

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

ISAAC FRANKEL,)
)
 Plaintiff,) TC-MD 120272C
)
 v.)
)
 MULTNOMAH COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

I. INTRODUCTION

Plaintiff appealed the real market value (RMV) for the 2009-10 and 2010-11 tax years of a condominium unit identified in Defendant’s records as Account R563618 (subject property) and otherwise known as 730 Northwest Naito Parkway, Unit E4. Trial in the matter was scheduled to be held by telephone October 18, 2012. Plaintiff, owner of the subject property, appeared for trial on his own behalf. Defendant was represented by Barry Dayton, Oregon Registered Appraiser, and Jeff Brown, a supervising appraiser with the Multnomah County Assessor’s office.

II. ANALYSIS

Prior to the actual commencement of trial and the swearing of witnesses, the court advised the parties of the documentary evidence it had received. Defendant’s representatives advised the court that they had not received the exhibits Plaintiff submitted to the court. Plaintiff responded by stating that he had gone into the Assessor’s office “about six weeks ago” and given one of Defendant’s representatives “the same materials” he sent in to the court. The court spent a few moments exploring that contention with the parties and discovered that the exhibits Plaintiff submitted to Defendant are not marked and are not in the same order or format as those given to the court. It also appeared that Plaintiff had not given Defendant all the exhibits he gave to the court.

The exhibits Plaintiff gave to Defendant are not properly organized and marked according to the requirements of Tax Court Rule-Magistrate Division (TCR-MD) 10 B and TCR-MD 10 B(1), which state:

“B Exhibit Labels. Each document, report, or other paper is a separate exhibit. The parties **shall** have the responsibility of organizing and marking their exhibits. The pages of the each exhibit shall be numbered. Each exhibit shall be identified by a label marked as follows:

“B(1) Plaintiff’s exhibits shall be marked numerically and have the case number on the label.”

(Emphasis added.)

Likewise, Plaintiff’s exhibits submitted to the court do not conform to TCR-MD 10 B. They are marked alphabetically rather than numerically, and the pages within each exhibit are not numbered.

In contrast, Defendant’s exhibits are marked in accordance with TCR-MD 10 B. They are properly organized and marked alphabetically as required by TCR-MD 10 (B)2. Each page within each exhibit is individually numbered.

The court excluded Plaintiff’s exhibits because they do not comply with the court’s rules governing the marking of exhibits.

Under ORS 305.427, Plaintiff had the burden of proof because he was the party seeking affirmative relief.¹ The applicable burden of proof is “a preponderance of the evidence.” ORS 305.427. This court has previously ruled that “[p]reponderance of the evidence means the greater weight of evidence, the more convincing evidence.” *Feves v. Dept. of Rev.*, 4 OTR 302, 312 (1971) (citation omitted). If the taxpayer bearing the burden of proof fails to sustain that burden, the court’s final order will sustain the value on the tax roll. *Cf. Reed v. Dept. of Rev.*, 310 Or 260, 265, 798 P2d 235 (1990).

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¹ All references to the Oregon Revised Statutes (ORS) are to 2011.

III. CONCLUSION

The court concludes that Plaintiff's appeal seeking reductions in the real market value for the 2009-10 and 2010-11 tax years, for property identified in the assessor's records as account R563618, is denied because Plaintiff's exhibits were excluded and he therefore had no evidence to present, nor a case to put on, and accordingly failed to meet the statutory burden of proof.

Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is denied.

Dated this ____ day of October 2012.

DAN ROBINSON
MAGISTRATE

If you want to appeal this Decision, file a Complaint in the Regular Division of the Oregon Tax Court, by mailing to: 1163 State Street, Salem, OR 97301-2563; or by hand delivery to: Fourth Floor, 1241 State Street, Salem, OR.

Your Complaint must be submitted within 60 days after the date of the Decision or this Decision becomes final and cannot be changed.

This document was signed by Magistrate Dan Robinson on October 24, 2012. The Court filed and entered this document on October 24, 2012.