

TAX COURT OF NEW JERSEY

Joshua D. Novin  
Judge



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OF THE TAX COURT COMMITTEE ON OPINIONS

February 11, 2016

Mrs. Fatma E. Cezzaroglu  
Mr. Ali N. Cezzaroglu  
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Adam J. Colicchio, Esq.  
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190 North Avenue East  
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Re: Fatma E. & Ali N. Cezzaroglu v. Roselle Borough  
Docket No. 010577-2014

Dear Mr. and Mrs. Cezzaroglu and Mr. Colicchio:

This letter constitutes the court's opinion following trial in the above-referenced matter. Fatma E. Cezzaroglu and Ali N. Cezzaroglu ("plaintiffs") contest the 2014 tax year local property assessment on their single-family residence. For the reasons set forth herein, the 2014 tax year local property tax assessment is affirmed.

**I. Procedural History and Factual Findings**

Pursuant to R. 1:7-4, the court makes the following findings of fact and conclusions of law based on the evidence and testimony offered at trial.

Plaintiffs are the owners of a single family home situate at 1234 Chestnut Street, in the Borough of Roselle, County of Union, and State of New Jersey (the "subject property"). For the 2014 tax year, the assessment on the subject property was as follows:

Land:	\$ 74,000
<u>Improvements:</u>	<u>\$ 84,100</u>
Total	\$158,100

The average ratio of assessed to true value, commonly referred to as the Chapter 123 ratio, for the Borough of Roselle for the 2014 tax year was 59.78%. See N.J.S.A. 54:1-35a(a). When the average ratio is applied to the local property tax assessment, the implied equalized value of the subject property was \$264,469.72 for the 2014 tax year.

Plaintiffs initially filed a petition of appeal with the Union County Board of Taxation (the “Board”) challenging the 2014 tax year local property tax assessment on the subject property. On June 26, 2014, the Board issued a Memorandum of Judgment (the “Judgment”) dismissing plaintiffs’ petition of appeal without prejudice under judgment code “2A”, concluding that the subject property’s assessment was “Within Range N.J.S.A. 54:3-22.” Thereafter, plaintiffs filed a timely Complaint with the Tax Court challenging the Board’s Judgment.

The trial of this matter was conducted on September 22, 2015. At trial, plaintiffs offered the testimony of Ali N. Cezzaroglu and a State of New Jersey licensed residential real estate appraiser, who was accepted by the court as an expert, without objection (the “expert”). The expert prepared an appraisal report for the subject property bearing an effective date of October 1, 2013, which was admitted into evidence, also without objection.

Based upon the testimony and evidence presented at trial, the court concludes the subject property is a one-story ranch style, single-family home, approximately 67 years of age and is situated on a 23,069 square foot lot. The home has a gross living area of 1,200 square feet, consisting of a living room, dining room, kitchen, two bedrooms, a full bathroom, a den, an enclosed porch, and an attached one-car garage. The subject property was acquired by plaintiffs from The Bank of New York on January 21, 2011 for a reported consideration of \$65,000. Following acquisition, plaintiffs undertook renovations to the subject property including, but not

limited to, replacement of the kitchen cabinetry, countertops, kitchen appliances, and HVAC systems.

Plaintiffs' expert employed the sales comparison approach to reach an opinion of the true market value of the subject property. The expert offered his opinion that the true market value of the subject property as of the October 1, 2013 valuation date was \$109,000.

At the close of plaintiffs' proofs, defendant moved to dismiss plaintiffs' Complaint under R. 4:37-2(b), arguing that plaintiffs' failed to overcome the presumption of validity. The court reserved decision on defendant's motion.

## **II. Conclusions of Law**

### **a. Presumption of Validity**

“Original assessments and judgments of county boards of taxation are entitled to a presumption of validity.” MSGW Real Estate Fund, LLC v. Borough of Mountain Lakes, 18 N.J. Tax 364, 373 (Tax 1998). The presumption “attaches to the quantum of the tax assessment. Based on this presumption, the appealing taxpayer has the burden of proving that the assessment is erroneous.” Pantasote Co. v. City of Passaic, 100 N.J. 408, 413 (1985) (citing Riverview Gardens v. North Arlington Borough, 9 N.J. 167, 174 (1952)). “The presumption...stands, until sufficient competent evidence to the contrary is adduced.” Little Egg Harbor Township v. Bonsangue, 316 N.J. Super. 271, 285-86 (App. Div. 1998). A taxpayer can only overcome the presumption by introducing “cogent evidence” of true value. That is, evidence which is “definite, positive and certain in quality and quantity”. Aetna Life Ins. Co. v. Newark City, 10 N.J. 99, 105 (1952). Thus, at the close of plaintiffs' proofs, the court must be presented with evidence which raises a “debatable question as to the validity of the assessment.” MSGW Real Estate Fund, LLC, supra, 18 N.J. Tax at 376.

When confronted with a motion for involuntary dismissal under R. 4:37-2(b), the trial court

must view the evidence presented as “uncontradicted” and accord the non-moving party the “benefit of all legitimate inferences” which can be deduced therefrom. Verdicchio v. Ricca, 179 N.J. 1, 30-32 (2004). Thus, when considering whether the evidence offered meets the “cogent evidence” standard, the court “must accept such evidence as true and accord the plaintiff all legitimate inferences which can be deduced from the evidence.” MSGW Real Estate Fund, LLC, *supra*, 18 N.J. Tax at 376 (citing Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995)). The evidence presented “must be ‘sufficient to determine the value of the property under appeal, thereby establishing the existence of a debatable question as to the correctness of the assessment.’” West Colonial Enters, LLC v. City of East Orange, 20 N.J. Tax 576, 579 (Tax 2003) (quoting Lenal Props., Inc. v. City of Jersey City, 18 N.J. Tax 405, 408 (Tax 1999), *aff’d*, 18 N.J. Tax 658 (App. Div. 2000), *certif. denied*, 165 N.J. 488 (2000)).

If after evaluating the evidence presented the trial court concludes that adequate “cogent evidence” of true value has not been presented to overcome the presumption of validity, then judgment must be entered affirming the assessment. Ford Motor Co. v. Township of Edison, 127 N.J. 290, 312 (1992). Only after the presumption of validity has been “overcome with sufficient evidence... must the court ‘appraise the testimony, make a determination of true value and fix the assessment.’” Greenblatt v. Englewood City, 26 N.J. Tax 41, 52 (Tax 2011) (quoting Rodwood Gardens, Inc. v. City of Summit, 188 N.J. Super. 34, 38-39 (App. Div. 1982)).

Accordinging plaintiffs all reasonable and legitimate inferences which can be deduced from the evidence presented, the court concludes that sufficient cogent evidence has been produced to overcome the presumption of validity that attaches to the quantum of the tax assessment. When the subject property’s local property tax assessment for the 2014 tax year is divided by the value opinion offered by plaintiffs’ expert, the resulting ratio exceeds the upper limit of the common

level range. Thus, if accepted by the court as true, the opinions of plaintiffs' expert would raise debatable questions regarding the correctness of the subject property's assessment.

However, concluding the presumption of validity has been overcome, does not equate to a finding by the court that the subject property's assessment is erroneous. Once the presumption has been overcome, the court must "turn to a consideration of the evidence adduced on behalf of both parties and conclude the matter based on a fair preponderance of the evidence." Ford Motor Co., supra, 127 N.J. at 312. Although the proofs, when measured against the liberal standards employed in evaluating a motion under R. 4:37-2(b), may be sufficient to overcome the presumption of validity at the close of plaintiffs' case-in-chief, "the burden of proof remain[s] on the taxpayer...to demonstrate that the judgment under review was incorrect." Id. at 314-15 (citing Pantasote Co., supra, 100 N.J. at 413).

**b. Methodology**

"There are three traditional appraisal methods utilized to predict what a willing buyer would pay a willing seller on a given date, applicable to different types of properties: the comparable sales method, capitalization of income and cost." Brown v. Borough of Glen Rock, 19 N.J. Tax 366, 376 (App. Div. 2001) (citing Appraisal Institute, The Appraisal of Real Estate 81 (11<sup>th</sup> ed. 1996), certif. denied, 168 N.J. 291 (2001)). "[T]he answer as to which approach should predominate depends upon the facts in the particular case." WCI-Westinghouse, Inc. v. Township of Edison, 7 N.J. Tax 610, 619 (Tax 1985), aff'd, 9 N.J. Tax 86 (App. Div. 1986).

The sales comparison approach derives an opinion of market value "by comparing properties similar to the subject property that have recently sold, are listed for sale, or are under contract." Appraisal Institute, The Appraisal of Real Estate 377 (14<sup>th</sup> ed. 2013). This approach requires an appraiser to engage in a "comparative analysis of properties" and to focus on the "similarities and differences that affect value...which may include variations in property rights,

financing, terms, market conditions and physical characteristics.” Id. at 378. When credible and reliable market data is available, this approach “is the most straight forward and simple way to explain and support an opinion of market value.” Greenblatt, supra, 26 N.J. Tax 41.

Here the court concludes, as did the expert, the sales comparison approach is the most appropriate method to determine the true market value of the subject property.

**c. Valuation**

In employing the sales comparison approach appraisers must adhere to a “systematic procedure”. Appraisal Institute, The Appraisal of Real Estate 381 (14<sup>th</sup> ed. 2013). Primarily, appraisers must conduct research of the competitive marketplace for “information on properties that are similar to the subject property and that have recently sold, are listed for sale or are under contract.” Ibid. A crucial element of this research involves the process of data verification. An appraiser must verify information by “confirming that the data obtained is factually accurate and that the transactions reflect arm’s-length market considerations.” Ibid. During this data verification process an appraiser must “elicit additional information about the property such as buyer motivation, economic characteristics, [and] value component allocations...to ensure that comparisons are credible.” Ibid. The process demands an appraiser “verify information with a party to the transaction to ensure its accuracy and gain insight into the motivation behind each transaction.” Id. at 385. When possible, an appraiser should confirm “statements of fact with the principals to the transaction...or with brokers, closing agents, or lenders involved.” Ibid.

Appraisers are similarly bound to ensure that all appraisals “conform to the Uniform Standards of Professional Appraisal Practice (USPAP) in effect on the date which the appraisal was prepared...” N.J.A.C. 13:40A-6.1. Those standards require appraisers to “correctly complete research and analysis necessary to produce a credible result.” The Appraisal Foundation, Uniform Standards of Professional Appraisal Practice, Standards Rule 1 (2012-2013

ed.). In developing a real property appraisal, appraisers “must...reconcile the quality and quantity of data available and analyzed” with the approach to value being utilized. The Appraisal Foundation, Uniform Standards of Professional Appraisal Practice, Standards Rule 1 (2012-2013 ed.).

Moreover, our Legislature has mandated that in Tax Court proceedings, any person being offered as a witness with respect to the review of a local property tax assessment shall possess information or knowledge regarding comparable property sales acquired from owners, sellers, purchasers, lessees, brokers or attorneys who were a party to, or participated in, the transaction.

N.J.S.A. 2A:83-1. Specifically, N.J.S.A. 2A:83-1 requires that:

in any action or proceeding in the Tax Court, any person offered as a witness in any such action or proceeding shall be competent to testify as to sales of comparable land, including any improvements thereon...from information or knowledge of such sales, obtained from the owner, seller, purchaser, lessee or occupant of such comparable land, or from information obtained from the broker or brokers or attorney or attorneys who negotiated or who are familiar with or cognizant of such sales, which testimony when so offered, shall be competent and admissible evidence in any such action or proceeding.

[N.J.S.A. 2A:83-1].

Here, plaintiffs’ expert was qualified by the court as an expert in residential real property valuation, thereby permitting him to express opinion testimony. See N.J.R.E. 702. In describing the process employed in selecting and gathering information about the comparable property sales, the expert offered that plaintiffs provided him with a “list of useable properties from the tax assessor’s office”. Although plaintiffs’ expert did not elaborate on this point, the court interprets his reference to “useable properties” to denote the designation contained on form SR1-A, for the exclusion of sales transactions from the Director of the New Jersey Division of Taxation’s assessment-sales ratio study. See N.J.A.C. 18:12-1.1(a).

The expert further explained that he “took [the list of useable properties provided by plaintiffs], put them on a map to see which was in the local area of the dwelling” and selected three transactions from that list for use in his appraisal report.

Plaintiffs’ expert relied on the sale of three single-family homes in Roselle Borough which sold between August 2012 and April 2013. The sale prices of the expert’s comparable sales ranged from \$60,000 to \$130,000. After adjustments, the adjusted sale prices of the expert’s comparable sale transaction ranged from \$72,900 to \$104,500.

Comparable sale one located at 1029 Drake Avenue, Roselle Borough, New Jersey sold in December 2012, for a price of \$65,000. This comparable is a two-story, colonial-style, single-family home, located approximately .80 miles from the subject property. According to the expert, comparable sale one had a gross living area of 942 square feet, making it approximately 21.5% smaller than the subject property. Plaintiffs’ expert made the following adjustments to the sale price of comparable sale one: (i) a positive adjustment of \$10,000 for condition; and (ii) a positive adjustment of \$6,000, to account for differences in gross living area; and (iii) a positive adjustment of \$3,500, to account for the lack of central air conditioning; and (iv) a negative adjustment of \$3,500, to account for the presence of a two-car garage; and (v) a positive adjustment of \$1,000, to account for the lack of a patio; and (vi) a positive adjustment of \$1,000 to account for the lack of a fence.

In total, the expert made net adjustments of 28% and gross adjustments of 38% to comparable sale one. The expert’s final adjusted sale price was \$83,000.

Comparable sale two located at 54 Independence Drive, Roselle Borough, New Jersey sold in April 2013, for a price of \$109,000. This comparable is a Cape Cod style, single-family home, located approximately .64 miles from the subject property. According to the expert, comparable sale two had a gross living area of 920 square feet, making it approximately 23%



smaller than the subject property. Plaintiffs' expert made the following adjustments to the sale price of comparable sale two: (i) a negative adjustment of \$2,000, to account for the presence of a half bathroom; and (ii) a positive adjustment of \$6,000, to account for differences in gross living area; and (iii) a negative adjustment of \$3,500, to account for the presence of a two-car garage; and (iv) a positive adjustment of \$1,000, to account for the lack of a patio; and (v) a positive adjustment of \$1,000 to account for the lack of a fence.

In total, the expert made net adjustments of 6% and gross adjustments of 16% to comparable sale two. The expert's final adjusted sale price was \$115,000.

Comparable sale three located at 561 Trinity Place, Roselle Borough, New Jersey sold in August 2012, for a price of \$140,000. This comparable is a Cape Cod style, single-family home, located approximately .99 miles from the subject property. According to the expert, comparable sale three had a gross living area of 1,672 square feet, making it approximately 39% larger than the subject property. Plaintiff's expert made the following adjustments to the sale price of comparable sale three: (i) a negative adjustment of \$4,000, to account for the presence of an additional full bathroom; and (ii) a negative adjustment of \$11,000, to account for differences in gross living area; and (iii) a negative adjustment of \$5,000, to account for the presence of a finished basement; and (iv) a positive adjustment of \$1,000 to account for the lack of a fence.

In total, the expert made net adjustments of -14%, and gross adjustments of 15% to comparable sale three. The expert's final adjusted sale price was \$121,000.

However, the expert's opinion suffers from flaws that are fatal to its credibility. The facts and data about the comparable sale transactions, upon which the expert's opinions of value were premised, were not verified, confirmed or corroborated with individuals possessing knowledge of or a familiarity with those transactions.

In performing his sales comparison analysis, the expert stated that he,

“...physically looked at, from the exterior, all the comps that I choose to use and...was able to go onto the MLS and look at the pictures and the interior of all the subject properties that I was using as comparables, going on to the MLS to see what they had to say about the property, then I went to the tax records that are available online for square footage...the Monmouth [County Board of Taxation] and they give you the year it was built, and the square footage, and the square footage as well of the land, and they usually put in the date that the property had closed and the selling price, so I used both as a method of confirming the sale and then I was able to enter them into my program, adjusting for square footage, adjusting for what the interior of the subject property looked like the interior and subject property looked like on the comparable properties, and from that extrapolated a current market value the property.”

The court’s questioning of the expert revealed that he “did not call the tax assessor’s office for the square footage of those [the comparable] properties” nor confer with the seller, purchaser, attorneys for the seller or purchaser, or the listing or buying brokers who negotiated, possessed knowledge of or, were familiar with such transactions. Instead, the expert relied solely upon information which he gathered from online sources such as the Garden State Multiple Listing Service website and Monmouth County Board of Taxation’s website. In the expert’s opinion, “generally, what happens is the buyer’s broker or the seller’s broker enters the selling price and closing date on that property, and I would say, 99% of the time it coincides exactly with what is on the tax form online.”

The expert’s comparisons, adjustments and conclusion of value for the subject property were premised upon facts and data which he did not verify with any transaction participants. Accordingly, material issues exist as to the credibility and reliability which the court should accord the expert’s analysis.

In recognizing the pitfalls which exist with information reported on real estate multiple listing service websites, the Appraisal Institute cautioned appraisers that while “the service will

contain fairly complete information about these properties, including descriptions and brokers' names...details about a property's square footage, basement area, or exact age may be inaccurate or excluded." Appraisal Institute, The Appraisal of Real Estate 119 (14<sup>th</sup> ed. 2013). In fact, the listings contained on most local real estate multiple listing service websites contain express disclosures about the accuracy of the information contained therein. For example, the Garden State MLS, LLC website, relied upon by the expert, contains an express disclaimer that the "information [is] deemed reliable but [is] not guaranteed." The rationale behind this disclosure is practical, as the information contained on the website may be reported to real estate sales professionals by unsophisticated third parties and thus, based upon erroneous data or speculation.

Moreover, the other source of information relied upon by the expert, the Monmouth County Board of Taxation's website contains an express "Disclaimer and Limitation of Liability." That disclaimer states that information available on the Online Public Records Search System ("OPRSS") "has many sources that are not controlled by Monmouth County and it's [sic] agencies." The disclaimer further provides that no warranties or assurances are made with respect to the "accuracy, adequacy, quality, currentness, validity, completeness, or suitability of any data for any purpose". Express disclaimers of liability are contained therein as the result of any "inaccuracies, errors or omissions with respect to the data" or "any damage arising therefrom or occasioned thereby, or for the results obtained from the use of the data." The "accuracy, adequacy, completeness, currentness, validity, and quality of any data" is expressly assumed by the user of the website.

Vital to the reliability and integrity of the sales comparison approach is the principle that information and data must be properly sourced, verified and analyzed to ensure accuracy and to "better understand the attitudes and motivations of the buyer and seller." Appraisal Institute, The Appraisal of Real Estate 125 (14<sup>th</sup> ed. 2013). The obligation of an appraiser to collect "accurate,

reliable data remains an essential task because the conclusions of the analyses of appraisers are only as good as the data that supports those conclusions.” Id. at 95. An appraiser must verify and analyze the data and its sources to ensure accuracy and to “better understand the attitudes and motivations of the buyer and seller.” Id. at 125.

Here, plaintiffs’ expert failed to verify the integrity of the facts and data upon which he relied, which facts and data formed the basis of his opinion of value for the subject property. The expert did not contact any transaction participants to confirm the sale terms, to inquire whether the seller or buyer were unusually motivated by economic factors to dispose of or acquire the property, or the condition of the comparable properties. Stated differently, plaintiffs’ expert did not abide by the fundamental requirements mandated by our Legislature under N.J.S.A. 2A:83-1. By declining to verify the accuracy of the information upon which he relied with transaction participants, the municipal tax assessor’s office or publicly recorded instruments, the court is unable to accord the expert’s testimony any weight. Although a real estate multiple listing service website and the OPRSS may be a source of data and information for appraisers, it is the process by which an appraiser verifies the accuracy of that data that is the hallmark of an effective appraisal report and sound opinion of value.

Additionally, the gross living area adjustments employed by the expert lack a credible foundation supported by objective data or market derived sources.

According to the expert, his gross living area adjustments were calculated by averaging the comparable properties gross living area sales prices, on a per square foot basis. The expert explained, “what I have been taught and have done over a number of years, I take the gross square footage value...and we average it, and divide by three and it comes out with a square footage price per square foot for the excess or the overage either way.”

It is well recognized that in residential real property gross living area is one of the central features that drives sales prices. However, the expert offered no support, either in law or in the appraisal community, for the mathematical approach he employed to make his gross living area adjustments. Moreover, based upon the expert's testimony, the formula he employed would have resulted in a gross living area adjustment value of \$30.13 psf ( $\$69 + \$118.48 + 83.73 = \$271.21/3 = \$90.40/3 = \$30.13$ ). However, the court's analysis of the gross living area adjustments contained in the appraisal report revealed that the expert utilized values of \$23.26 psf, \$21.43 psf and \$23.31 psf. The expert offered no plausible explanation for these discrepancies and inconsistencies. Moreover, the expert's appraisal report provides no meaningful insight into the formula or market data utilized to support his per square foot gross living area adjustments.

The weight to be accorded expert testimony "depends upon the facts and reasoning which form the basis of the opinion. An expert's conclusion can rise no higher than the data providing the foundation (citation omitted). If the bases for the adjustments are not made evident the court cannot extrapolate value." Inmar Associates v. Edison Township, 2 N.J. Tax 59, 66 (Tax 1980). Thus, in order for the opinion of an expert to be of any import, the expert is required to "identify the factual bases for their conclusions, explain their methodology, and demonstrate that both the factual bases and the methodology are scientifically reliable." Landrigan v. Celotex Corp., 127 N.J. 404, 417 (1992). "Without explanation as to the basis, the opinion of the expert is entitled to little weight..." Dworman v. Tinton Falls Borough, 1 N.J. Tax 445, 458 (Tax 1980) (citing to Passaic v. Gera Mills, 55 N.J. Super. 73 (App. Div. 1959), certif. denied, 30 N.J. 153 (1959)). Thus, an expert's adjustments which are not derived from the market and supported by an "explanation of the methodology and assumptions used in arriving at the adjustments" are entitled to little weight. Greenblatt, supra, 26 N.J. Tax at 55.

**d. Determination of true market value**

Our Supreme Court has recognized that “[t]he Tax Court has not only the right, but the duty to apply its own judgment to valuation data submitted by experts in order to arrive at a true value and find an assessment for the years in question.” Glen Wall Associates v. Township of Wall, 99 N.J. 265, 280 (1985) (citing New Cumberland Corp. v. Roselle Borough, 3 N.J. Tax, 345, 353 (Tax 1981)). Stated differently, the court bears the responsibility of applying its own judgment to the objective data presented to determine the true market value of a property. To enable the court to make this finding of true market value, credible and competent evidence must be adduced in the trial record.

Here, the lack of credible factual and objective market data raises material doubts regarding the verity of the comparable sale transactions relied upon by the expert and clouds his opinion of value for the subject property. As Judge Andrew observed, “[w]hile this court has a certain degree of knowledge and expertise in local property tax matters...it cannot legitimately review the adjustment process...and arrive at an informed determination” in the absence of credible data. WCI-Westinghouse, Inc. v. Township of Edison, 7 N.J. Tax 610, 622 (Tax 1985), aff’d, 9 N.J. Tax 86 (App. Div. 1986). The court’s independent determination of value must be based “on the evidence before it and the data that are properly at its disposal.” F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 430 (1985).

**III. Conclusion**

The court concludes that plaintiffs have failed to prove, by a fair preponderance of the evidence, the subject property’s local property tax assessment exceeds its true market value. Accordingly, the court will enter judgment dismissing plaintiffs’ Complaint.

Very truly yours,

  
Hon. Joshua D. Novin, J.T.C.