

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

HUONG L. HUYNH and TAI TRUONG,)	
)	
Plaintiffs,)	TC-MD 040939C
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs seek a reduction in the real market value (RMV) of their improvements (the home) for the 2003-04 tax year.¹ Defendant moved to dismiss the appeal because Plaintiffs did not file a petition with the county board of property tax appeals (Board) before appealing to the Tax Court.

The court addressed the motion during the November 15, 2004, telephonic case management conference. Huong L. Huynh (Huynh) appeared for Plaintiffs and was aided by Hinh Dong, a court certified interpreter. Huynh's uncle, Jimmy Schea (Schea), also appeared with Huynh. Baron Hartwell, an appraiser with the county assessor's office, appeared for Defendant.

I. STATEMENT OF FACTS

Plaintiffs' improvement's RMV for tax year 2003-04 was \$110,810. The RMV for the prior tax year (2002-03) was \$98,720. Plaintiffs do not believe that the RMV increased at all

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¹ The Complaint requested a reduction in taxes but after the court explained that the issue must focus on the value of the property, Ms. Huynh confirmed her uncle's statement that Plaintiffs would like the value for 2003-04 reduced to the value on the tax rolls for the prior year. Plaintiffs withdrew their request for relief for the 2002-03 tax year at the November 15, 2004, case management conference.

between 2002 and 2003. Accordingly, they have requested that the RMV for the 2003-04 tax year be reduced to \$98,720. Plaintiffs filed their appeal directly with the Tax Court on August 13, 2004. They did not petition the Board or take any other official action to contest the value of their property before appealing to the court. The court asked a series of questions to ascertain the reason Plaintiffs did not file a petition with the Board after they received their tax statement in October 2003, but the witnesses were unable to explain why there was no Board appeal. Both Huynh and Schea testified that they were unfamiliar with the appeal process and, when asked specifically about the Board, one of the witnesses testified that they thought they had filed with the Board, apparently mistaking the court for the Board. Moreover, Plaintiffs were not quite sure how they ended up in the Tax Court.

II. ANALYSIS

Plaintiffs are concerned by what they perceive as a dramatic increase in the market value of their property. Their improvement value rose \$12,090 in 2003 (2003-04 tax year) and nearly as much in 2004 (2004-05 tax year). However, because Plaintiffs did not first petition the board, the court must determine whether they satisfy the requirements of ORS 305.288.²

ORS 305.288 provides two situations in which the court can reduce the value of property when the owner does not timely appeal to the court from an order of the Board. The first involves situations where there is an alleged error in value of at least 20 percent and the property is used primarily as a dwelling. ORS 305.288(1). Although the subject property is used as a dwelling, Plaintiffs have only alleged an 11 percent error in value.³

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² All references to the Oregon Revised Statutes (ORS) are to 2001.

³ $\$12,090 \div \$110,810 = 0.1091 = 11\%$ (rounded).

The second situation requires a showing by the taxpayer of good and sufficient cause for not petitioning the Board before the deadline. ORS 305.288(3). Good and sufficient cause exists where there were “extraordinary circumstances” that were “beyond the control of the taxpayer” that prevented the taxpayer from timely petitioning the Board. ORS 305.288(5)(b)(A). Plaintiffs in this case do not know why they did not petition the Board before the applicable deadline of December 31, 2003. *See* ORS 309.100(2). Plaintiffs’ appeal to the court was filed August 13, 2004. One of the witnesses stated that they were unaware of the appeal process and, in fact, thought they were before the Board. Plaintiffs were unable to explain how they ended up in the Tax Court or what prompted them to question the value of the property roughly nine months after they had received their tax statement. Plaintiffs paid the taxes and it was therefore not a delinquent tax notice that captured their attention. The tax statement for the subsequent tax year (2004-05) arrived several months after they filed their appeal with the court.

Paragraph (B) of subsection (5)(b) of ORS 305.288 excludes from the definition of good and sufficient cause “inadvertence, oversight, [and] lack of knowledge.” It is clear to the court that Plaintiffs did not file a petition with the Board because of a lack of knowledge, notwithstanding the fact that information regarding the Board appeal process is included with the county’s annual tax statement.

III. CONCLUSION

On the facts before it, the court concludes that Defendant’s motion to dismiss Plaintiffs’ appeal must be granted. Plaintiffs did not timely appeal to the court from an order of the Board; Plaintiffs have not alleged an error in value of 20 percent; nor demonstrated they were prevented

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from petitioning the Board due to circumstances both extraordinary and beyond their control.

Accordingly, Plaintiffs' Complaint is dismissed. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is dismissed.

Dated this _____ day of December 2004.

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 DECEMBER 6, 2004. THE COURT FILED AND ENTERED THIS DOCUMENT DECEMBER 6, 2004.