

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

MEDFORD HAH LLC,)
)
Plaintiff,) No. 010105C
)
v.)
)
JACKSON COUNTY ASSESSOR,)
)
Defendant.) **DECISION**

The matter is before the court on defendant's Motion to Dismiss, included in the Answer filed March 1, 2001. Defendant requests dismissal because plaintiff did not first present a petition for reduction to the Jackson County Board of Property Tax Appeals (board).

The telephone case management conference scheduled for April 5, 2001, was converted to a hearing so that the court could receive sworn testimony and legal argument from the parties concerning the "good and sufficient cause" provisions of ORS 305.288. Testifying for plaintiff were Sam Rosenwald and Dick Spears. Ron York represented the defendant. By its Complaint, plaintiff seeks a reduction in the real market value, for the 2000-01 tax year, of a retail shopping center it owns in Medford, Oregon.

STATEMENT OF FACTS

The property under appeal is carried in the Jackson County Assessor's records under five separate account numbers: 1-72048-2, 1-72049-1, 1-72050-6, 1-72051- 4, and 1-72052-2. The total real market value of the property is \$9,381,500. Plaintiff seeks a reduction to \$5,215,000, based on the purchase of the property for that price on December 30, 1999. The value of the land on a per-square-foot basis is particularly

troubling to Messrs. Rosenwald and Spears.

After receiving the property tax statements in October 2000, Mr. Spears, whose office is located outside the state, visited the Assessor's office to discuss the values. Mr. Spears talked with Mr. Arrasmith, an appraiser with the Assessor's office, about the value difference. The conversation lasted approximately one-half hour. Mr. Spears provided the county with copies of the closing statement reflecting the purchase price and after some discussion was optimistic about the outcome of an appeal. No assurances were made by Mr. Arrasmith, however.

Mr. Spears obtained from Mr. Arrasmith the forms necessary to file a petition with the county board. He completed those forms and forwarded them to Mr. Rosenwald for his review and signature. Mr. Rosenwald received those forms on or about December 15, 2000. Construction workers began remodeling Mr. Rosenwald's Beverly Hills office the following day. The completed petition forms were inadvertently set aside during the chaos. Sometime thereafter, Mr. Spears contacted the Assessor's office to inquire about the appeal and was informed that the petitions were not submitted and that there was no pending appeal. Mr. Spears phoned Mr. Rosenwald. Mr. Rosenwald looked around the office and discovered the petition forms, along with two other time-sensitive documents, in an unmarked envelope. Mr. Spears later phoned the Tax Court after investigating appeal procedures further and was advised he could submit a Complaint to the court. Court staff mailed Mr. Spears a blank Complaint form to be completed and submitted in order to initiate the appeal process at the state court level. Plaintiff's Complaint was filed February 2, 2001 (postmark date).

COURT'S ANALYSIS

To appeal property values in Oregon, taxpayers must typically begin the process by filing a petition with the local county board before December 31 of the current tax year. The tax year is a 12-month period beginning July 1. ORS 308.007(1)(c). The postmark date is controlling as to the filing date. ORS 305.820(2). The deadline for filing the petition in this case was December 31, 2000. ORS 309.100. Because the deadline fell on a Sunday, the petition was required to be postmarked on or before January 2, 2001. ORS 305.820(2). Plaintiff acknowledges that it missed the deadline.

The Legislature has provided a limited opportunity for taxpayers to pursue property value reduction requests when they fall outside the ordinary process. In cases involving commercial property, the taxpayer must establish good and sufficient cause for failing to correctly pursue the statutory right of appeal by first petitioning the board and then timely appealing the board's order. ORS 305.288(3). Good and sufficient cause is defined by statute as:

“(A) * * * an extraordinary circumstance that is beyond the control of the taxpayer, or the taxpayer's agent or representative, and that causes the taxpayer, agent or representative to fail to pursue the statutory right of appeal; and

“(B) Does not include inadvertence, oversight, lack of knowledge, hardship or reliance on misleading information provided by any person except an authorized tax official providing the relevant misleading information.” ORS 305.288(5)(b).

The reason for the lack of a timely county board petition in this case is best described as inadvertence or oversight. Mr. Rosenwald forthrightly acknowledged the mistake was “stupid” and explained that it was based on the “unplanned happenstance of renovation.” Both Mr. Spears and Mr. Rosenwald emphasized that, while they had no good reason for failing to timely submit the board petition forms, their concern is over the

large disparity between the roll value and the purchase price.¹ The court can appreciate that position. However, before considering the underlying value issue, the court must first find plaintiff meets the requirements of ORS 305.288. It does not.

CONCLUSION

Having reviewed the matter under the relevant provisions of ORS 305.288, the court concludes the Complaint must be dismissed for failure on plaintiff's part to show good and sufficient cause for the lack of a timely appeal.

IT IS THE DECISION OF THE COURT that defendant's Motion to Dismiss the Complaint is granted.

Dated this _____ day of April, 2001.

DAN ROBINSON
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97301-2563. 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 APRIL 13, 2001. THE COURT FILED THIS DOCUMENT ON APRIL 13, 2001.

¹ While the court lacks the authority to consider this appeal, plaintiff is encouraged to pursue the value reduction request with the Oregon Department of Revenue under ORS 306.115.