

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
PROBATE DIVISION

Abbas & Nafisseh Heyat,)	
Petitioners)	
)	
v.)	Tax Docket Nos. 5567-93
)	Judge Kaye K. Christian
District of Columbia,)	
Respondent.)	

ORDER

This matter comes before the Court on a Motion filed by the Respondent, the District of Columbia, to Dismiss or alternatively grant Summary Judgement against the Petitioners, Abbas & Nafisseh Heyat, Petitioners in the above-captioned matter. The Respondent argues that the petitioners failed to properly exhaust administrative remedies available under the Board of Real Property Assessments and Appeals for the District of Columbia ("Board"). The Petitioners refute the motion and reason that they have exhausted administrative remedies, that the respective statute did not clearly indicate proper appealing procedures, and that extraordinary circumstances sanction their petition in the Superior Court.

BACKGROUND

This action involves real estate tax appeals for properties owned by Petitioners, Abbas and Nafisseh Heyat and Intervest Limited Partnership. The properties are Square 2583, Lots 2039-2053, 2055-2057, 2059, 2061, 2064, 2065, 2070-2072, 2627 Adams Mill Road, N.W., Washington, D.C. The petitioners are appealing the tax year 1993 annual real property assessments for these lots. The valuation dates for the assessment is

January 1, 1992.

Petitioners argue that when they received their tax assessment they contacted the assessor, Mr. Sheldon Brown, in order to reduce the assessed tax. They argue further that they filled out a Real Property Tax Assessment Appeal Form ("Form"), filed the original with the Board and gave several copies of the Form to Mr. Brown "with his assurances that the Board will meet, that Mr. Brown will be present at the Board's hearing, and that he would explain to the Board the Petitioners' arguments." Memorandum of Points and Authorities in Support of Petitioners' Response to Respondent's Motion to Dismiss, or Alternatively, Motion for Summary Judgment, p. 2, (hereinafter, Petitioners' Response). Petitioners allege that on the day of the scheduled meeting of the Board, Petitioners were out of town and were unaware that it was being held. Id. According to Petitioners, after the scheduled meeting, Mr. Brown informed Petitioners that the Board met and rejected Petitioners' claim and arguments for a reduction in the tax assessment. Id.

Petitioners allege that Mr. Brown informed them that the next step in the procedure is to file an appeal with the District of Columbia Superior Court, Tax Division which Petitioners did. Id. Therefore, Petitioners conclude that they properly exhausted the administrative remedies available under the Board of Real Property Assessments and Appeals for the District of Columbia.

Petitioners also argue that assuming arguendo the

administrative procedures were not exhausted, Petitioners are nonetheless properly before this Court. Petitioners argue in this regard that they did not properly receive the tax assessment prior to the statutorily mandated time, that the respective statute did not clearly indicate proper appealing procedures, and that extraordinary circumstances sanction their petition in the Superior Court.

This Order will address the Respondent's Motion to Dismiss or grant Summary Judgment based on their argument that no administrative appeal was made to the Board pursuant to D.C. Code § 47-825 and therefore this Court lacks subject matter jurisdiction.

ANALYSIS

Petitioners' argument in this case is similar to that put forward in another case Petitioners brought before this Court, Tax Docket No. 6322-94. In that case, Tax Docket No. 6322-94, the Respondents also filed a Motion to Dismiss, or alternatively, a motion for Summary Judgment. The Respondent's argument was that the Petitioners' failure to file a timely appeal with the Board rendered this Court without subject matter jurisdiction because a timely appeal is a jurisdictional prerequisite for judicial review of tax appeals as provided in D.C. Code § 47-825 (f) (1) and (j).

The Petitioners contended that the appeal form and accompanying documents were submitted in due time to the District's assessor on the mistaken belief that the

Government's own assessor, Mr. Sheldon J. Brown, would file the appeal for the Petitioner. Petitioner in that case alleged that he was "misled" to believe that the appeal documents would be filed by the assessor. The Court in its Order, dated July 18, 1995, found that the Respondent's Motion to Dismiss was persuasive and after an analysis of the facts and relevant law in the case, dismissed the Petitioner's appeal with prejudice for lack of subject matter jurisdiction pursuant to Superior Court Civil Rule 12(b)(1) and D.C. Code 47-825(f)(1) and (j). The Court concluded that the taxpayer bears the sole and ultimate responsibility for complying with all prerequisites for seeking relief in the Superior Court.

The situation in Tax Docket No. 5567-93 is similar to that in Tax Docket No. 6322-94 with a few minor differences. In the case before this Court, Petitioners also allege that they filled out the required Real Property Tax Assessment Appeal Form. However, in this case the Petitioners allege that they filed the original with the Board and gave Mr. Brown, the assessor, several copies thereof. In the instant case, Petitioners relied on Mr. Brown's assurances that "the Board will meet, that Mr. Brown will be present at the Board's hearing, and that he would explain to the Board the Petitioners' arguments." As in Tax Docket No. 6322-94, Petitioners were out of town at the time the Board met, and relied on Mr. Brown to present their case to the Board. Petitioners now assert that they fully complied with the

process for filing an appeal. However, Petitioners have not complied with the process for filing an appeal.

The Court has not been provided affidavits, deposition testimony or any other information whereby Petitioners have sought to prove that Mr. Brown did in fact receive copies of the appeal form or that any person at the Board received copies of the appeal form. Nor has the Court seen any evidence presented by the Petitioners that Mr. Brown undertook to represent or explain Petitioners' arguments to the Board. The Court notes, however, that in Tax Docket No. 6322-94, Mr. Brown through sworn affidavit believed that a copy of the appeal document provided to him by Petitioners, was provided for his personal records. If in this case, Mr. Brown did in fact receive copies of the appeal information as alleged by the Petitioners, the Court finds that Petitioners must demonstrate that Mr. Brown received such copies for the purpose of explaining to the Board Petitioners' arguments or for some other reason other than for his own personal records. Petitioners have not so demonstrated to this Court.

The instant action, however, is somewhat different from Tax Docket No. 6322-94. Unlike Tax Docket No. 6322-94, here Petitioners allege that they filed the original forms with the Board. The Court has reviewed the Court jacket in this case, and has seen the sworn affidavit of Ms. Doretha McCallum, Administrative Officer of the Board of Real Property Assessments and Appeals, and custodian of the records for the

Board of Equalization and Review TY 1993 and Supplemental Appeals. Ms. McCallum searched the computer generated report of all real property tax appeals for Tax Year 1993 and found no record of any appeals for the subject properties.

Therefore, there exists no record of Petitioners' appeal in the Board's records. Nor has Petitioner sought to present to this Court a copy of such an appeal with evidence that it had been filed with the Board. The Petitioners have therefore not presented proof that a proper appeal had been filed with the Board. The Court is left only with the bald assertion that Petitioners followed the correct procedures in filing their appeal with the Board and that Petitioners did file an appeal. This is not sufficient to persuade the Court that a timely appeal with the Board has taken place.

A timely appeal to the Board of Real Property Assessments and Appeals is a jurisdictional prerequisite for judicial review of tax assessments. District of Columbia v. Keyes, 362 A.2d 729, 733 (D.C. 1976). The Court finds that Petitioners' argument are legally insufficient and the Motion to Dismiss must be granted.

The Court reasons as did Judge Long in her Order of July 18, 1995, in Tax Docket No. 6322-94, Petitioners bear the sole and ultimate responsibility for complying with all prerequisites for seeking relief in the Superior Court. It is unrealistic and illogical for anyone to believe that the Government tax assessor can or should play the role of an

advocate for the Petitioner by explaining the Petitioners' arguments to the Board. This would be a total conflict of interest on the part of any assessor. The assessor, if anything, is aligned with the Government's interests. One cannot expect the person who would stand in the role of the opposing party to advocate the position of the Petitioners wherein his own work product is the subject of the taxpayers' complaint.

The Petitioners were not in attendance at the Board hearing. Petitioners allege that on the date of the scheduled hearing, Petitioners were out of town and were unaware that it was being held. Petitioners' Response, at 2. Petitioners allege further that they did not receive any notice in the mail or by telephone, as required in the Form and related statutes, of the date of a hearing before the Board. Id. However, Petitioners at page 5 of Petitioners' Response, allege that in their communication with Mr. Brown regarding the hearing, Mr. Brown told Petitioners that they were not required to attend the Board hearing and that their explanations on the Form would suffice. If the Court is to believe Petitioners' representations, the Court must believe that Petitioners had no intention of being present at the hearing since they believed their presence was not required. To the extent that petitioners were out of town and did not file and pursue their appeal, they did so at their own peril.

Petitioners have not provided any supporting information to

demonstrate that they did in fact file an appeal with the Board. The Court has no copy of the appeal or any information to support the allegation that an appeal had been filed. The Court has, however, an affidavit from the Board's Administrative Officer stating that there are no records of an appeal filed with the Board. The Court concludes that this dearth of information is persuasive on the point of whether an appeal had been filed with the Board. The Court finds therefore, that no appeal had been filed and this Court lacks subject matter jurisdiction pursuant to Superior Court Rule 12(b)(1), and D.C. Code 47-825(f)(1) and (j).

Petitioners also complain that assuming arguendo the administrative procedures had not been exhausted, they are still properly before this Court because they did not receive the tax assessment prior to the statutorily mandated time, and that the respective statute did not clearly indicate proper appealing procedures, and therefore these extraordinary circumstances sanction their petition in the Superior Court.

This Court does not find, as Petitioners argue, that there was any lack of clarity in the statute which led to the Petitioners improperly or inadequately filing their appeal. If Petitioners were unsure as to the meaning of the statute and the proper procedures to follow, Petitioners should have availed themselves of assistance other than in the form of the assessor, Mr. Brown.

Finally, Petitioners complain that they did not receive the

Tax Assessment prior to the statutorily mandated time.

In the District of Columbia, any tax payer aggrieved by a real property assessment, equalization or valuation may appeal the real property assessment, equalization or valuation provided that the taxpayer shall first have appealed the assessment to the Board. D.C. Code § 47-825. However, no appeal to the Board shall be required before the taxpayer may appeal to the Superior Court of the District of Columbia when written notice of the real property assessment, equalization, or valuation was not given to the taxpayer prior to March 15th. D.C. Code § 47-825.

In this instant case, the Court finds that the respondent properly served Notices of the Proposed Real Property Assessment for the Tax Year 1993 dated as of February 27, 1992 on the Petitioners, Abbas and Nafisseh Heyat, at 5826 Highland Drive, Chevy Chase, MD 20815. The Court finds that the Respondent mailed the Notice to the address authorized by the Petitioners, Abbas and Nafisseh Heyat.

The Petitioners in the instant case, Abbas and Nafisseh Heyat, have represented themselves pro se. The Court does not have before it any matter involving a corporation controlled by a Heyat. Pursuant to Super.Ct.Civ.R. 101(2), a corporation must be represented before this Court by legal counsel.


From all appearances, Robert B. Heyat represents Abbas and Nafisseh Heyat and Intervest Limited Partnership. The tax bills show that all the property tax bills for the Petitioners

were sent to 5826 Highland Drive, Chevy Chase, MD 20815 except those tax bills related to property owned by Intervest Limited Partnership. The Court has no way, however, of determining whether Mr. Heyat or Intervest received its tax bill before the March 15th date and is left once again with a bald assertion from the Petitioners that they did not receive a tax bill prior to this date. The Court reasons that Petitioners tax bill could have been forwarded to them prior to March 15, 1992, but as in other scenarios presented to this Court by Petitioners there is no evidence to support their assertion that they received the tax bills after the March 15th date. Here, Petitioners' argument to the Court is also legally insufficient to support Petitioners' appeal in the instant case.

Wherefore it is this 25th day of March, 1996

ORDERED, that Respondent's Motion to Dismiss is hereby **GRANTED**; and it is further

ORDERED, that Petitioners' appeal in the instant matter is dismissed with prejudice.



Judge Kaye K. Christian
(Signed in Chambers)

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