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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

Mark Cimino
Judge

Atlantic County Civil Courts Building
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January 12, 2016

Edward Sakos, *pro se*
64 Zion Road
Egg Harbor Township, NJ 08234

Stanley L. Bergman, Esquire
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Egg Harbor Township, NJ 08234

RE: EDWARD SAKOS v.
EGG HARBOR TOWNSHIP
DOCKET NO: 014257-2015

Gentlemen:

This letter supplements the court's decision placed upon the record in the above-referenced matter challenging the 2015 tax year assessment on the taxpayer's property.

The taxpayer attempts to upset the original assessment upheld by the judgment of the County Board of Taxation. For the reasons set forth below, the court determines that the judgment entered by the Atlantic County Board of Taxation stands.

Mr. Sakos is the record owner of a property located in Egg Harbor Township in Atlantic County bearing the address of 64 Zion

Road identified on the tax records of the municipality as Block 7801, Lot 38. The assessment determined by the Municipal Assessor for 2015 is $117,000.00 consisting of $98,900.00 for the land and $18,100.00 for the improvements. Unsatisfied with this assessment, Mr. Sakos appealed to the Atlantic County Board of Taxation which by way of judgment dated August 26, 2015, upheld the Municipal Assessor's assessment. Thereafter, on October 5, 2015, Mr. Sakos filed a complaint with this court which is the subject of this opinion.

Mr. Sakos' property consists of slightly over 20 wooded acres. The only substantial improvement on the property is a log cabin dating to 1920. The cabin is served by electric service, however, water is provided by a well and sewerage is handled by a cesspool. There is also a detached garage nearby. Mr. Sakos has resided in the log cabin for some time. The chief complaint of Mr. Sakos is that of the approximately 20 acres he owns, allegedly only 5 acres is usable due to wetlands restrictions, thereby, as he claims, affecting the value of his property.

Mr. Sakos also alleges the structures on the property, including the house where he lives, need to be demolished and therefore he should receive a dollar-for-dollar credit against the assessed value for the projected demolition costs. Mr. Sakos

claims he has the expertise to determine the demolition costs as a result of his years of experience in the building trades.

However, even if the court accepted the cost of demolition presented as correct, this does not settle the issue of whether demolition is warranted and what the ultimate value of the property would be absent the structures. The answer is not as simple as merely subtracting the costs of demolition. It is entirely possible that after demolition, the property may be more valuable than currently assessed. Mr. Sakos has not proffered any legally competent evidence of what effect the demolition would have on the property value. Moreover, Mr. Sakos has not proffered any legally competent evidence that the highest and best use of the property is as a vacant parcel despite his continued habitation of the parcel.

At the trial of this matter, Mr. Sakos did not offer any comparable sales even though he was invited by the court to do so. Moreover, he was informed by the court that if he did not present any comparable sales, the court might be left with no alternative but to dismiss his complaint. Nevertheless, Mr. Sakos declined to present any comparable sales. Instead, he wanted to present what amounted to expert testimony from himself as to value of the property. In support of his proffered testimony, Mr. Sakos

presented over 100 pages of various documents. The court determined that his testimony would essentially constitute expert testimony which he was not qualified to provide. Without any further evidence on his behalf, the complaint was dismissed.

Thereafter, Mr. Sakos filed a motion for a retrial and was permitted to present additional testimony. Once again, Mr. Sakos did not present any comparable sales.

Conclusions of Law

It is a well-established principle that, "original assessments and judgements 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 Supreme Court further states:

> 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. The presumption in favor of the taxing authority can be rebutted only by cogent evidence, a proposition that has long been settled. The strength of the presumption is exemplified by the nature of the evidence that is required to overcome it. That evidence must be "definite, positive and certain in quality and quantity to overcome the presumption."
> [Id. (quoting Pantasote Co. v. City of Passaic, 100 N.J. 408, 413 (1985) (citations omitted)).]

Pantasote further states, "that in tax matters it is to be presumed that governmental authority has been exercised correctly and in accordance with law." Id. at 413 (citing Powder Mill, I Assocs. v. Township of Hamilton, 3 N.J. Tax 439 (Tax 1981)). It has further been determined that the presumption be sustained even in the case where the "municipality utilized a flawed valuation methodology, so long as the quantum of the assessment is not so far removed from the true value of the property or the method of assessment itself is so patently defective as to justify removal of the presumption of validity." Transcon. Gas Pipe Line Corp. v Township of Bernards, 111 N.J. 507, 517 (1988) (quoting Pantasote, supra, 100 N.J. at 415).

The taxpayer is responsible for producing sufficient evidence that is, "definite, positive and certain in quality and quantity to overcome the presumption." Aetna Life Ins. Co. v. City of Newark, 10 N.J. 99, 105 (citing Central R.R. Co. of N.J. v. State Tax Dept., 112 N.J.L. 5, 8 (E. & A. 1933)). Taxpayer can accomplish this task by establishing a value utilizing one of the three traditional approaches: sales comparison, income capitalization or cost. Apline County Club v. Borough of Demarest, 354 N.J. Super. 387, 389 (App. Div. 2002).

Single residential properties can proceed in the Small Claims Division of the Tax Court. R. 8:11(a)(2). As established by the Legislature:

> Hearings in the Small Claims Division shall be informal, and the judge may receive evidence as the judge deems appropriate for a determination of the case, except that all testimony shall be given under oath. A party may appear on the party's own behalf or by an attorney or by any other person as may be provided by the Rules of the Supreme Court. [N.J.S.A. 2B:13-15.]

Moreover, the Supreme Court Rules governing the Small Claims Division of the Tax Court provides:

> The pretrial conference and the hearing shall be informal and the court may hear such testimony and receive such evidence as it deems necessary or desirable for a just and equitable determination of the case. All testimony shall be given under oath and a verbatim record shall be made of the proceeding. [R. 8:11(b).]

Thus, the court is authorized to consider reliable evidence from a self-represented litigant even though such evidence is not derived from an expert opinion. Cohn v. Township of Livingston, 18 N.J. Tax 429, 433 (Tax 1999). The court is mindful of the cost of litigating an appeal of the assessment of a single family home. Siegfried v. Township of Holmdel, 20 N.J. Tax 8, 18 (Tax 2002). However, "[a]lthough it may not be cost effective to engage an

expert witness, taxpayer is not relieved from the responsibility of providing this court with competent and sufficient evidence of value." Otelsburg v. Township of Bloomfield, 18 N.J. Tax 243, 249 (Tax 1999). "Accordingly, the court has recognized that litigants in Tax Court who do not engage an expert witness, although not required to do so, would appear to be at a grave disadvantage against an appraisal expert's testimony along with an appraisal report." Siegfried, supra, 20 N.J. Tax at 18 (citing Cohn, supra, 18 N.J. Tax at 433).

Without qualifying as an expert, a taxpayer is unable to adjust a comparable sale which he presents into evidence for any variation between the comparable sale and his property. Siegfried, supra, 20 N.J. Tax at 18. See also, Cohn, supra, 18 N.J. Tax at 434.

Typically, with a self-represented individual taxpayer, a presentation is made by the taxpayer of comparable sales to establish that the value of his property is erroneous. The taxpayer can provide competent factual, as opposed to expert, testimony as to the characteristics of the comparable properties as compared to the taxpayer's property. However, the taxpayer cannot equate these physical differences into value adjustments without expert testimony. Id.

For example, in Cohn, the taxpayer did not present expert testimony, yet the Tax Court was able to easily discern an adjusted value which was necessitated by proximity to high-tension electrical wires. Cohn, supra, 18 N.J. Tax at 436. While this court is recognized as having a certain expertise in dealing with tax matters, the court must be careful not to go beyond its scope of expertise which would then require an outside expert to assist the court in executing its duties as the trier of fact. See Dover Chester Associates v. Township of Randolph, 419 N.J. Super. 184, 195 (App. Div. 2011)(as to expertise of court). Thus, the court must maintain a careful balance between the informality of the Small Claims Division proceedings and the necessity to have competent expert testimony when necessary. In other words, litigants in the Small Claims Division are given some latitude with regard to their presentations, but the court cannot ignore the need to have competent testimony to ensure its decisions do not become arbitrary.

The taxpayer asserts that he has a number of years of experience in the construction business which makes him qualified to testify as an expert as to value. Even if taxpayer can reliably testify as to the value of certain improvements, that does not render him competent to testify as to valuation. Just

because an improvement costs a certain amount of dollars to construct (or demolish) does not mean that the sales price would therefore increase (or decrease) by a corresponding amount.

Even assuming taxpayer's proposed demolition costs are correct, simply deducting the demolition costs from the value of the property would be like simply deducting the environmental clean-up costs from the cost of the property, an approach which was rejected long ago by our Supreme Court. Inmar Associates v. Borough of Carlstadt, 112 N.J. 593, 596 (1988). Whether by demolition or environmental factors, adjusting the value of the property for these conditions requires expert testimony from an appraiser or assessor. Moreover, substantiating that an existing structure is worthless would also require expert testimony.

Even if Mr. Sakos was qualified to testify as an expert, he could not, since he is not licensed to do so.

The Real Estate Appraisers Act, N.J.S.A. 45:14F-1 to -26, provides:

> [N]o person other than a State licensed real estate appraiser, a State certified real estate appraiser, or a person who assists in the preparation of an appraisal under the direct supervision of a State licensed or certified appraiser shall perform or offer to perform an appraisal assignment in regard to real estate located in this State including, but not limited to, any transaction involving

> a third party, person, government or quasi-governmental body, court, quasi-judicial body or financial institution.
> [N.J.S.A. 45:14F-21(c).]

There is an exception set forth from this requirement as to counsel and advice on pricing, listing, selling and use of a property directly to a property owner or prospective purchaser if such information is solely for the use of such owner or prospective purchaser. Id. Municipal assessors are also exempt. N.J.S.A. 45:15F-7(b).

Here, the taxpayer wants to offer expert testimony as to the valuation of the property. He is not a certified or licensed real estate appraiser. The New Jersey Supreme Court has indicated:

> Under Rules 601 and 702 of the New Jersey Rules of Evidence, the determination of whether a witness is qualified as an expert generally rests in the sound discretion of the trial judge. That discretion can, of course, be guided by statute. Indeed, there is nothing in our jurisprudence to "suggest that the broad view of expert qualification embodied in the rules of evidence is sufficient to permit the testimony when the Legislature expresses a contrary view."
> [Ryan v. Rennie 203 N.J. 37, 50 (2010)(citations omitted)(citing Mizrahi v. Allstate Co., 276 N.J. Super. 112, 117 (Law Div. 1994)).]

In Mizrahi, the plaintiff presented a witness who had extensive background in various areas of the insurance industry. Mizrahi, supra, 276 N.J. Super. at 114-15. The court noted that the individual was not licensed under the New Jersey Insurance Producers Licensing Act. Id. at 115. See N.J.S.A. 17:22A-3 (repealed 2001, replaced with N.J.S.A. 17:22A-29). The court determined that plaintiff's expert was indeed acting as an insurance consultant and was not qualified to testify since he was unlicensed. Id. at 120-21. N.J.R.E. 601 excepts testimony prohibited by the Rules of Evidence or by other law of this State such as statutes. See Ryan, supra, 203 N.J. at 50. In this case, the other law of this State is the Real Estate Appraisers Act. N.J.S.A. 45:14F-1 to -26.

The Real Estate Appraisers Act serves a number of salutary purposes. First, the Legislature defines a "real estate appraisal" as "an unbiased analysis, opinion or conclusion relating to the nature, quality, value or utility of specified interests in, or aspects of, real estate." N.J.S.A. 45:15F-2. Moreover, the Legislature describes an "appraisal assignment" to "mean[] an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased appraisal."

Id. Thus, the overriding purpose of the Act is to ensure that real estate in this State is valued by unbiased analysis conducted by disinterested third parties. The Act also provides for the "establish[ment] [of] a code of professional ethics for persons licensed or certified under this act which meets the standards established by the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation." N.J.S.A. 45:14F-8(g).

In addition, there are to be standards for the certification of real estate appraisers which meet the standards established by the Appraisal Foundation, and standards for the licensing of appraisers which are acceptable to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. N.J.S.A. 45:14F-8(h), -2. There is an examination procedure in which an applicant must demonstrate: appropriate knowledge of technical terms; a basic understanding of real estate law; an understanding of the principles of land economics, the real estate appraisal process and problems likely to be encountered in the gathering and processing of data; an understanding of the standards for the development and communication of real estate appraisal reports; an understanding of the grounds for which the board may initiate disciplinary procedures; and, a knowledge of the theories of

depreciation, cost estimating, methods of capitalization, and the mathematics of real estate appraisal. N.J.S.A. 45:14F-19. Continuing education is required for renewal of the license and certificate. N.J.S.A. 45:14F-18. Those convicted of crimes involving theft and certain other offenses would be disqualified from licensure or certification. N.J.S.A. 45:14F-10.1.

Overseeing all of this is the State Real Estate Appraiser Board, as well as an Executive Director of the Board. N.J.S.A. 45:14F-8, -9.

The legislative history of the Act confirms the intention of the Legislature to require, except for certain limited exceptions, that appraisals be conducted by licensed or certified appraisers. When the first enacted in 1991, the Act was only applicable to federally related transactions and was otherwise voluntary. L. 1991, c. 68, § 21(c). In 1994, a bill was introduced to require that "all persons performing appraisals on real estate in this State be certified or licensed in accordance with the provisions of the [Act]. . . This bill would clarify that all appraisals performed in connection with real estate located in this State, which shall include, but not be limited to, any transaction involving a third party, person, government or quasi-governmental body, court, quasi-judicial body or financial institution, shall

be performed by a State certified or licensed appraiser." Assembly Sponsor Statement to A-1112, p. 2 (Jan. 27, 1994), Assembly Commerce and Regulated Professions Committee Statement to A-1112 (Mar. 24, 1994).

Subsequently, the Assembly bill was amended by the Senate Commerce Committee to provide that property worth less than $150,000 would not be subject to the Act. Senate Commerce Committee Statement of A-1112 (Sept. 28, 1995). The bill was later enacted into law. L. 1995, c. 389. Not only does the plain language of the statements reveal an understanding of the scope of the legislation, but the amendment of the bill to limit it to transactions over $150,000 reveals an awareness of the scope of the enactment.

In 1997, bills were introduced in both houses to broaden the applicability of the act to "require[] that persons performing appraisals on real estate, regardless of the value or the purpose for which the appraisal is being performed, be certified or licensed in accordance with the provisions of the [Act]." Assembly Sponsor Statement to A-3254 p. 4 (Nov. 6, 1997), Senate Sponsor Statement to S-2316, p. 5 (Dec. 11, 1997). Once again, certain limited exceptions were added by amendments to except assessors, state employees appraising property worth less than $25,000 and

certain federally related transactions in which federal law or regulation does not require a certified or licensed appraiser. However, the broad pronouncement that licensure or certification is required regardless of the value or the purpose was stated in the committee statements. Assembly Consumer Affairs and Regulated Professions Committee Statement to A-3254, p. 1 (Nov. 17, 1997), Senate Community Affairs Committee Statement to S-2316, p. 1 (Dec. 11, 1997). Thus, both the plain statutory language as well as the legislative history of the 1994 and 1997 amendments demonstrate the intent of the Legislature to require, with limited exception, that persons performing appraisals on real estate, regardless of the value or the purpose for which the appraisal is being performed, be certified or licensed in accordance with the Act.

To recap, the statutory language is clear that no person but a licensed or certified appraiser shall perform an appraisal assignment. N.J.S.A. 45:14F-21(c). The taxpayer here is not licensed nor certified to render an opinion, let alone an unbiased opinion, as to value. While an expert is hired by a particular party, the expert still must assist the court appropriately. The Legislature mandates that appraisals be conducted by unbiased and disinterested third parties. N.J.S.A. 45:14F-2, -21(c). To allow

the taxpayer to testify as to his appraisal of the value of the property would fly in the face of this legislative mandate.

The letter and spirit of the Act is to ensure that appraisals of real property are accurate. This is important to consumers and financial institutions alike. This is also especially important in the field of local property taxation which relies upon accurate assessments (appraisals) of real property so that the tax is applied uniformly and fairly. The Legislature specifically realized that appraisals would be relied upon by the courts or third parties. N.J.S.A. 45:14F-21(c). To this end, the Legislature wanted to instill confidence with third parties and the public that appraisals are conducted by disinterested third parties. N.J.S.A. 45:14F-2. To allow the process to be infected with questionable appraisals could lead to uneven and unfair taxation which undercuts the public's confidence in our taxing system.

The taxpayer is not a disinterested third party and by his interest in the outcome, his testimony is highly susceptible to bias. Thus, he is precluded by virtue of the Act from offering to this court an appraisal of the value of his property which he prepared. As stated previously, he could have offered comparable properties for the court's review, but declined to do so.

Since the taxpayer cannot offer expert appraisal testimony, and because expert appraisal testimony would certainly be necessary to establish valuation of the property in this case, the taxpayer has not satisfied his evidentiary obligation to overcome the presumption of validity which attaches to the assessment as upheld by the judgment of the County Tax Board.

Accordingly, plaintiff's Complaint is dismissed.

Sincerely,

Mark Cimino, J.T.C.