

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
TAX DIVISION

JBG Watergate, Inc.	:	
	:	
Petitioner	:	
	:	
v.	:	Tax No. 6693-95
	:	Judge Kaye Christian
District of Columbia,	:	
	:	
Respondent	:	

ORDER

This matter comes before the Court on the appeal of a real estate tax assessment in which the Petitioners claim that the Board of Real Property Assessment and Appeals (the Board) rendered an illegal appeal decision of the tax assessment on the subject property in violation of D.C. law and in violation of Petitioner's due process rights.

FACTS

Petitioner, JBG Watergate, Inc., owns the subject property located at 2600 Virginia Avenue, N.W., Lot 808, Square 8, in the District of Columbia. Petitioner comes before this Court on appeal from an amended decision of the Board. The Respondent is the District of Columbia.

For tax year 1995 the District of Columbia assessed the value of the subject property at \$26,462,000, allocating \$14,529,924 to the land and \$11,932,076 to the improvements. Petitioner filed an appeal on May 2, 1994, and on June 10,

1994. Panel Three of the Board, composed of Jacquelyn Helm and Jane McNew, conducted a hearing on Petitioner's appeal. The Petitioner submitted documentary evidence in support of Petitioner's position that the assessment of the subject property should be \$15,500,000, which was the price paid by the Petitioner for the subject property several months earlier. The Petitioner introduced several documents, including a copy of the sale and purchase agreement, and a copy of the agreements of mergers of estates.

The Board barred from the record any written comments or response from the District regarding Petitioner's petition for appeal because of the District's acknowledged failure to comply with D.C. Code §47-825.1(f)(3), which requires the District to provide a written response to the petition for appeal at least 5 days prior to the hearing. The Board also requested that Assessor Holmes review and report to the Board on the documents submitted by Petitioner prior to July 8, 1994.

On July 8, 1994, the Board ruled in favor of the Petitioner and reduced the assessment of the subject property from \$26,462,000 to \$15,500,000, allocating \$14,529,924 to the land and \$970,076 to the improvements. As of July 8, 1994, Assessor Holmes had not provided the Board with the report ordered on June 10, 1994.

On July, 14, 1994, six days later, the Board amended its decision of July 8, 1994, and adopted the District's proposed assessment of \$26,462,000, rejecting the previous decision

without notice to Petitioners.

However, between July 8 and July 14, there was an ex parte communication with the Board in the form of a memorandum written by Assessor Holmes. The memorandum was delivered to Ms. McNew on July 12, at which time Ms. McNew and Assessor Holmes met (outside the presence of Petitioner) regarding the Board's first decision. The Petitioner was never provided notice of the opportunity to respond to the information provided by Assessor Holmes to the Board.

According to the Board itself, the decision of July 14, 1994, was not derived from any plain error in the Board's first decision. There is no basis for the Court to determine on what the Board based its July 14, 1994, decision. This finding had not been presented earlier by the Board in its initial determination. There was no formal rehearing of Petitioner's appeal, pursuant to 9 DCMR § 2020.4 prior to the Board rendering the second decision.

The Petitioner filed this petition on September, 29, 1995. Petitioner also filed a Motion for Summary Judgment on May 24, 1996.

#### Analysis

The main issue presented is whether the actions of the Board, including the ex parte contacts, are a violation of Petitioner's rights, and if it is determined that Petitioner's rights have indeed been violated, the Court must then determine what relief Petitioner is appropriately entitled to.

Under D.C. Code § 47-3303-05, the Tax Court has broad discretion in fashioning appropriate relief in cases involving aggrieved tax payers such as this. The D.C. Court of Appeals has stated that the trial court has the authority to grant summary judgment cancelling a Board decision where gross illegality has "short-circuited the administrative process and cut off [the aggrieved tax payer's] rights." District of Columbia v. W.T. Galliher & Brother, Inc., 656 A.2d 296, 301 (D.C. 1995).

The Court of Appeals further stated in Brisker v. District of Columbia, 510 A.2d 1037, 1040 (D.C. 1986) that it was within the statutory power of the trial court under D.C. Code § 47-3303-05 to cancel an improper assessment and leave in place the last prior valid assessment.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits...show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Nader v. de Toledano, 408 A.2d 31, 41 (D.C. 1979), *cert. denied*, 444 U.S. 1078 (1980). The Court views the record in the light most favorable to the non-moving party. Fry v. Diamond Constr., Inc., 659 A.2d 241, 245 (D.C. 1995). The Court finds that summary judgment in favor of the Petitioner is appropriate in the present case. Based on the evidence before the Court, the Court finds that there are no material facts in dispute.

Respondent's opposition rests on the argument that summary judgment is inappropriate here because the trial court's sole function is to conduct a de novo assessment of the value of the subject property. In support of this position, Respondent cites to District of Columbia v. New York Life Ins., 650 A.2d 671 (D.C. 1994), in which the Court of Appeals reversed the trial court's decision stating essentially that tax division proceedings are entirely de novo. However, New York Life is distinguished from Galliher as well as the case at bar. In New York Life the trial court corrected a perceived error made by the Board in reaching its decision regarding the actual assessment of the subject property and did not allow certain evidence to be heard in arriving at the corrected decision. Here, as in Galliher, the Court is not attempting to reformulate the actual amount of the assessment. Rather, the Court is addressing serious procedural errors and outright violations in the conduct of the Board. Petitioners are not asking, [and this Court is not seeking] to delve into the minds of the Panel or the Board with respect to the substantive amount of the assessment.

Respondent's interpretation of the authority of the tax Court in matters such as these fails to acknowledge the distinction between the procedural obligations of the Board and the substantive power it has over the actual determination of an assessment. Contrary to Respondent's assertion, there is no contradiction between New York Life and Galliher.

While the Board may have desired to conduct a second hearing to reconsider its first decision of July 8, 1994, it failed to follow the proper procedure for convening such a hearing. In addition, not only did the Board engage in serious violations of the rights of the Petitioner and its own rules of procedure, the specific panel responsible for this case, including Ms. McNew, refused to accommodate a new hearing in order to reconcile the mistakes that had been made. The Administrative Officer of the Board was aware that these serious errors had occurred and attempted several times to have the panel reconvene to rectify the situation before the tax rolls were certified, at which point no further appeals or hearings would be possible. Board Member Harry Martin stated to Petitioner the intent of the Board to convene a rehearing with the original panel prior to the certification of the tax rolls. Statement ¶ 31. However, the Panel refused to make themselves available, despite their knowledge that the proper procedures had not been followed.

Respondent's opposition to the Motion for Summary Judgment turns on their interpretation of the Tax Court's power of de novo review. Respondent argues that this Court does not have power to review the conduct of the Board of Equalization and Review, and cites primarily to District of Columbia v. New York Life Ins., 650 A.2d 671 (D.C. 1994). However, Respondent's interpretation of the Court's scope of review is incorrect. The Court is not seeking to alter the substantive amount and

quality of the assessments of the Board. Rather, the Court is concerned with reviewing the procedural conduct of the Board itself. The Court does have the authority to review actions by the Board, especially in the face of such striking disregard for the law. D.C. Code § 47-3303. The Board is not free to ignore or willfully violate its own rules of procedure and the due process rights of those over whom the Board exercises jurisdiction.

It is clear from the facts of this case and the controlling statutory and case law, that the Board's decision of July 14, 1994, should be disregarded and the first decision of the Board, dated July 8, 1994, should be upheld and affirmed as the final assessment on the subject property for tax year 1993.

The question before the Court is not the Board's right to reconsider a prior assessment pursuant to 9 DCMR § 2020.1, nor is the question the Board's authority to alter the actual amount of the assessment. However, the Court has serious concerns about the procedures through which the Board arrived at the second assessment in this case. A decision of the Board may be altered on a rehearing, but then only on a finding of plain error. 9 DCMR § 2020.5. The Court recognizes that the Board may have legitimate reasons for wanting to re-evaluate a prior assessment decision. However, the Board cannot abandon the established rules for doing so.

CONCLUSION

The record indicates that the persons on the Board involved with this case were fully aware of the illegality of their actions as reflected in their statements made under oath, yet carried them out nonetheless and then refused to address the errors. The Court is disturbed by such flagrant disregard for the law and the rights of those who come before the Board.

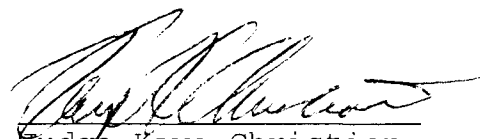
Since Respondent fails to demonstrate a genuine issue as to any material fact and Petitioner is entitled to judgment as a matter of law, the Court must grant Petitioner's motion for summary judgment.

Accordingly, it is this 2nd day of October, 1996, hereby

**ORDERED** that Petitioner's motion for summary judgment is **GRANTED**; and it is further

**ORDERED** that the most recent valid assessment for the subject property for the tax year in question, that assessment dated July 8, 1994, be instated as the final assessment for the subject property for the tax year 1993.

**SO ORDERED.**

  
Judge Kaye Christian  
(signed in chambers)



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COUNSEL FOR RESPONDENT

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AMENDED ORDER

On October 7, 1996, this Court issued an order in the above-captioned case granting Petitioner's Motion for Summary Judgment. The tax year was incorrectly transposed on pages 7 and 8 of this Order. This Court hereby amends its previous Order to read that the assessment dated July 8, 1994, be instated as the final assessment for the tax year 1995. This change should be made on page 7, first full paragraph, last line, and page 8, fifth paragraph, last line, of the Court's Order.

SO ORDERED.

October 31, 1996

  
Judge Kaye Christian  
(Signed in Chambers)

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