

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

SQUARE 345 LIMITED PARTNERSHIP,	:	
	:	
Petitioner,	:	
	:	
v.	:	Tax Docket No. 4269-89
	:	
DISTRICT OF COLUMBIA,	:	
	:	
Respondent.	:	

MEMORANDUM OPINION AND ORDER

This matter came before the Court for trial upon the petition for a partial refund of real property taxes for Tax Year 1989. The parties filed stipulations pursuant to Rule 11(b) of the Superior Court Tax Rules. Upon consideration of the stipulations, the evidence adduced at trial, the applicable law, and having resolved all questions of credibility, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The subject property is owned by Petitioner Square 345 Limited Partnership ("Square 345") and is located at 1001 G Street, N.W., Square 345, Lot 41, in the District of Columbia.

2. On January 1, 1988, the date of valuation, the subject property was a vacant parcel of land improved by a shell known as the McLachlen Building, and designated a historic preservation

structure. The land area is 39,551 square feet. The property is zoned C-4 and thus may be developed to a maximum 10.0 FAR (floor area ratio) since it is on a street at least 110 feet wide.

3. For Tax Year 1989, with valuation date of January 1, 1988, the District's proposed assessment was \$38,760,980. Petitioner timely filed a complaint with the Board of Equalization and Review (BER) for a reduction in the assessment and a refund of excess taxes paid. After a hearing, the BER sustained the assessment. At trial, the District sought to uphold the assessment of \$38,760,980 even though its expert valued the property at \$39,550,000. Petitioner asserted in its petition that the fair market value of the property for Tax Year 1989 was \$22,000,000. Petitioner changed its claim at trial as to the value of the property to \$26,500,000, reflecting the value set by its expert appraiser.

4. Petitioner timely paid all real estate taxes assessed against the subject property valued at \$38,760,980, as required by law, and timely filed this petition for reduction of assessment and refund of excess taxes paid for Tax Year 1989.

5. Square 345 entered into an Option and Development Agreement ("Option Agreement") with Woodward and Lothrop on November 28, 1983 for the sale price of the subject property for \$22,000,000. The subject property was sold over three years later on December 12, 1986 for \$22,000,000.

6. The tax assessor for the District for Tax Year 1989 was Troy Davis, a supervisory assessor. Mr. Davis is a commercial assessor with the Department of Finance and Revenue of the District of Columbia (DFR). Mr. Davis used the Mass Appraisal System technique and after consideration of the three different approaches to value, as required by law, he ultimately applied the comparable sales approach to value in assessing the property.

7. Mr. Davis, the Petitioners' first witness, in making his assessment, started with a "basic rate" or "locational rate" of \$65/FAR, which was given to him by the Office of Standards and Review, a division of the Department of Finance and Revenue. He provided no basis for the \$65 basic rate other than that the Office of Standards and Review furnished it to him. He did indicate, however, that he participated in a limited way in assisting Standards and Review in compiling the data to obtain the rate.

8. Mr. Davis used 1987 comparable land sales in determining his assessment but did not use the sale of the subject property at \$22,000,000 recorded December 12, 1986. He reasoned that he was not provided with that information by Standards and Review, contrary to the usual procedure in which the assessors receive such data. As a result, Mr. Davis did not consider the 1986 sale in his assessment.

9. With respect to the McLachlen Building, the Court credits Mr. Davis' testimony that he was aware that the building

was on the subject parcel on the valuation date and that the shell had a historic designation and could not be torn down. However, on cross examination, he testified that he thought only the facade had to be retained and not the interior.

10. Mr. Davis noted that the McLachlen Building had a small floorplate of about 3,800 square feet. He admitted that he made no adjustments in his assessment for the requirement to retain the interior of the McLachlen Building.

11. Robert Knopf, a Senior Vice President of development for Quadrangle Development Corporation, the general partner of Square 345, testified next. Mr. Knopf testified that the McLachlen Building was a shell when Square 345 purchased the property from Woodward and Lothrop, Inc. and that it was in poor condition. The subject property's owner was required to preserve both the interior and exterior as a condition precedent to developing the property.

12. Due to the historic preservation requirement to retain both the interior and exterior of the McLachlen Building, two factors depressed the purchase price of the property: 1. the construction costs were significantly higher; and 2. the small floorplate limited the market of tenants to whom the property could be leased.

13. Mr. Knopf also testified concerning the Option Agreement entered into by Square 345 and Woodward and Lothrop in November, 1983. The parties set the purchase price of

\$22,000,000 in contemplation of a closing on the purchase in two years, i.e., by 1985. He referred to the long approval process for historic preservation properties. Mr. Knopf testified that if the parties met all the conditions of the Option Agreement, then they were bound by the \$22,000,000 price. He testified to no violations of any Option Agreement conditions by either party.

14. The taxpayer offered as its third witness, Ms. Michelle A. Saad, and her qualifications as an expert in commercial real estate appraisals were stipulated to by Respondent. The Court accepted her as an expert witness.

15. Ms. Saad used the comparable sales approach in valuing the subject property by analyzing the sale of the subject property along with nine other comparable sales. The sale of the subject property occurred thirteen months prior to her valuation date, and the nine other sales took place in 1986 and 1987. For each sale, including the subject, she adjusted the sale price for dissimilarities with the subject property, considering several different factors including market conditions, location, zoning, demolition cost and the historic preservation requirement for the McLachlen Building.

After adjusting each sale and excluding the extremes of \$42.48 and \$88.55 per FAR (floor area ratio), she arrived at a range of \$49.64 to \$82.01 per FAR. Adjusting the subject property's sale price of \$22,000,000, or \$55.62/FAR, upwards for date of sale and demolition cost, Ms. Saad obtained a unit price

of \$63.45/FAR. Estimating a market value range for the subject property of \$63/FAR to \$71/FAR, Ms. Saad reached a market value conclusion of \$67/FAR. When applied to the subject property's 39,551 square feet and 10.0 FAR, the \$67/FAR conclusion resulted in a property value of \$26,500,000.

16. The largest single adjustment made to the comparable sales was for the historic preservation of the of the McLachlen Building. Ms. Saad adjusted each of the nine comparables down by 25% to account for this factor. She testified that there were two elements that impacted the price that a potential purchaser would pay due to the requirement to retain and preserve both the facade and interior of the McLachlen Building.

The first element is the additional construction costs. Ms. Saad testified that she consulted with Omni Construction and the Historic Preservation Board in arriving at a figure of \$40.00 per square foot to restore the skin of the McLachlen Building.

The second element is the reduced income to the overall project due to the smaller floorplate of the McLachlen Building. Ms. Saad testified that the building would have a larger core factor resulting in less rentable area on each floor, and would be harder and take longer to lease. Because the floorplates are limited, the number of potential tenants is greatly reduced.

17. The combination of these two elements resulted in a 25% adjustment to the comparable sales.

18. Ms. Saad also commented on the District of Columbia's assessment of the property for Tax Year 1989. She testified that the sale of the subject was a significant point that the assessor did not consider. Moreover, the assessor appeared not to have any knowledge of the impact on the value of the requirement to retain the McLachlen Building facade.

19. The Respondent called two witnesses at trial, Mr. Troy Davis, the District assessor, and Mr. Ryland Mitchell, an appraiser.

20. Mr. Ryland Mitchell is an M.A.I. appraiser, and counsel for Petitioner stipulated to his expertise.

21. In valuing the property, Mr. Mitchell considered six comparable sales recorded in 1986, 1987 and 1988, several of which were the same as those used by Ms. Saad. In his analysis, however, Mr. Mitchell did not consider the sale of the subject property for \$22,000,000, dated December 12, 1986. Mr. Mitchell testified that his original appraisal included only limited information on the sale of the subject property: that the sale was recorded on December 12, 1986 and was a transfer from Woodward & Lothrop, Inc. to Square 345 Limited Partnership. No sale price or other information was indicated in his report. He testified that at the time, he was still pursuing information on the sale.

22. Mr. Mitchell testified that Mr. Leonard Horton, a representative of the owner, told him that the sale price was

established in the November 1983 Option Agreement. He made no analysis of the sale in his report however. He testified that he did not give it any weight because he considered that the sale took place in 1983. On cross-examination, Mr. Mitchell admitted that the agreement called for the exercise of the contract and closing on the sale at \$22,000,000 in 1985, two years after the date of the agreement.

23. One sale which Ms. Saad did not use was Mr. Mitchell's first sale. He testified that he relied heavily on this sale, which was recorded on January 22, 1988, twenty-one days after the valuation date of his appraisal. Although the recordation date for the first sale was after the January 1, 1988 valuation date, it was undisputed that the historic preservation process, financing and acquisition of the fully assembled development site, and negotiation of the sale price were determined before the valuation date.

24. Mr. Mitchell testified that this first sale was particularly useful as a comparable because, like the subject, its facade had been retained and restored and incorporated into a new, larger building. However, he admitted that he did not know whether the developer was required to retain the facade as he had not checked the records at the Historic Landmark Commission. He testified that Mr. Horton told him that the requirement to retain the McLachlen Building facade and interior was an unusual feature

of the sale and that additional development costs were associated with this requirement.

25. After analyzing the remaining comparable sales and adjusting for location, zoning, size, and date of sale, Mr. Mitchell concluded that the subject property's value as of January 1, 1988 was \$100.00 per FAR or \$39,550,000.

LEGAL ANALYSIS

This Court has jurisdiction over this matter pursuant to D.C. Code §§47-825 and 47-3303 (1990 Repl.). The Superior Court's review of a tax assessment is by a trial de novo necessitating competent evidence to prove the matters in issue. Wyner v. District of Columbia, 411 A.2d 59, 60 (D.C. 1980). Petitioner bears the burden of proving that the assessment appealed from is incorrect. See Wyner v. District of Columbia, 411 A.2d 59, 60 (D.C. 1980) (citing Super. Ct. Tax R. 11(d)); see also Safeway Stores, Inc. v. District of Columbia, 525 A.2d 207, 211 (D.C. 1987). However, petitioner is not required to establish the correct value of the property. Brisker v. District of Columbia, 510 A.2d 1037, 1039 (D.C. App. 1986).

"The assessed value of property for real property taxation purposes shall be the 'estimated market value' of the property on January 1st of the year preceding the tax year." District of Columbia v. Washington Sheraton Corp., 499 A.2d 109, 112 (D.C. 1985) (citing D.C. Code § 47-820(a) (1981)). In this case, the

property was assessed on January 1, 1988 for Tax Year 1989. The "estimated market value" is defined as:

. . . one hundred per centum of the most probable price at which a particular piece of real property, if exposed for sale in the open market with a reasonable time for the seller to find a purchaser, would be expected to transfer under prevailing market conditions between parties who have knowledge of the uses to which the property may be put, both seeking to maximize their gains and neither being in a position to take advantage of the exigencies of the other.

D.C. Code § 47-802(4) (1990 Repl.).

The Court has generally recognized three approaches to value, capitalization income, replacement cost, and comparable sales, and it has been held that all three must be considered in assessing a property. See District of Columbia v. Washington Sheraton Corp., 499 A.2d 109, 113 (D.C. 1985); Safeway Stores, Inc. v. District of Columbia, 525 A.2d 207, 209 (D.C. 1987).

Both the Petitioner's expert, the Respondent's expert and the District's assessor examined all three approaches and unanimously rejected both the cost approach and the income approach.

Both experts and the District's assessor gave considerable weight to the comparable sales approach, the preferred method for valuing vacant land. Since the only improvement on the land, the McLachlen Building, is of insignificant value, the subject property can be accurately analyzed as vacant land.

The Petitioner forwarded several arguments in attempting to illustrate incorrectness in the tax assessor's appraisal. While

this Court finds two of the arguments unsound, the argument regarding the tax assessor's failure to consider the requirement to maintain the interior of the historic structure has merit, and thus illustrates error in the assessment.

First, the Court finds unavailing the Petitioner's argument that the failure to incorporate the December 1986 sale of the subject property into the assessment constitutes error. The factors that the assessor must consider in assessing real property are specified in § 47-820(a) of the D.C. Code:

The Mayor shall take into account any factor which might have a bearing on the market value of the real property including, but not limited to, sales information on similar types of real property, mortgage, or other financial considerations, reproduction cost less accrued depreciation because of age, condition, or other factors, income-earning potential(if any), zoning, and government-imposed restrictions.

D.C. Code § 47-820(a) (1990 Repl.). Section 47-820(a) does not stipulate that the actual sale of the subject property must be considered in an assessment. The section does, however, make mandatory the consideration of any factor which might have a bearing on the market value of the real property. While it may be unsound appraisal practice not to consider the sale of the subject property, if it is determined that such an additional consideration would have insignificant or no influence on the estimated appraisal value, then the petitioner has not met its burden of showing that the final assessment is incorrect. As the

Court of Appeals noted in Wolf v. District of Columbia, 609 A.2d 672, 676 (D.C. 1992), "[i]f a factor is not shown to 'have a bearing upon the market value,' then the assessor commits no misdeed in failing to consider it." In that case, the Court of Appeals affirmed the trial court's holding that the appellants failed to meet their burden of proof by merely giving the unsupported stipulation that the assessor omitted consideration of a ground lease in the assessment where "the trial court found, and appellants presented, no evidence of the magnitude of the ground lease's possible impact." See id.

In this case, the Petitioner needed to illustrate that had the tax assessor considered the \$22,000,000 sale of the subject property, such consideration would have been reflected in an adjusted final assessment value. The assessor, however, testified that even if he had the information pertaining to the 1986 sale of the subject property, he would have relied on the more recent 1987 comparative land sales rather than the 1986 sale, especially considering the fact that negotiations for that sale yielded a \$22 million sale price, which was fixed on November 28, 1983, slightly more than four years prior to the January, 1988 assessment date. Mr. Davis never testified, nor was it shown by the Petitioner, that such consideration of that sale would materialize in a revised appraisal value. As a result, the Petitioner has failed to show that the tax assessor's

lack of consideration of the sale of the subject property resulted in an incorrect final assessment value.

This Court furthermore gives little or no weight to Ms. Saad's testimony regarding Rule 1-5 of the Uniform Standards of Professional Appraisal. Petitioner entered the rule into evidence in its case in chief under the title: Uniform Standards of Professional Appraisal Practice 1992 Edition. See Pl.'s Ex. 3. While the rule addresses the obligation to "consider and analyze any prior sales of the property being appraised that occurred within...three years" for all properties other than one- to four-family residential properties, the rule was taken from a 1992 publication of the guidelines, whereas the subject property was assessed in January of 1988 for Tax Year 1989. This Court hesitates to hold the District's assessor to a standard at trial not demonstrated to be in effect on the January 1, 1988 valuation date for the 1989 Tax Year. While the same obligation might exist in earlier editions of the Uniform Standards of Professional Appraisal Practice, the Petitioner here entered the 1992 edition into evidence in its attempt to bind the tax assessor to this appraisal standard. Furthermore, these standards were established with regard to appraisers and not assessors. As a result, Plaintiff's Exhibit 3 and Ms. Saad's testimony regarding that exhibit shall not be considered in determining whether or not the Petitioner has met its burden of proof.

The second argument made by the Petitioner is that the tax assessor's inability to provide the basis for the \$65 "basic rate" or "locational rate," upon which he relied as a starting point in his assessment, renders the assessment arbitrary. Mr. Davis testified that the Office of Standards and Review, a division of the Department of Finance and Revenue, furnished him with the \$65 basic rate. As a result of Mr. Davis' inability to provide the basis for the \$65 rate, Respondent made the conclusive argument that reliance upon that rate renders the assessment incorrect.

The Court of Appeals in Wolf v. District of Columbia held that the appellant in that case bore the burden of proving that the *basis* for the formula upon which the assessor relied in making his calculations was unlawful or that the assessor's computation of the formula was inaccurate. 609 A.2d at 675 (emphasis added). As a result, the assessor's use of the formula was not erroneous absent a showing of the invalidity of that formula's foundation. Here, Respondent has provided no further support for its argument other than the admitted fact that Mr. Davis did not know the procedure behind the calculation of the \$65 rate, which incidentally was only \$2.00 less than Ms. Saad's rate of \$67.00 calculated on behalf of the Petitioner.

This Court is not persuaded by the argument that an assessor's inability to explain the basis for the starting rate afforded to him by the Office of Standards and Review renders an

assessment relying on that rate erroneous. For the Petitioner to illustrate error in such reliance, it would have to examine the Office of Standards and Review and find fault in the rate-determining procedure. This Court recognizes that one assessor's inability to substantiate the basic rate does not render that rate incorrect.

This Court, however, does find that the Petitioner has met its burden of proving incorrectness in the tax assessor's assessment with respect to the assessor's failure to consider the requirement to preserve and maintain **both** the interior and the exterior of the McLachlen Building. Mr. Davis admitted that while he was aware that the shell and facade of the McLachlen Building had historic designations and could not be torn down, he was unaware that the interior of the building had to be retained. The Petitioner adequately illustrated that such failure to consider the requirement resulted in an overassessment of the value of the subject property. The Petitioner's witnesses, Mr. Knopf and Ms. Saad, both testified that retention of the interior of the building resulted in higher construction costs, and the building's small floorplate limited the market of tenants to whom the property could be leased. As the Respondent failed to oppose the Petitioner's arguments that retention of the interior diminishes the subject property's assessment, this Court is inclined to accept the Petitioner's argument that failure to consider the requirement to retain the interior as well as the

exterior of the McLachlen Building resulted in an overassessment of the subject property and thus constitutes error in the assessor's appraisal. As a result, Petitioner has met its burden of showing incorrectness in the tax assessor's assessment, and the original assessment is invalidated.

When a taxpayer appeals an assessment to this Court, the Court can affirm, cancel, reduce or increase the assessment. D.C. Code § 47-3303 (1990 Repl.). This Court has enough information on the record to deduce the appropriate value of the subject property. The Petitioner argues that the original assessment was erroneous because of its failure to incorporate the sale of the subject property, its reliance on the \$65 basic rate, and its failure to consider the requirement to preserve both the interior and exterior of the building. However, since the first two arguments were rejected, and the Court has found that the tax assessor did consider the requirement to retain the exterior of the building, this Court need only adjust the assessor's original appraisal downward to account for the failure to consider the requirement to preserve the interior of the building in order to reach the correct assessment. As the Respondent has offered no testimony countering that of Petitioner's expert, Ms. Saad, regarding the calculations that account for this interior-preservation requirement, the Court will apply Ms. Saad's interior-preservation adjustment to the District's original assessment.

The Petitioner's expert adjusted each of her comparable sales downward by 25% to account for the requirement to preserve the historical characteristics of the McLachlen Building. As her final adjusted value of the subject property was \$26,500,000, with the cost of the interior and exterior retention requirements reflected therein, the Court deduced that the value of the subject property prior to this adjustment would be \$35,333,333 (25% of \$35,333,333 is \$8,833,333, and \$35,333,333 minus \$8,833,333 yields the final assessment of \$26,500,000).

Ms. Saad consulted with Omni Construction and the Historic Preservation Board in arriving at a figure of \$40.00 per square foot to restore the skin of the building, which, when multiplied by the total square footage of the exterior of the building, yields a value of \$7 million. This \$7 million figure was calculated independently of any proposed assessments, and therefore is not the result of a percentage reduction in the \$35,333,333 assessment.

Ms. Saad claimed that consideration of the historic aspects of the building requires a 25% adjustment to the overall value of the property, which for the \$35,333,333 value would be \$8,833,333. Seven million is due to the requirement to preserve the exterior of the building. Consequently, she would conclude that the remaining \$1,833,333 must be due to the requirement to preserve the interior of the building. In order to calculate the amount due to the interior-preservation requirement for an

assessment different from the \$35,333,333 value deduced from Ms. Saad's calculations, it would be necessary to calculate the total 25% adjustment to that different assessment and then subtract out the \$7 million value, which Ms. Saad determined to account independently for the exterior-preservation requirement. The final result of that calculation would be the amount necessary to account for the interior-preservation requirement, the adjustment that is presently at issue before this Court.

This Court already determined that it would use the District's assessment of the subject property and apply Ms. Saad's historic preservation adjustments to that assessment to achieve the subject property's final value. The District's assessment was \$38,760,980, which included consideration of the historic preservation requirement to maintain the exterior shell of the building. Performing the calculations above, a 25% adjustment to \$38,760,980 would be \$9,690,245. Subtracting the \$7 million amount necessary to account for the exterior-preservation requirement results in an amount of \$2,690,245. This amount represents the necessary downward adjustment to account for the cost due to the interior-preservation requirement.

As a result, the Court accepts \$2,690,245 as the necessary adjustment to render the District's previous assessment for Tax Year 1989 correct.

Respondent argued that Ms. Saad failed to provide any support for her facade retention adjustment. This Court finds that her consultation with Omni Construction and the Historic Preservation Board to arrive at a figure of \$40.00/square foot is adequate support for her facade calculation. As the Respondent did not contest her 25% reduction value, but rather only the facade retention figure, the Court accepts the calculations proposed to account for the interior-preservation requirement.

Applying the \$2,690,245 adjustment to the Respondent's proposed assessment of \$38,760,980 results in a corrected value of \$36,070,735 for the property.

In assessing real property, the value of the land and improvements must be identified separately. D.C. Code § 47-821 (a) (1990 Repl.). Therefore, the Court adopts \$36,070,735 as the value of the land with no value given to the subject property improvements.

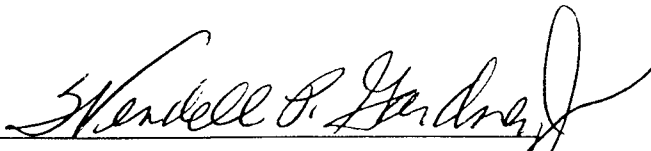
Based upon the foregoing, it is this 25th day of September, 1996,

ORDERED, that the assessed value for the subject property is determined to be as follows for the Tax Year 1989:

Land	\$36,070,735
Improvements	\$ <u> 0</u>
Total	\$36,070,735

IT IS FURTHER ORDERED, that the assessment record card for the property maintained by the District shall be adjusted to reflect the value determined by this order; and it is

FURTHER ORDERED, that the Petitioner shall submit a proposed order providing for a refund of the overpayment of taxes due to the Petitioner, along with interest as allowed by law. A copy of the proposed order shall be served on Respondent and filed with the Court no later than fifteen (15) days following receipt of this Order.



JUDGE WENDELL P. GARDNER, JR.
(Signed in chambers)

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**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION**

SQUARE 345 LIMITED PTNSHP.	:	
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Petitioner	:	
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v.	:	Tax Docket No. 4269-89
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DISTRICT OF COLUMBIA	:	
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Respondent	:	

ORDER

This matter came before the Court for trial upon the petition for a partial refund of real property taxes for Tax Year 1989. The parties filed stipulations pursuant to Rule 11(b) of the Superior Court Tax Rules. Upon consideration of the stipulations, the evidence adduced at trial, the applicable law, and having resolved all questions of credibility, and,

Whereas this Court does find that the Petitioner has met its burden of proving incorrectness in the assessment of the subject property, 1001 G Street, NW, Square 345, Lot 41; and

Whereas this Court determined that it would use the District's assessment of the subject property and apply Ms. Saad's historic preservation adjustments to that assessment to achieve the subject property's final value,

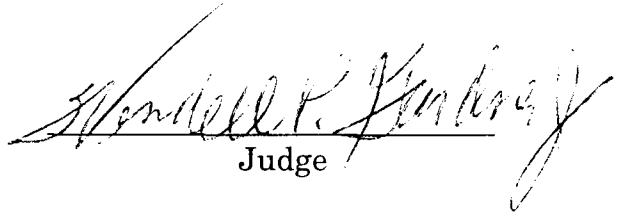
It is by the Court this 31st day of October, 1996:

ORDERED, that the assessed value for the subject property is determined to be as follows for the Tax Year 1989:

Land	\$36,070,735
Improvements	<u>0</u>
Total	\$36,070,735

IT IS FURTHER ORDERED, that the assessment record card for the property maintained by the District shall be adjusted to reflect the value determined by this Order, and it is

FURTHER ORDERED, that the Respondent shall refund to the Petitioner taxes in the amount of \$54,611.97 with interest at 6% per annum from March 31, 1989.


Judge

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