SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF THE NATIONAL CAPITAL AREA, INC.,	:	
Petitioner,	:	
v.	:	Tax Docket Nos. 5011-91
	:	5633-93
DISTRICT OF COLUMBIA,	:	5986-94
Respondent.	:	

MEMORANDUM OPINION AND ORDER

This matter came before the Court for trial upon a petition for a partial refund of real property taxes for Tax Years 1992, 1993, and 1994. 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 Petitioner, the Young Women's Christian Association of the National Capital Area, Inc. ("the YWCA"), is a non-profit organization, which owns the land and improvements on Lot 68 in Square 376, located at 634 Ninth Street, N.W., in the District of Columbia ("subject property").

2. The subject property, built in 1981, is improved by an eight-story building. The first floor comprises a pool and a recreation area. The second and third floors are leased as office space. The fourth floor comprises classrooms for the YWCA, and the remaining floors are rented to non-profit organizations. The building's interior was renovated in the period between the Fall of 1991 and June 1992.

The property is zoned C-4 in the Central Business District with an FAR (floor area ratio) of 8.5. The exterior of the building, which was not renovated, consists of incomplete and cracked pre-cast concrete paneling.

3. The assessed value of the subject property for Tax Years 1992, 1993, and 1994 was $22,344,000, $20,519,791, and $20,519,791, respectively. The Petitioner timely filed an appeal for each tax year with the District of Columbia Board of Equalization and Review ("BER"), which reduced the Tax Year 1992 assessment to $18,736,638, reduced the Tax Year 1993 assessment to $18,669,000, and sustained the Tax Year 1994 assessment.

4. Petitioner timely paid all real estate taxes assessed against the subject property valued at $22,344,000 for Tax Year 1992, and valued at $20,519,791 for Tax Years 1993 and 1994, as required by law, and timely filed a petition for a reduction of each assessment and refund of excess taxes paid for all three tax years. Petitioner asserted at trial that the fair market value of the subject property for Tax Year 1992 was $8,200,000, for Tax

Year 1993 was $7,600,000, and for Tax Year 1994 was $11,100,000. The District, at trial, sought to uphold the assessor's assessments of $22,344,000, $20,519,791, and $20,519,791 for Tax Years 1992, 1993, and 1994, respectively.

5. Petitioner called Mr. Richard W. Naing to testify on its behalf. Mr. Naing has been a real estate appraiser/broker of properties in the District of Columbia for over twenty years, and this Court admitted him as an expert on the subject of commercial real estate appraisals without objection from the District.

6. Mr. Naing, on July 1, 1993, appraised the subject property to determine its market value as of that date. His 1993 appraisal incorporated the assumption that the pre-cast concrete exterior wall was in normal condition. Mr. Naing considered the three different approaches to value in appraising the subject property: the comparable sales approach, the replacement cost approach, and the capitalization of income approach.

7. Under the comparable sales approach, Mr. Naing first looked at comparable sales from the immediate past and then adjusted each comparable to account for its differences with the subject property.

8. Under the replacement cost approach, Mr. Naing determined the value of the subject property by independently determining the value of the land and the improvements, and then adding them together to get the total value. First, assuming that the land was vacant and developed to its highest and best

use, Mr. Naing determined the value of the land by comparing it to the value of other land in the community. Then, he calculated the cost of improving the land to its theoretical highest and best use, which in this case was similar to the existing structure on the subject property. From this cost was subtracted existing depreciation, and the combination of the value achieved for the land and that achieved for the improvements yielded the total value.

9. Under the income approach, Mr. Naing analyzed the rents achievable in this market place and adjusted them for time, location, and other differences between them and the rents achievable for the subject property. Mr. Naing also adjusted for vacancies and subtracted out typical expenses for a building such as the subject property. Then, he looked to the market place to determine what buyers and sellers were paying for commercial office buildings. His ten-year analysis of the residual values determined the value of the subject property based upon its income.

10. Mr. Naing concluded that as of July, 1, 1993, the comparable sales approach was the most appropriate valuation method. He believed that the income approach, while similar in nature, was the second most reliable. Finally, he concluded that the replacement cost approach was the least reliable because he said that people usually do not buy buildings of this nature based on the replacement cost approach.

11. Mr. Naing's July 1993 appraisal of the subject property under the comparable sales method resulted in an estimated value of $16 million, subject to six limiting conditions and nineteen general assumptions.[1] See Pet'r Ex. 8 at B1, C1-C2.

12. In reaching his $16 million value, Mr. Naing inspected the building on June 27, 1993 and then conducted a second inspection on July 6, 1993. Mr. Naing considered how the building was built, why it was built, and by whom it was built. He further considered the District's assessment of the subject property as well as the trends and general economic climate of Washington, D.C. Mr. Naing read newspapers and public documents from the federal government and public agencies to obtain information on zoning conditions, employment conditions, and other factors that might affect the market value of the subject property. Such a profile is required for an appraisal to be considered valid. Mr. Naing researched studies conducted by other assessment companies, public records, and other sources in determining that although there had been a downturn in the real estate market, Washington, D.C. had remained competitive for buyers.

13. Mr. Naing considered the improvements on the property "typical": it was level, had street frontage, and the renovations

[1] The most significant assumption, as stated in Findings of Fact 6, was that the exterior walls were assumed to be in good condition for the appraisal. In calculating the estimated market values for the three Tax Years in issue, however, the appraiser made adjustments for the pre-cast concrete exterior problem.

rendered the building competitive in the market. There were no zoning problems, and the property was built to its highest and best use as an office building.

14. Under his comparable sales approach, Mr. Naing used five different land sales in determining the value of the land portion of the property.

15. Comparable one was the property located at 1001 E Street, N.W., in the District of Columbia. That sale occurred in July of 1993, and as a result, Mr. Naing did not need to adjust for a difference in time between the sale of the comparable and the date of the appraisal. He did make a 10% upward adjustment to the value of the comparable because the comparable was smaller in size than the subject property. He also adjusted for differences between the FARs of the comparable and the subject properties (the value of the land is directly proportional to the FAR).

16. Comparable two was the property located at 1111 K Street, N.W., in the District of Columbia. To make the property more similar to the subject property, Mr. Naing adjusted for differences in location, size and FAR.

17. Comparable three was the property located at 12th Street and New York Avenue, N.W., in the District of Columbia. Mr. Naing adjusted the value of this comparable downward by 5% to account for its larger size, and downward to reflect the effect of the decline in the market that occurred in late 1989 and 1990.

This latter adjustment, the "date of sale" adjustment, accounts for the fact that property values decrease as a function of the period of time separating the sale date of the property from the peak market year. Mr. Naing deducted 5% from the value of the comparable sale for every year that separated the appraisal date from the comparable's sale date. This adjustment would effectively push the comparable's sale date to the date of the appraisal.

18. Comparable four was a Capitol Hill property, which had a 1992 date of sale. Mr. Naing adjusted the value of that property upward by 5% to account for the fact this comparable was not in as good a location as the subject property, adjusted downward by 5% per year to account for the difference between the comparable's sale date and the appraisal date, and adjusted for the condition of sale, which accounted for the fact that the comparable was a distress sale sold as a result of bankruptcy.

19. Comparable five was the property located at 1100 F Street, N.W., in the District of Columbia. Mr. Naing adjusted for condition of sale, size, location, and date of sale, resulting in a total net adjustment of 42%.

20. The five comparable sales resulted in a land appraisal of $8,300,000.

21. To determine the value of the improvements on the land under his sales approach, Mr. Naing looked at all of the sales that occurred in the area, narrowed that field down to certain

comparable sales, and analyzed them to achieve a value for the improvements on the subject property. The analysis was quite similar to that for the comparable land sales. One difference, however, is that for the improvements on the land, the appraiser looks at the per square foot value of the improvements above grade rather than the analogous FAR for comparable land sales.

22. Mr. Naing used six comparables to determine the value of the improvements on the subject property. The locations of those comparables are as follows: 700 11th Street, N.W.; the intersection of 13th Street and F Street, N.W.; 1420 New York Avenue, N.W., 635 Massachusetts Avenue, N.W.; 1212 New York Avenue, N.W.; and Capitol Hill, all in the District of Columbia. He adjusted these comparables to account for differences in square footage, location, date of sale, class of building (the subject property is class B), use of the building, and condition of the sale. He weighted the comparable sales, placing more reliance on the more comparable sales, in achieving a value of $177/square foot for the improvements on the property. The $177/square foot was chosen from a range of values for the improvements on the property so that when added to the $8,300,000 value achieved for the land, it resulted in a total market value of $16 million as of July, 1993.

23. Mr. Naing testified that an "appraisal is not an exact science." To illustrate this fact, he determined that the value of the improvements, under the sales approach, was $177/square

foot based upon a range of values. In his opinion, to choose a different "per square foot" value, leading to a final market value of, for example, say $15,987,334.23, would be misleading as to the accuracy of appraising real property.

24. Mr. Naing also determined the value of the improvements on the land under the replacement cost approach, although he considered this method of valuation less reliable. Under that approach, Mr. Naing looked at the cost to rebuild the improvements to the highest and best use of the property. He used both the Marshall and Swift approach to determine the industry's cost of building certain structures and to determine the adjustment factors that account for differences in location. He also used the Advanced Construction Management Company's appraisal of the cost to replace the building. After arriving at a replacement cost, Mr. Naing adjusted that value to account for the depreciation of the subject property. The value of the improvements on the subject property under the replacement cost approach was $20,090,000, to which Mr. Naing added an additional $1 million, accounting for entrepreneurial profit, construction cost, and leasing cost until the building stabilized.

25. Mr. Naing relied on the comparable sales approach rather than the replacement cost approach, arguing that an investor would be hesitant to build a new office building as it would cost less to use a pre-existing structure. Also,

excessively high construction costs at the time of the appraisal rendered the cost approach unreliable.

26. Mr. Naing also determined the estimated market value of the subject property using the capitalization of income approach. That approach entails estimating the NOI (net operating income) of the property, and then dividing that number by the appropriate capitalization rate.

27. Mr. Naing calculated the NOI using the discounted cash flow analysis. Under that analysis, he analyzed all of the leases in the building and multiplied the rent by the square footage to achieve a potential income for each tenant. Those potential incomes were summed to achieve a total income for that year. Then, the total income was estimated for each of the next ten years. Mr. Naing then made an adjustment for increases in the inflation rate, which, based on publications from the Federal Reserve, he assumed to be 5%. He then subtracted vacancies and collection losses, accounting for a 5% reduction, a generally accepted value in the industry for downtown D.C. Mr. Naing made specific lease adjustments to account for, as an example, the fact that the GSA lease was exempt from certain expenses. Actual YWCA expenses and industry-wide expenses were then subtracted, after Mr. Naing had compared them to records that adjusted these expenses over the eleven-year period. Mr. Naing adjusted for passthroughs, and for capital expenditures in the amount of $10.83/SF based on reference materials and industry standards.

Further adjustments were made to account for the assumption that the building would be sold in year eleven at a capitalization rate of 10%, a rate that would account for the higher return expectancy rates at the eleventh year than the present year. There was also a 3% downward adjustment for the cost of sale. Summing the total adjusted incomes for all eleven years resulted in a NOI for the entire eleven-year period. The income values for years two through eleven were then adjusted back to year one's values to achieve the present value of the NOI.

28. Mr. Naing achieved a capitalization rate of 9.61% based on comparable sales, conversations with buyers and sellers, and the Band of Investment technique.

29. Dividing the NOI by the 9.61% capitalization rate, Mr. Naing, under the discounted cash flow analysis, achieved a market value of $15,755,466, or $174/SF.

30. Mr. Naing also computed the market value using the direct capitalization method of the income approach. Under this method, rather than calculating the income over an eleven-year period, the market value is based on only one year's income. The direct capitalization method is referred to as the "snapshot approach." Mr. Naing, using this method, calculated an NOI of $1,452,494.36, which, when divided by a 9.5% capitalization rate, resulted in a market value of $15,289,000, or $169/SF.

31. From these two values, Mr. Naing chose a value of $171/SF, which resulted in a conclusion of value of $15,500,000

for the subject property under the capitalization of income approach.

32. Mr. Naing felt that that the $16 million, $177/SF, value achieved through use of the comparable sales approach was the most reliable. Additionally, Mr. Naing calculated the estimated market value of the subject property by combining the results of all three approaches to value, which, coincidentally, led to the same $177/SF result obtained under the comparable sales approach.

33. Mr. Naing reviewed an appraisal of the subject property prepared on October 30, 1990 by Reynolds and Reynolds, an appraisal company. Based on the comparable sales in that report, Mr. Naing concluded that the "as is" value of the property was $12,800,000 as of November 1, 1990. He agreed with Reynolds and Reynolds's conclusion under the cost approach as well as with their $20 million estimation of the value of the property as renovated. The renovation costs for the building as of 11/1/90 were $7,800,000. In Mr. Naing's 1993 appraisal, after recalculation, the renovation costs were a little lower.

34. Mr. Naing, using his July 1993 appraisal for the latter two values and the 10/30/90 Reynolds and Reynolds appraisal for the first two values, estimated the following market values for the subject property for the corresponding dates:

Valuation Date		Estimated Value
1/1/91	(Tax Year 1992)	$8,200,000
1/1/92	(Tax Year 1993)	$7,600,000
7/1/92		$10,700,000
1/1/93	(Tax Year 1994)	$11,100,000

Mr. Naing based his 1/1/91 value of $8,200,000 on his agreement with the Reynolds and Reynolds appraisal of the subject property as of November 1, 1990. Mr. Naing adjusted the Reynolds and Reynolds appraisal at 5% per annum to account for the two-month time difference. Also, the Reynolds and Reynolds appraisal excluded consideration of the pre-cast concrete problems, which Mr. Naing concluded would amount to a $4,500,000 adjustment. He based that figure on the final judgment entered by another court addressing that very issue.

Mr. Naing calculated his 1/1/92 value of $7,600,000 in a similar manner to his 1/1/91 value. He adjusted the Reynolds and Reynolds 11/1/90 appraisal at 5% per annum to account for the time difference, and then subtracted $4,500,000 to account for the pre-cast concrete problems.

Mr. Naing based his 7/1/92 value of $10,700,000 on his own July 1993 appraisal of the subject property. Starting with the $16 million estimated value that he achieved in that appraisal, Mr. Naing adjusted for the difference in time using the %5 per annum rate. He also subtracted $4,500,000 for the pre-cast

concrete problem, an adjustment not originally made in his July, 1993 appraisal, and adjusted for the fact that the tenants had not moved in yet.

Mr. Naing also based his 1/1/93 value of $11,100,000 on his July 1993 $16 million appraisal, once again adjusting for time difference and the pre-cast concrete problem.

35. On cross-examination, Mr. Naing testified that "different appraisers use different assumptions. If [another appraiser's] assumptions were based on things that were different from mine, that valuation may be fair and reasonable. It depends on the assumptions."

36. Mr. Naing was present at the Board of Equalization and Review (BER) Hearing for Tax Year 1995, but not for Tax Years: 1992, 1993, or 1994.

37. Upon the District's cross-examination, Mr. Naing said that the assessor failed to consider the pre-cast concrete problems in his assessment. Mr. Naing also testified that industry standard allows a 5% margin of error in an appraisal.

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 de novo, necessitating competent evidence to prove the matters in issue. See Wyner v. District of Columbia, 411 A.2d 59, 60 (D.C. 1980).

"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, 1991 for Tax Year 1992, on January 1, 1992 for Tax Year 1993, and on January 1, 1993 for Tax Year 1994. 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 other.

D.C. Code § 47-802(4) (1990 Repl.).

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.).

In this case, Respondent moved to dismiss at the close of the Petitioner's case in chief, asserting that the Petitioner failed to meet its burden of proof. According to Superior Court Tax Rule 11(d), with respect to tax assessment challenges, "[t]he burden of proof shall be upon the petitioner, except as otherwise provided by law." See Wyner v. District of Columbia, 411 A.2d 59, 60 (D.C. 1980) (citing Rule 11(d)). The petitioner's burden for challenging tax assessments of commercial property was stated by the Court of Appeals in District of Columbia v. Burlington Apt. House Co., 375 A.2d 1052, 1057 (D.C. 1977): "[W]here an assessment is based not upon a 'valuation made according to law' but rather upon a figure determined by the court to be 'erroneous, arbitrary, and unlawful,' the figure thus rejected must be considered a mere nullity, incapable of future applicability." Thus, under Burlington Apt., the Petitioner can meet its burden of proof by showing that the Government's assessment is "erroneous, arbitrary, or unlawful." See id.

The Court of Appeals, in Brisker v. District of Columbia, 510 A.2d 1037, 1039 (D.C. 1986), refined petitioner's burden of proof in stating:

> The taxpayers were not required to establish the correct value of their property in order to meet their burden of

> proof; rather, the taxpayers bore the burden of proving the incorrectness of the government's assessment . . . . The taxpayers met that burden when the evidence showed that the District's . . . valuation was flawed.

Thus, in appealing the Government's assessment, the Petitioner need not establish the correct value of the property and can satisfy its burden of proof by showing that the assessment is incorrect, erroneous, arbitrary, or unlawful. See Brisker, 510 A.2d at 1039; Burlington Apt. House, 375 A.2d at 1057.

Furthermore, the Court of Appeals in Safeway Stores, Inc. v. District of Columbia, 525 A.2d 207 (D.C. 1987) clarified this burden when it held that "a taxpayer bears the burden of proving that an assessment is incorrect or illegal, not merely that alternate methods exist giving a different result." Id. at 211. It is not enough for the Petitioner to present an expert who testifies that, in his opinion, the fair market value of the subject property is lower than that estimated by the assessor. Rather, the Petitioner must *prove* error in the actual assessment by showing why it is incorrect or specifying those flaws rendering the assessment excessive.

This Court has the authority to sustain a Motion to Dismiss pursuant to Rule 41(b) of the Superior Court Civil Rules.[2] See

[2] Rule 41(b) was amended on May 12, 1993, effective July 1, 1993, and as a result, the language relevant to this matter cannot be found in more current editions of the Superior Court Rules. As of the time of Respondent's Motion to Dismiss, however, the Rules of Practice and Procedure before the Tax Division adhere to the Superior Court Civil Rules as they stood prior to the January 1, 1991 amendments.

Bay General Industries, Inc. v. Johnson 418 A.2d 1050, 1054 (D.C. 1980) (citing Marshall v. District of Columbia, 391 A.2d 1374 (D.C. 1978); Keefer v. Keefer & Johnson, Inc., 361 A.2d 172 (D.C. 1976); Warner Corp. v. Magazine Realty Co., 255 A.2d 479 (D.C. 1969)). Such a dismissal is considered an "involuntary dismissal" under Rule 41(b), which provides in pertinent part:

> After the plaintiff, in an action tried by the Court without a Jury, has completed the presentation of evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The Court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence.

Super. Ct. Civ. R. 41(b); see Bay Gen. Indus., 418 A.2d at 1054. Thus, if the petitioner in an action, upon the facts and the law, has shown no right to relief by the completion of the presentation of its evidence, and thus has failed to meet its burden of proof, this Court may grant a respondent's motion for involuntary dismissal.

In this matter, Petitioner did not meet its burden of proof at the completion of the presentation of its evidence for it failed to illustrate any incorrectness in the Government's assessment. The main argument upon which Petitioner relies is that the large discrepancy between the estimated market value for the subject property achieved by Petitioner's expert, Mr. Naing,

and that achieved by the District assessor illustrates error in the District's assessment. While an appreciable discrepancy, $5 million or $50 million, does illustrate a difference between the two estimated market values, by itself it does not indicate that one or the other is incorrect or erroneous. Petitioner's own expert witness recognized the possibility that two different appraisals could both be valid when he testified that "different appraisers use different assumptions. If [another appraiser's] assumptions were based on things that were different from mine, that valuation may be fair and reasonable. It depends on the assumptions."

The Court of Appeals in Safeway Stores clearly rejected the possibility that "alternate methods . . . giving a different result" might meet the burden of proving that an assessment is incorrect or illegal. See 525 A.2d at 211. Regardless of the magnitude, a difference between two estimations of market value does not illustrate per se that one or the other is incorrect.

In order to meet this burden of proving incorrectness, the Petitioner must attack the District's assessment and illustrate error, either independently, by showing, for example, that the assessor failed to fulfill the statutory requirements of §§ 47-802(4) and 47-820(a) of the D.C. Code, or dependently, by showing that its own appraisal is more accurate than the District's

assessment, not just merely different. Petitioner in this case, relying solely on the discrepancy between the assessor's and appraiser's proposed market values as indicative of excessiveness in the District's assessment, has done neither.

Petitioner, in oral response to Respondent's Motion for Dismissal, referred to the large discrepancy between the assessment and the appraisal, stating that "[s]omething is incorrect. It is either Mr. Naing's testimony, the assessor's, or both." In order to demonstrate that the discrepancy stems from incorrectness in the assessment and not its appraisal, Petitioner at some point in its case in chief needed to attack the assessment itself as the source of error. Rather than attack the assessment, however, Petitioner only presented evidence of its opinion of the correctness of its appraisal. As explained in Safeway Stores, such a showing cannot sustain one's burden of proof. See id.

There was one potential assertion of incorrectness in the District's assessment of the subject property, elicited by Respondent upon cross-examination of Petitioner's expert, Mr. Naing. Mr. Naing testified that at the BER hearing for Tax Year 1994, he had the opportunity to consider the reasoning used by the assessor in calculating the estimated market value of the subject property for Tax Year 1994. Based on what he had heard at that hearing, Mr. Naing concluded that "the assessor has neglected or has decided not to reflect for the decrease in value

because of the pre-cast problems, something that if you were reflecting market value, you would have to adjust for." Of the three tax year assessments at issue here, this assertion of incorrectness was directed only to the Tax Year 1994 assessment, for Mr. Naing testified that he had only attended the 1994 BER hearing, and not the 1992 or 1993 hearings.

This Court need not determine the sufficiency of Petitioner's expert's allegation of incorrectness toward meeting its burden of proof, however, for Petitioner's own redirect examination of Mr. Naing revealed that the allegations were irrelevant to any of the three tax years at issue. Petitioner elicited on redirect examination that in fact its expert witness had attended the BER hearing for Tax Year 1995 rather than Tax Year 1994. Petitioner's expert admitted that his previous testimony, that he had attended the 1994 BER hearing, was incorrect. As a result, any potential allegation of incorrectness in the assessment of the subject property for Tax Years 1992, 1993, or 1994 cannot be entertained by conclusions supported solely by information obtained from the 1995 BER hearing. Furthermore, in responding to Respondent's Motion for Involuntary Dismissal at the close of Petitioner's case in chief, Petitioner made no mention of the pre-cast concrete problems as a source of error in the government's assessment.

Subsequent to this Court orally granting Respondent's Motion for Involuntary Dismissal, Petitioner filed a Motion for

Reconsideration of Ruling to Dismiss at the Close of Petitioner's Evidence. In that Motion, Petitioner argued that the granting of the Motion for Involuntary Dismissal was inappropriate for the following reasons: (1) the Court incorrectly required Petitioner to introduce evidence of the methodology used by the District of Columbia in assessing the subject property; (2) the necessary evidence as to the assessor's methodology would have been elicited in the Respondent's case in chief anyway; (3) in Burlington, 375 A.2d 1052, expert testimony in support of a lower appraisal of the fair market value was sufficient to meet petitioner's burden of proof; and (4) the testimony of Petitioner's expert, Mr. Naing, as to the estimated market value of the subject property, clearly indicates that the assessments were excessive. As to each of these arguments, Petitioner fails to persuade the Court that it was incorrect in granting Respondent's Motion for Involuntary Dismissal.

First, Petitioner alleges that this Court was incorrect to suggest that the Petitioner had to introduce evidence of the methodology used by the District of Columbia in assessing the subject property. See YWCA's Mot. for Reconsideration at 1, 4. This Court recognizes that the case law establishing the burden of proof in real property tax assessment appeals may not have used the word "methodology" in defining the petitioner's burden of proof. Nevertheless, this Court's reference to the assessor's

methodology in terms of the Petitioner's burden of proof is not in error.

The Petitioner's burden, as discussed above, is to show that the assessment is "incorrect, erroneous, arbitrary, or unlawful." See Brisker, 510 A.2d at 1039; Burlington Apt. House, 375 A.2d at 1057. The Court of Appeals in Safeway Stores indicated that this burden could not be met merely by proving "that alternate methods exist giving a different result." 525 A.2d at 211. The Safeway Stores Court indicated that a petitioner could not rely solely on its own appraisal to met its burden of proof. Such reliance can only go as far as to prove a difference in the estimated market values calculated in the assessment and the appraisal. In order to show that the assessment is "incorrect, erroneous, arbitrary, or unlawful," the Petitioner must attack the assessment itself.

Now, in order to attack the assessment itself, Petitioner, having alleged that the assessment is incorrect, erroneous, arbitrary, or unlawful, must show *how* or *why* the assessment is incorrect, erroneous, arbitrary, or unlawful. An assessment is the result solely of the assessor's methodology used in achieving that assessment. Thus, it logically follows that in order to show how or why an assessment is incorrect, the Petitioner must show that the methodology used in calculating the assessment was incorrect. As a result, it is not a misapplication of the case law, as the Petitioner claims, to require the introduction of

evidence as to the methodology used by the assessor in assessing the subject property.

Thus, in order to satisfy its burden of proof the Petitioner must attack the assessor's methodology. Furthermore, in order to attack the methodology, the Petitioner must introduce evidence of that methodology. The Petitioner cannot conclude, based solely on the numerical value of the assessment, that the estimated market value for the property is incorrect. The numerical value itself in the assessment gives no indication of the methodology used in achieving that numerical value. By merely introducing evidence of what the Petitioner's expert did to calculate his appraisal, Petitioner has only speculated as to incorrectness in the methodology used to calculate the assessment. Furthermore, any testimony by Petitioner's expert as to what the assessor did, without first putting the assessor on the stand, is inadmissible hearsay. Thus, Petitioner, as a prerequisite to attacking the methodology employed by the assessor, must first introduce evidence of that methodology.

Petitioner, citing Brisker, 510 A.2d at 1039, further asserts that "[t]he 'burden of proof' doctrine has been applied only to determine whether the taxpayer's evidence has been sufficient to persuade the trial court, after consideration of the District's evidence, that the assessment was excessive or otherwise incorrect." YWCA's Mot. for Reconsideration at 7. Petitioner's interpretation of the rationale in Brisker is

faulty. With respect to meeting the burden of proof, the Court of Appeals in Brisker only stated that "[t]he taxpayers were not required to establish the correct value of their property in order to meet their burden of proof; rather, the taxpayers bore the burden of proving the incorrectness of the government's assessment." 510 A.2d at 1039. The Court of Appeals in Brisker only mentions what is not required to meet the burden of proof, namely, establishing the correct value of the property, and makes no mention as to what evidence is to be considered in assessing whether the taxpayers have met their burden of proof. Therefore, the Petitioner's interpretation that Brisker requires consideration of the District's evidence in determining whether the Petitioner has met its burden of proof is incorrect.

Furthermore, the language of Rule 41(b) itself contradicts the Petitioner's interpretation of the rationale in Brisker. Rule 41(b), which governs motions for involuntary dismissal, provides the following: "*After the plaintiff . . . has completed the presentation of evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted,* may move for dismissal of an action on the ground that upon the facts and the law the plaintiff has shown no right to relief." Super. Ct. Civ. R. 41(b) (emphasis added). Pursuant to Rule 41(b), this Court may grant such a motion at the close of the Petitioner's case in chief and before the presentation of the Respondent's evidence, for the Rule preserves the right of the

Respondent to offer evidence in the event that the motion is not granted. The Petitioner's misinterpreted assertion that the "burden of proof doctrine" requires consideration of the District's evidence, thus, contradicts the language of Rule 41(b). The ruling on the Motion for Involuntary Dismissal in this case, which occurred at the close of the Petitioner's case in chief, clearly comports with the language of Rule 41(b).

A second contention made by Petitioner in its Motion for Reconsideration is that evidence as to the assessor's methodology would have been elicited in the Respondent's case in chief anyway. Petitioner states that "the District of Columbia advised the court that it only had one witness, the assessor, Quintin Harvell, who was in the courtroom ready to testify when the Court made its ruling. Whatever question the Court had as to the methodology by which the Mayor and the Mayor's subordinates made their assessments probably would have been answered during the assessor's testimony." YWCA's Mot. for Reconsideration at 2-3. A Rule 41(b) Motion for Involuntary Dismissal allows for a challenge to the sufficiency of the Petitioner's case in chief. The Petitioner, here, cannot rely on what the assessor probably would have said in the Respondent's case in chief to satisfy Petitioner's own burden of proof. In fact, Respondent does not even have to call the assessor as a witness or put on any evidence for that matter, so Petitioner's argument that the information necessary to satisfy its burden of proof would have

been elicited in Respondent's case is unpersuasive in deciding whether or not to reconsider the granting of the Motion for Involuntary Dismissal

The third contention in Petitioner's Motion for Reconsideration is that the Court of Appeals in Burlington, under a "clearly erroneous" standard of review, "affirm[ed] the trial court's conclusion that the assessment to which Burlington was subjected was arbitrarily excessive and affirm[ed] the reduced assessment" based on the fact that "Burlington [taxpayer] presented extensive expert testimony in support of a lower appraisal of the fair market value." See YWCA's Mot. for Reconsideration at 5 (citing Burlington, 375 A.2d at 1055). Petitioner asserts that the taxpayer in that case met its burden of proving error in the District's assessment simply by presenting expert testimony in support of a lower appraisal of the fair market value of the subject property. Petitioner's understanding of this point in Burlington is incorrect.

The distinction in real property assessment appeals between proving incorrectness in the assessment and establishing the true market value of the property was made in Brisker: "The taxpayers were not required to establish the correct value of their property in order to meet their burden of proof; rather, the taxpayers bore the burden of proving the incorrectness of the government's assessment." Brisker, 510 A.2d at 1039. In Burlington, the taxpayer offered evidence as to both the

incorrectness of the Government's assessment as well as to the true market value of the property. The Court of Appeals, in Burlington, understood this distinction and reviewed the lower court's findings as to each of these matters separately.

The cited portion of the opinion in Burlington, to which Petitioner refers, addresses only the issue of whether or not, under the "clearly erroneous" standard, the trial court's valuation of the property was against the weight of the evidence. That portion of the opinion does not refer to whether or not the taxpayer in Burlington has met its burden of proof with respect to illustrating error, arbitrariness, or unlawfulness in the District's assessment. The portion of the opinion in Burlington that does address whether or not the taxpayer has met its burden with respect to showing error in the District's assessment precedes the cited portion by two paragraphs. The conclusion at the end of the cited portion, upon which Petitioner relies, states the Court of Appeals' affirmation of the finding that the assessment was arbitrarily excessive as well as the affirmation of the trial court's finding of true market value. This conclusion, however, refers to all three paragraphs. The Court of Appeals' affirmation of the trial court's finding that the District's assessment was arbitrarily excessive refers to the court's rationale in the first two paragraphs regarding proving error in the District's assessment. The Court's affirmation of the trial court's finding of true market value refers to the

rationale of the third (the cited paragraph) regarding the valuation determined by the trial court. The Petitioner, here, reads the entire conclusion as referring solely to the rationale given in the third (cited) paragraph, which supports only the finding of true market value.

Indeed, it is true that a trial court's finding as to the true market value of the subject property may be based solely on the evidence offered by the petitioner, but the conclusion that the "assessment was arbitrarily excessive" in Burlington was based on the rationale in the first two paragraphs and not the third paragraph. Petitioner erred in its understanding that both parts of the conclusion referred to the court's rationale for affirming only the trial court's finding as to true market value, and, thus, Burlington is ineffectual in Petitioner's attempts to meet its burden of proof as to the incorrectness of the District's assessment by only introducing evidence of its expert's appraisal.

Finally, Petitioner reasserts in its Motion for Reconsideration that the testimony of Mr. Naing, its expert witness, sufficiently demonstrates that the assessments were excessive. As Petitioner did in its case in chief, it now again relies on the large discrepancy between the market value achieved in the assessment and that achieved in its expert's appraisal as indicative of excessiveness in the assessment. For the same reasons made in the granting of the Motion for Involuntary

Dismissal, the Court is not persuaded by this argument in determining whether to reconsider its granting of that Motion.

As Petitioner's only evidence was its expert's detailed analysis of the methods he used to determine his estimation of the market value of the subject property, this Court finds that Petitioner did not meet its burden of proof, failing to illustrate any incorrectness, error, arbitrariness, or unlawfulness in the District's assessment. As a result, this Court, pursuant to Rule 41(b) of the Superior Court Civil rules, grants the Respondent's Motion for Involuntary Dismissal. Furthermore, as this Court is not persuaded by any of the arguments made in YWCA's Motion for Reconsideration, this Court denies that Motion.

Therefore, it is this 10th day of February, 1997,

ORDERED, that the Respondent's Motion for Involuntary Dismissal is **GRANTED;** and it is

FURTHER ORDERED, that Petitioner's Motion for Reconsideration of Ruling to Dismiss at the Close of Petitioner's Evidence is **DENIED.**

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

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