The Tribunal has a duty to make an independent determination of value. In this case, the Tribunal *was unable to make an independent determination of value* as it had no evidence from which to make such a determination except the assessment record for the subject property provided by Respondent. The Tribunal reviewed and analyzed Respondent’s assessment record card, as revised by the Respondent, and the calculation provided therein and finds the same to provide reasonable support for the assessed value as set forth above. [Emphasis added.]

Thus, the hearing referee did not make an independent determination of TCV. This deficiency was not ameliorated by the final opinion and judgment issued by the Tax Tribunal, which states in part:

The Tribunal is charged with determining the true cash value of the subject property and, in doing so, must rely on the evidence. Neither party provided sufficient or reliable sales comparison or income approach data to support the actual or alleged statements cited by Petitioner. As a result, the Hearing Referee properly relied on the best remaining evidence and affirmed the assessments for the tax years at issue.

The tribunal’s final opinion and judgment does not state that the valuation on the assessment rolls reflected the TCV of the property. It merely states that that evidence was the “best remaining evidence.” In adopting the hearing referee’s proposed opinion and judgment,

the tribunal thus also adopted the referee's finding that "the Tribunal was unable to make an independent determination of value[.]" If the tribunal did not have adequate evidence to properly make an independent determination of TCV, it could have sought additional data from the parties. Because the Tax Tribunal did not make an independent determination of TCV, we reverse its decision regarding TCV and remand for further proceedings.

Reversed and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

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