

Opinion No. 1138

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
JOSEPH M. BURTON
CLERK OF THE
SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

TAX DIVISION

DEC 7 1976

DISTRICT OF COLUMBIA)
REDEVELOPMENT LAND AGENCY, et al.)
)
Petitioner)
)
v.)
)
DISTRICT OF COLUMBIA,)
)
Respondent)

FILED

Docket No. 2275

OPINION AND ORDER

The petitioners seek to recover taxes and penalties which they contend were illegally and erroneously levied on real property located at 401 M Street, S.W., in the District of Columbia, and more fully described as Square 499, Lot 60.

In this case the petitioners have not appealed from the real estate assessment ^{1/}; they accept the assessment but contend that the taxes were incorrectly, erroneously or illegally computed on their assessment. The parties engaged in discovery and the case was finally set down for trial on June 23, 1975. The case came on for trial on June 23 and 24 and July 10, 1975. The petitioners presented their case and rested. In its case, the respondent attempted to introduce oral and written evidence to show that the letter of May 6, 1974 (Pet. Ex. 1) was not the "Decision" of the Board of Equalization and Review (Board) or,

^{1/} Any appeal from the assessment would be taken pursuant to D. C. Code 1973, §47-2405.

if it was, that the Decision contained an error in setting forth the total assessed value as \$8,880,655. Respondent contends that the correct assessed value and the one actually determined by the board was \$10,495,674. It was at this point during the trial that the petitioners objected on the grounds that the proffered evidence amounted to a collateral attack on the Board's "Decision". The Court took that matter under advisement and requested the parties to file written memoranda on that issue.

I

Prior to addressing the merits of the case, the Court should note that the respondent had previously filed a Motion to Dismiss the Petition on the grounds that the Petition had not been filed within six months after April 15th as provided by D. C. Code 1973, §47-711.

Section 47-711 provides that an appeal from an assessment must be filed within six months after April 15th. Here, the petitioners are not appealing the assessment, in fact, for the purposes of this action, they concede the assessment is correct. This is not an appeal and the petitioners are not now at liberty to challenge the assessment.^{2/} Since this case does not represent an appeal from the assessment pursuant to §47-711, the limitation

^{2/} Petitioners have challenged the assessment in a separate action. District of Columbia Redevelopment Land Agency v. District of Columbia, Tax Docket No. 2274. See also the Memorandum Order filed in both cases on June 24, 1975, and in particular, Part III thereof.

period set forth in that section does not apply. The relevant time limitation is contained in D. C. Code 1973, §12-301(8) and is three years. Accordingly, the instant case is well within the time period, and the Motion to Dismiss was denied.^{3/}

II

The respondent also belatedly moved to dismiss on additional grounds just prior to trial. It contends that the petitioners are not the real parties in interest in this case.

The confusion stems, in part, from the following facts: The title owner of the property is the District of Columbia Redevelopment Land Agency (DCRLA). The appeal to the Board of Equalization and Review was filed by Southwest Developers, Ltd. (Southwest). The taxes were paid by Town Center Management Corp. (Town Center). The petitioners here are DCRLA and Trilon Plaza Co. (Trilon).

While the manner in which the tax matters were handled is confusing, the Court is satisfied that it has the proper parties before it in this case. The prime organization is Bresler and Reiner which set up a number of partnerships and corporations to develop, operate, and manage the development of certain properties in Southwest Washington; namely, Southwest, a limited partnership, Trilon, a limited partnership, and Town

^{3/} The Motion to Dismiss was denied without a written order on February 28, 1975.

Center, a corporation managing the property on behalf of Trilon.

It appears from the record that in 1964 Southwest succeeded to the leasehold interest of a corporation known as Webb and Knapp, Inc. In 1971, Trilon succeeded to the leasehold interest of Southwest. When the tax bill was sent, it was sent in the name of DCRLA in care of Southwest. Charles Bresler, acting on behalf of both Southwest and Trilon, appealed to the Board in the name of Southwest as a matter of convenience. The decision by the Board named Southwest as the taxpayer or aggrieved party. When this case was filed, Bresler brought it in the name of the true leaseholder, Trilon. The tax was paid by Town Center, a management company, and the payment was charged off against Trilon. Under the lease, Trilon has the responsibility to pay the real estate taxes and to contest the taxes and/or assessments. Under these facts, there appears to be no question that Trilon and DCRLA are the aggrieved persons referred to under Section 47-711 and are the aggrieved persons in this action even though this action is not brought pursuant to Section 47-711. Moreover, it appears that the District of Columbia was fully apprised of these facts.

Since the Court concludes that the proper parties are before the Court, the motion to dismiss on those grounds is also denied.

III

Turning now to the merits of this case, the petitioners contend that the letter of May 6, 1974 (Pet. Ex. 1) is the "Decision" of the Board. That document states that the total assessed value is \$8,880,655 and the Court understands that respondent concedes that based upon that assessment, the tax as computed and paid would have been in error.

The respondent argues that the above letter does not constitute the "Decision" of the Board and that at most it is notice of the Board's decision. The Board's decision, according to the respondent, is found in the handwritten notation on the reverse side of the Appeal From Real Estate Assessment filed by Southwest. (See Resp. Ex. 1 for Identification.)

It is obvious that the prime issue is whether the May 6, 1974 letter is a "Decision" because if it is the decision of the Board then petitioners correctly argue that the respondent's defense in this case really amounts to a collateral attack on that decision.

This Court has found no cases and counsel have cited none on this point. Normally, a decision or order or judgment is clearly identified as such. Here, the letter is not entitled "Decision" or identified by any other term which would be synonymous with "Decision". Absent such a title or introduction, it is important to review the entire document in the light of the surrounding facts to determine what the document purports to be. In short, substance will control over form.

A starting point would be to look at what happens when an appeal is filed before the Board. The taxpayer has an opportunity to present his case. After the case is heard, the Board takes it under advisement and thereafter renders a decision and communicates that decision to the taxpayer. The letter used in this case is, in the experience of the Court, similar to letters setting forth the action of the Board in most, if not all cases. It is obviously a form letter. Once the taxpayer receives the letter and is thereby advised of the Board's decision, he is free to accept the decision and pay the appropriate tax or to file an appeal to this court. If he accepts the decision, he pays the tax based on that decision. That tax is determined simply by multiplying the assessed value by the tax rate. See District of Columbia v. Green, 310 A.2d 848, 851 (D.C. App. 1973). Obviously, before a taxpayer can decide whether to appeal, he must receive some notice of the action of the Board. Here, the only written notice received was a letter of May 6, 1974.

The procedure for conducting hearings before the Board, at the time this case was heard, was set out in Title 16, Chapter 9 of the District of Columbia Register, Section 600 et seq. ^{3a/} Section 606.1 provided what the Board had to consider in arriving at its decision. Section 606.1(c) provided that "the Board's decision shall be in writing, and shall contain a brief statement of the basis for its decision". It is provided in Section 606.2 that promptly after reaching its decision, the Board shall mail

^{3a/} The Chapter was subsequently amended, however, the sections pertinent to this case remain virtually unchanged.

notice thereof to the petitioner "and shall include a copy of the decision".

The fact that the only written notice of the decision in this case was the letter of May 6, 1974, is strong support for the argument that that letter constituted the decision of the Board. The letter did not contain any enclosures and specifically did not enclose a copy of the handwritten notation contained on the back of the taxpayer's Appeal from the Real Estate Assessment. ^{3b/}

Respondent argues that the letter was not the decision but in doing so it must also argue that it did not comply with its own rules and regulations as set forth in the Register. On the other hand, the taxpayer was officially advised (in the Register) that he would receive a copy of the decision and since, as will be discussed below, the May 6, 1974 letter had every indicia of a decision, the taxpayer had every right to accept it as such especially since it is the only written notification he received. Indeed, it may be that in view of the published regulations and past practices, the respondent is estopped from denying that the May 6, 1974 letter is the decision of the Board.

Last on this point is the fact that the May 6, 1974 letter has all the indicia of a decision. It contains a legal description of the property, sets forth the taxable period, and the determined assessed value of the land and buildings. It states that the Board found the valuation to be fair and in equalization with the same or substantially similar properties. It advises the taxpayer what was considered and ends by advising him of

^{3b/} In addition, the handwritten notation obviously does not comply with the requirements set forth in the regulations.

his rights of appeal.^{4/} Finally, the letter was signed by the Alternate Chairman of the Board of Equalization and Review. Not only does it read like the Board's decision, it gives every appearance of having been drafted pursuant to Sections 606.1 and 606.2. In the last sentence it also provides "you may appeal this decision to the Superior Court of the District of Columbia as provided in Title 47-2405 of the District of Columbia Code, 1973 Edition". (Emphasis this Court's.)

For all of the above reasons, the Court concludes that the May 6, 1974 letter is the "Decision" of the Board.

IV

The respondent seeks to call witnesses and introduce other evidence to show that the Decision (May 6, 1974 letter) sent out by the Board was in error. Such evidence would constitute a collateral attack on the Board's Decision. The law is clear that collateral attacks on judgments are usually not permitted unless the court or body rendering that judgment or decision had no jurisdiction to entertain the matter. See generally 49 Corpus Juris Secundum, Judgments, §§401 - 435; 46 Am. Jur. 2d, Judgments, §§621 - 656. That rule also applies to boards and officers acting judicially. 49 Corpus Juris Secundum, Judgments, §407(d).

^{4/} The letter reads in part "The Board gave careful consideration to value evidence presented in the petition, exhibits and/or testimony of witnesses; suggested sales and sales - assessment ratio studies; equalization and valuation of substantially similar properties; and an inspection of the property in applying generally accepted principles of valuation to reach its decision." (Pet. Ex. 1)

In Edward Thompson Co. v. Thomas, 60 App. D.C. 119, 49 F.2d 500 (1931), it was stated:

A collateral attack upon a judgment has been defined to mean any proceeding in which the integrity of a judgment is challenged, except those made in the action wherein the judgment is rendered or by appeal, and except suits brought to obtain decrees declaring judgments to be void ab initio.

Thus, a defendant in a case charging him with driving after revocation of his license could not attack the finding or ruling of the body or officer that originally revoked his permit. Franklin v. District of Columbia, 248 A.2d 677 (D.C. App. 1968); Abbott v. District of Columbia, 154 A.2d 362 (D.C. Mun. App. 1959).

This Court recognizes that the result of this litigation may be that the taxpayer receives a "windfall"; an especially harsh result in these times when cities are having financial difficulties in meeting the needs of their citizens, but such matters are not grounds for overturning the rule prohibiting collateral attacks on judgments and decisions.^{5/} Taxpayers however, like other citizens, are entitled to finality; to know where they finally stand in tax litigation. Moreover, had the problem been reversed and the respondent computed the tax at less than it should have been based on the assessed valuation, the Court would expect the respondent

^{5/} Of course, the petitioners here have also preserved their rights to appeal from the assessment in a separate case. Fn. 2. The result of such an appeal could be that the final tax determination would be higher, the same as, or lower than the tax to be assessed based on the assessed values set forth in the Board's Decision of May 6, 1974.

to resist any attempts by the taxpayer to look behind the decision. Furthermore, this "problem" did not just come to the attention of the respondent. Respondent was placed on notice when the petitioners first complained that their tax had been erroneously computed based on the Board's decision as to assessed valuation. The respondent may have been in the position at that time to move to correct the decision by the Board of Equalization and Review but the respondent took no action.

This case is not unlike Higginson v. Schoeneman, 89 U.S. App. D.C. 126, 190 F.2d 32 (1951), where the Court of Claims had entered a judgment for taxpayer with interest to be computed at six percent. When the Commissioner of Internal Revenue refused to pay the total interest on the grounds that the Internal Revenue Code prohibited the payment of interest for periods when the taxpayer was outside the country, the taxpayer brought a separate action to collect his interest. There, the court noted the Government's position was well taken had the judgment provided for payment of interest "as provided by law". However, even though the court recognized that the Government's position under the Code was correct, the court was required to follow the judgment and to hold that the Government's defense in that separate action constituted a collateral attack on the judgment. This Court must reach the same result in this case.

The respondent also argues that the Decision is ambiguous in that it reads that the Board "sustains" the proposed valuation. The answer is that the Decision is not ambiguous or vague on its face, and the respondent's argument is without merit. In Moore v. Harjo, 144 F.2d 318 (CA 10, 1944), cited by the respondent, the alleged ambiguity appeared on the face of the order.

V

The last question to be faced is the present posture of this case. As already stated, the case was recessed when petitioners objected to the evidence that the respondent sought to offer in defense of the case on the grounds that it amounted to a collateral attack on the Board's Decision. The Court expressed concern that it was indeed a collateral attack and recessed this case and asked the respondent to file a memorandum of law in support of its position. The Court also asked the respondent to proffer whatever other evidence it intended to present in order that the Court could decide whether it was necessary to continue on with the trial.^{6/}

The respondent has filed its memorandum and has made a proffer of what it intends to present. (Respondent's Memorandum of Law filed July 16, 1975, p. 4.) Although the respondent has

^{6/} If all the evidence that the Government proffered amounted to a collateral attack on the decision of the Board then there is no reason why the record should not be closed since to continue with the trial in the case would be a useless gesture due to the fact that the petitioners' objections would be sustained.

not made a proffer of facts as requested by the Court, it has proffered its theory and what it intends to prove. It intends to prove, based on the official record of the Board, what action the Board took in this case. In short, it intends to collaterally attack the Decision of the Board by going behind that Decision.^{7/}

The Court has already ruled on those matters in this Opinion and accordingly, no further trial hearing is required since based on the respondent's proffer, the Court would sustain petitioners' objections to the evidence. The record in this case is therefore closed. The respondent is protected should it take an appeal since the Appellate Court will be able to consider the proffer of the respondent and the documentary evidence including the Appeal From Real Estate Assessment (Resp. Ex. 1 for Identification), and the Board's file (Pet. Ex. 13 for Identification).

In view of the above, the Court concludes that the taxes have been erroneously assessed and should have been assessed on the assessed valuation of \$8,880,655. Accordingly, the petitioners should submit to the Court an appropriate Order giving them judgment against the respondent for taxes, interest and penalties erroneously paid. Petitioners should prepare the Order and submit it to respondent in order that respondent may consent to

^{7/} The Court's characterization, not respondent's.

the form of the Order. In the event respondent has any objections to the computation or amounts set forth in the Order, other than those already discussed in this Opinion, respondent should set those objections forth within the time period set forth below.

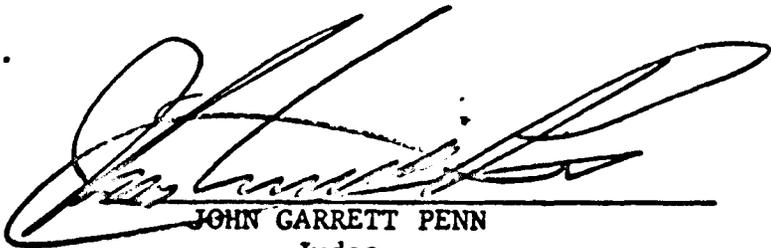
O R D E R

It is hereby

ORDERED that the petitioners shall submit a proposed order, consistent with this Opinion and Order, to the respondent, within five days of receipt of this Opinion and Order; and it is further

ORDERED that respondent shall submit the proposed judgment order to the Court within five days after it is submitted to them by petitioners indicating their consent to the form or in lieu thereof setting forth their objections to the amount or amounts set forth in the order, and setting forth in detail the reasons for the objections.^{8/}

Dated: October 30, 1975.


JOHN GARRETT PENN
Judge

^{8/} Once again the respondent is advised that it is not requested nor required to set forth any arguments already made as an objection to the proposed order. Respondent's objection which has been fully discussed in this case is already reserved for the record.

