



*Opinion No.*  
*7139*

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

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

TAX DIVISION

DISTRICT OF COLUMBIA )  
REDEVELOPMENT LAND AGENCY. )  
and BRESLER & REINER, INC. )

v. )

DISTRICT OF COLUMBIA )

DISTRICT OF COLUMBIA )  
REDEVELOPMENT LAND AGENCY )  
and L'ENFANT PLAZA )  
PROPERTIES, INC. )

v. )

DISTRICT OF COLUMBIA )

DISTRICT OF COLUMBIA )  
REDEVELOPMENT LAND AGENCY )  
and TRILON PLAZA CO. )

v. )

DISTRICT OF COLUMBIA )

Docket Nos. 2369  
2375

Docket No. 2370

Docket No. 2374

DEC 13 1976

FILED

OPINION AND ORDER

These cases came before the Court on motions for judgment filed by the petitioners. The motions are based upon this Court's Opinion and Order in Kelly v. District of Columbia, 102 Wash. L. Rept. 2093 (D.C. Super. Ct. 1974), in which the Court directed the District of Columbia to reassess all real property in the city once every two years. <sup>1/2/</sup> The petition

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1/ The motions for judgment based on Kelly v. District of Columbia, 102 Wash. L. Rept. 2093 (D.C. Super. Ct. 1974), will at times be referred to simply as the "Kelly motions" in order to distinguish them from other motions discussed in these cases.

2/ The Court will use the term assessment and/or reassessment to refer to the revaluation of property. That is, where the respondent assigns a higher, lower or the same value.

in each case represents an appeal from real property tax assessments for Fiscal Year 1976.

I

It is necessary to briefly review the allegations and findings in Kelly before addressing the instant motions.

In Kelly the taxpayers alleged that the respondents (District of Columbia, the Mayor, and the Director of the Department of Finance and Revenue) had changed their method of selecting properties for real property assessments without complying with the District of Columbia Administrative Procedure Act (DCAPA), that the method of selecting properties for reassessment violated the equal protection provisions of the Constitution, and that the District was not assessing all real properties every year as required by D. C. Code 1973, §47-702. The taxpayers, in that case, did not challenge the valuations assigned to their respective properties; what they challenged simply was the method utilized for selecting properties for reassessment. Moreover, it was alleged that the District did not use a cyclical reassessment program, rather, some properties were assessed every year, others every two years, others every three years and so forth.

The respondents in Kelly conceded that they could not comply with the requirements of Section 47-702 and assess real properties every year due to a shortage of manpower and a lack of resources, however, they contended that the method used to select the properties was fair and reasonable and did not violate the equal protection clause of the Constitution.

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The trial in  Kelly took over two weeks. Thereafter, this Court filed an Opinion and Order in which it found that the respondents had failed to follow the DCAPA, that the respondents had violated the equal protection clause of the Constitution in their method of selecting properties for reassessment, and that the taxpayers were entitled to injunctive relief.  Kelly v. District of Columbia, supra.

The Court did not specifically grant the relief requested by the taxpayers in  Kelly. They had asked that the property be valued in Fiscal Year 1975 the same as Fiscal Year 1974. The taxpayers' request was apparently based upon an assumption that the respondents had changed the method of selecting properties for Fiscal Year 1975. However, the Court found that, for some years prior to Fiscal Year 1975, the respondents had used an unfair method of selecting properties for reassessment. It was clear, however, that for Fiscal Year 1975, the respondents had assessed approximately one half of all real properties in the District of Columbia. The Court was also satisfied, based upon the representations of the respondents, that the respondents lacked the manpower or resources to assess all real properties every year and that they could only assess all real properties once every two years.

As a result of the above findings, the Court directed the respondents to initiate a cyclical reassessment program based on a two year cycle. Every parcel of real property in the District of Columbia was to be reassessed every other year. All properties were to be designated as falling into Group A

or Group B. All properties which had been reassessed for Fiscal Year 1975 were designated as Group A. All properties which had not been reassessed were designated Group B, and the Court directed that those properties falling in Group B were to be reassessed for Fiscal Year 1976. The Court enjoined the respondents from reassessing Group A properties for Fiscal Year 1976. Last, the Court directed that every real property taxpayer be advised of the Court's ruling, that every taxpayer be advised which Group their property fell into, and that they be advised that all properties would be assessed only once every two years until such time as the District was able to comply with Section 47-702, and make annual reassessments.

In this connection the court order further provided:

7. The written Notice described in paragraph 6 of the Order shall specifically inform the taxpayer, in plain language, of the following:

(a) That D. C. Code 1973, §47-702 requires that every parcel of real property in the District of Columbia be reassessed once every year.

(b) That reassessment refers to the process of revaluation in which the property is thereafter assigned a higher, lower or the same market value. The respondents may give any further description of the process as they deem necessary.

(c) That due to fiscal and manpower shortages the District is unable to make annual reassessments and that accordingly the District will use a cyclical reassessment program.

(d) That under the cyclical reassessment program the District will operate with a two-year cycle and that all real property which was reassessed for Fiscal Year 1975 shall constitute Group A. That properties not

reassessed for Fiscal Year 1975 shall constitute Group B. That all properties in Group B will be reassessed for Fiscal Year 1976.

(e) That the taxpayer is to be advised whether his property or properties fall in either Group A or Group B. In this connection, the designation of the Group may be contained in the Notice or on the annual assessment bill, whichever is easier for the District to prepare. If the designation is contained on the annual assessment bill, the written notice will direct the taxpayer to that part of the annual assessment bill where the Group designation appears.

(f) That the cyclical reassessment program will operate on a two-year cycle and that the parcel of property can be reassessed only once in a given cycle.

(g) That the District expects to be able to comply with D. C. Code 1973, §47-702 and make annual reassessments on all real property for Fiscal Year 1977.

(h) That if the District is unable to make annual reassessments for Fiscal Year 1977, that the District will continue to operate under a cyclical reassessment program.

(i) Other information which District officials feel is appropriate, including, but not limited to appeal rights, and numbers or persons to call for information. The Notice may contain such additional information as the District representatives feel necessary including the information contained in "Your Real Estate Assessment".

## II

Petitioners in the present cases seek to have the Court grant judgment on the theory that all of the properties involved in these cases have been designated Group A properties, that is, that all of the properties were reassessed for Fiscal Year 1975. That being the case, the petitioners argue that

those properties cannot now be reassessed for Fiscal Year 1976.<sup>3/</sup>  
After reviewing the Kelly case and giving due consideration to the Kelly motions, and the opposition thereto, the Court concludes that the position taken by the petitioners is basically correct and that should the petitioners be able to demonstrate that the properties were assessed for Fiscal Year 1975 as Group A properties, that those properties cannot be subject to reassessments in Fiscal Year 1976 in view of the Court's ruling in Kelly v. District of Columbia, supra, and more importantly, in view of the representations and actions of the respondents in Kelly after that decision had been rendered.

Once again the Court finds it necessary to turn to Kelly in order to track the actions of the parties once the Court had rendered its decision. After the Court filed its Opinion and Order, the respondents filed a number of post trial motions and the petitioners filed a motion for counsel fees. Those motions were filed in late August 1974. Thereafter, in early September 1974, prior to any ruling on the motions, the respondents advised the Court that they were complying with the Court's Order. For example, they prepared a notice consistent with the Opinion and Order (par. 7, supra), and submitted the proposed order to the petitioners and to the Court in compliance with the Opinion and Order (102 Wash. L. Rept. 2102, Slip Op. pp. 51-52). Once the proposed notice

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<sup>3/</sup> The group designation of the properties is not clearly set forth in the records of these cases. The group designation must appear in the record before the Court can take final action on the motions.

was approved by the petitioners and the Court, the respondents sent copies of the notice to every real property taxpayer in the District of Columbia. Moreover, the respondents have since indicated on every real property tax bill, a designation describing the property as falling within Group A or B.

To summarize, the respondents, after filing a number of post trial motions, advised this Court, the petitioners in Kelly, and all real property taxpayers that they intended to fully comply with the decision in Kelly, and moreover, they advised the Court, those petitioners, and all real property taxpayers that they had in fact complied with the Court's Order. Accordingly, the logical result is that the respondents assessed all Group A properties for Fiscal Year 1975, assessed all Group B properties for Fiscal Year 1976, and that no Group A properties were reassessed for Fiscal Year 1976.

Respondents assert that the motion should be denied on the ground that the Kelly case is not final and/or that the related Fiscal Year 1975 cases are not final.

There were two issues in Kelly. One, of course, was the primary issue which resulted in this Court granting an injunction and directing the establishment of a two-year real estate tax assessment cycle. The other is the request for counsel fees submitted by the petitioners and their counsel. Concededly, the latter issue is not final.<sup>4/</sup> In the view of

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<sup>4/</sup> The parties are filing further briefs on the issue of counsel fees.

the Court, the former is moot.

After the Court rendered its decision in Kelly and after the respondents filed their post trial motions, the respondents prepared a proposed notice, submitted it to counsel for the petitioners and then to the Court for approval. That notice was in compliance with paragraph 7 of the Kelly Order. Respondents thereafter distributed the notice to every real property taxpayer. Thus, the respondents have fully complied with the order of the Court in Kelly. More important, they have advised the Court, the Kelly petitioners, and the taxpayers that they (respondents) have complied with the order and will reassess all real properties in the District on a two-year cycle, every property being assessed only once every two years, and every property to be assessed in either Fiscal Year 1975 or Fiscal Year 1976 depending upon the group designation of the property. Each taxpayer has been advised whether his real property falls within Group A or Group B.

The prompt, full and voluntary compliance with the Court's Order in Kelly, by the respondents, has rendered the post trial motions in that case moot. The compliance was complete and voluntary. Even if the Court had later ruled favorably on respondents' motions, the Court would have been unable to give the respondents effective relief since their compliance with the Order made that impossible. The respondents have, by their representations and actions rendered these motions

moot. See generally; 4 Am. Jur., Appeal and Error, Sec. 262.<sup>5/</sup>

Even setting aside the issue of mootness, there is another compelling reason for ruling favorably on the Kelly motions. Simply stated, the respondents in Kelly have voluntarily put the two year reassessment program into practice and have published notice of that program.<sup>6/</sup>

#### IV

Taking all of the above matters into consideration this Court is satisfied that the injunctive aspect of the Kelly case is final. In any event, the District of Columbia voluntarily initiated a two-year reassessment cyclical, Group A, Group B, program which is consistent with the Kelly Order, and is now estopped from arguing that it has not done

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<sup>5/</sup> A further argument in support of mootness can be made in that, the respondents, by complying with the Kelly order before it became final and by taking affirmative action in that regard, have made the case analogous to one in which a defendant pays a judgment notwithstanding a stay of execution. Such action can be interpreted as voluntary acquiescence with the order thereby mooting any appeal. See 4 Am. Jur., Appeal and Error, Sec. 260.

<sup>6/</sup> At the time the respondents prepared the notice which was consistent with the order in Kelly, they filed no formal documents with the Court but merely submitted the proposed notice to the petitioners and the Court for approval. They thereafter furnished that notice, setting forth the new two-year reassessment program, to all taxpayers in the District. In other words, they adopted the two-year reassessment cyclical program.

The Court concludes that the arguments made by these petitioners are well taken and that the value assigned to any Group A property for the two year cycle encompassing Fiscal Years 1975 and 1976, must be the value of that property for Fiscal Year 1975. The value of Group A real property for Fiscal Year 1976 will remain the same as that in Fiscal Year 1975.

V

Having reached the above conclusion, the Court notes that a simple blanket order would not be appropriate in these cases since the related Fiscal Year 1975 and Fiscal Year 1976 cases are in various stages of appeal and litigation. Accordingly, the following guidelines shall apply:

(a) All Group A properties were reassessed for Fiscal Year 1975 and cannot be reassessed for Fiscal Year 1976. All Group B properties were reassessed for Fiscal Year 1976.

(b) In any case in which a taxpayer, whose property falls

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7/ The District's compliance with the Kelly Order and its initiation of a two-year cyclical reassessment program consistent with that order, has not caused the District loss of revenue, indeed, it may have increased the available revenue. The Kelly decision, and the two-year reassessment cycle program, only affects the method of selection of properties for reassessment and does not affect the valuation or the tax rate. Therefore, a taxpayer whose property is in Group A, but whose tax bill reflects an increase for Fiscal Year 1976 might properly assume that the increase resulted from an increase in the tax rate and not from a reassessment for Fiscal Year 1976, in view of the District's representation that his tax would not be reassessed for the fiscal year.

within Group A, filed a proper appeal from the Fiscal Year 1975 assessment, including the exhaustion of any administrative remedy, the final determination of value for Fiscal Year 1975 will remain and is controlling for Fiscal Year 1976. The valuation date for Group A properties is July 1, 1974.

(c) If a taxpayer, owning property falling within Group A, did not file a proper appeal from the Fiscal Year 1975 assessment, and the time for such appeal has expired, the Fiscal Year 1975 assessment, as determined by the Assessor is final and controlling for Fiscal Year 1975. Where the same taxpayer elects to file an appeal from his Fiscal Year 1976 assessment, which assessment is necessarily the same as that for Fiscal Year 1975, he may do so provided he takes all steps including the exhaustion of any administrative remedies. In such an event, the final determination of the value of the property for Fiscal Year 1976 will apply only to that fiscal year and will not apply to Fiscal Year 1975, since the taxpayer, by not filing an appeal from Fiscal Year 1975, has waived his right to a redetermination of the value of his property for that year.

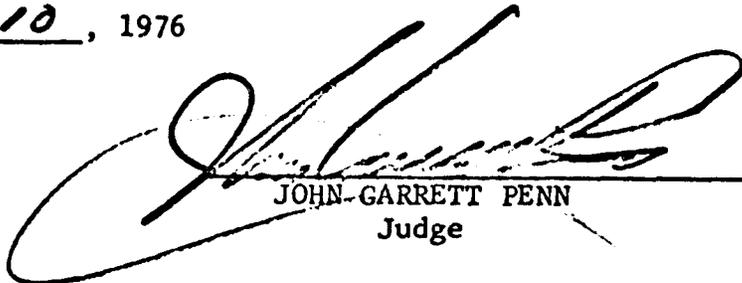
(d) With respect to any Group A property in which a Fiscal Year 1975 appeal is still pending, or with respect to any Group A property in which a Fiscal Year 1976 appeal is made, the value is to be determined as of July 1, 1974.

Petitioners shall submit proposed orders consistent with this Opinion and Order, to the respondents within five days

of receipt of this Opinion and Order, and the respondents shall thereafter submit the proposed order to the court within five days after it is submitted to them by petitioners indicating their consent to the order or in lieu thereof setting forth their objections to the order. In the event respondents object to the order they should set forth in detail the reasons for the objections.

SO ORDERED.

Dated: December 10, 1976



JOHN GARRETT PENN  
Judge

Gilbert Hahn, Esq.  
Attorney for Petitioners

Melvin Washington, Esq.  
Attorney for Respondents

Copies mailed postage prepaid  
to parties indicated above on  
12/13, 1976.

*Jean Senerius*  
and to  
Finance Office, DC.  
12/12/76  
*R. Stanford*