Opinion No. 1267



SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION



FARRAGUT LIMITED PARTNERSHIP :

Petitioner, :

v. : Tax Docket No. 3721-86

:

DISTRICT OF COLUMBIA :

Respondent.

**O R D E R**

This matter came before the Court for trial on Petitioner's appeal of its 1986 Tax Year Assessment on Lot 852 in Square 126, a commercial office building located at 900 Seventeenth Street, N. W. in Washington, D. C. Petitioner maintains that no genuine reassessment took place for the 1986 Tax Year, while Respondent maintains the assessment was correct and made according to law. Petitioner maintains that the assessed value should be $15,940,598 while Respondent asserts the value to be $19,744,000. Upon consideration of the trial and the record in this case, the Court makes the following Findings of Fact:

FINDINGS OF FACT

1. The Petitioner, Farragut Limited Partnership, has its principal office at 900 Seventeenth Street, N. W., legally described as Lot 852 in Square 126.

2. The real estate tax assessed against Lot 852, Square 126 for the 1986 Tax Year was $400,803.20 as a result of a proposed assessed value of $19,744,000.

3. Petitioner filed its appeal of the proposed assessment with the District of Columbia Board of Evaluation and Review on or about April 15, 1985. Following a hearing, the Board affirmed the proposed assessment of $19,744,000.

4. For the 1986 Tax Year, Robert Klugel, Chief of Standards and Review, Real Property Taxes, made a preliminary assessment of Lot 852 in Square 126 of $19,744,000. Mr. Klugel testified that he had also been the assessor for the preliminary assessment for the 1985 Tax Year for the same property.

5. Mr. Klugel's proposed assessment for the 1985 Tax Year was $19,744,000. This assessment was reduced by the Board to $15,940,598.

6. Mr. Klugel testified that in determining the Tax Year 1986 value, he simply reinstated the value he proposed for Tax Year 1985 which was void by the Board. He testified that in his opinion the Board was in error in reducing this assessment for Tax Year 1985.

7. Mr. Klugel testified that he did not perform a new valuation of the subject property for Tax Year 1986, but instead reinstated his previous year's assessment value of $19,744,000.

8. Mr. Phillip Appelbaum testified as the line assessor for the subject property for Tax Year 1986. He stated that he was instructed by Mr. Klugel to prepare a worksheet using the identical figures, breakdown and calculations used on the 1985 office building worksheet.

9. Mr. Appelbaum testified that this was an unusual instruction ordered by Mr. Klugel, but he complied and made no new analysis for the 1986 Tax Year.

## CONCLUSION OF LAW

The cornerstone of real property assessment principles and practice in the District of Columbia is D.C. Code Ann. § 47-820 (1981). Among its dictates is the requirement that

> The assessed value for all real property shall be the estimated market value of such

> property as of January 1st of the year preceding the tax year ....

D.C. Code Ann. § 47-820(a) (1981).

Therefore, we begin with the proposition that the assessing authority must determine the estimated market value for each property as of January 1 of every year. Furthermore, the code unequivocally states that "all real property shall be assessed on an annual basis." D.C. Code Ann. § 47-820(b) (1981).[1/]

In determining this annual assessment, the Mayor,[2/] through his agents 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 or similar types of real property, mortgage, or other financial considerations, reproduction costs less accrued depreciation because of age, condition, and other factors, income earning potential (if any), zoning, and governmental imposed restrictions. Assessments shall be based upon the sources of information available to the Mayor which may include actual view.

D.C. Code Ann. § 47-820(a) (1981).

The process described above is essential to the determination of a valid assessment. Accordingly, in the case of District of Columbia v. Burlington Apartment House Co., 375 A.2d 1052 (D.C. 1977), the court cancelled an assessment which was determined not in compliance with the statutory standards and reinstated the previous tax year's assessment. The court based its decision to reinstate the

---

1/ Prior to 1978, real property assessments were to be conducted no less frequently than once every two years. For 1978 and all future years, all real property must be assessed on an annual basis. D.C. Code Ann. § 47-820(b) (1981).

2/ Mayor as defined in D.C. Code Ann. § 47-802(2) (1981) means the Mayor or his or her designee, agent or representative.

former valuation on D. C. Code Ann. § 47-709 (1973) which provided that,

> The valuation of said real property... when approved by the Commissioner [of the District of Columbia] shall constitute the basis of taxation for the next succeeding year and until another valuation is made according to law. 3/

A valid assessment, as illustrated, is a complex analysis both of factors specifically related to the individual property and economic trends affecting the market as a whole. Congress, in adopting the stringent requirements for assessment in the District, stated as its purpose the establishment of a sophisticated assessment procedure comparable to cities of similar size. District of Columbia v. Catholic University of America. 397 A.2d 915 (D.C. App. 1979).

Chapter 3 of the District of Columbia Municipal Regulations Title 9 (9 DCMR) contains regulations pertaining to the assessment of real property, promulgated pursuant to D.C. Code Ann. § 47-820(c) (1981). The purpose of Chapter 3 "is to establish rules for the assessment and reassessment of real property ... consistent with [D.C. Code Ann. §§ 47-814 and 47-820 (1981)] and other applicable provisions of law." 9 DCMR § 300.2.

---

3/ The governing code provision cited in Burlington, D.C. Code Ann. § 47-709 (1973), is essentially identical to the one now in effect, D.C. Code Ann. § 47-825(g) (1981), which states that, "[t]he approved assessment roll shall constitute the basis of taxation for the forthcoming fiscal year and until another assessment roll is made according to law."

In keeping with this stated purpose, 9 DCMR § 305.4 defines the word "assessment" as "a real property valuation established by the Director for tax purposes against which the rate of tax is applied to arrive at the tax liability."[4/] This assessment must be done on an annual basis and is the estimated market value as of January 1 of the year preceding the tax year, 9 DCMR § 306.1, and this value

> shall be established on the basis of the most current, accurate, and conclusive evidence of market value available at the time the assessed value is determined .... (Emphasis added.)

9 DCMR § 306.2. According to 9 DCMR § 307.1, this determination shall take into account the same list of factors enunciated in D.C. Code Ann. § 47-820(a) (1981) (cited above) with the addition of two:

(g) The highest and best use to which the property can be put; and

(h) the present use and condition of the property and its location.

Additionally, 9 DCMR § 312 requires six District government agencies to submit various types of information to the DF&R in order to aid in establishing an assessment.

These regulations, consistent with D.C. Code Ann. §§ 47-820 (1981) et seq., leave no doubt that the Director is responsible for an annual estimate of market value as of January 1 of each year for every property in the District.

---

4/ DCMR § 300.4 defines "Director" as the Director of the D. C. Department of Finance and Revenue (the "DF&R") or his or her designee, agent or representative.

It is contemplated that this assessment must be the product of an involved and thorough review of numerous considerations and must be based on the most current, accurate and conclusive evidence available.

The importance of the complex statutory scheme set out above has been repeatedly recognized by the courts. The determination of the assessed value or estimated market value as of January 1 of the year preceding the tax year is a fundamental feature of this scheme. The failure of the District to determine an assessed value according to law may result in the cancellation of the proposed assessment and reinstitution of the last valid assessment. The voided assessment becomes a nullity.

In Burlington, the taxpayer received a notification of assessment for Tax Year 1974 which was identical to the value established by the Board of Equalization and Review (the "Board") in 1973. However, the figure established by the Board in 1973 was reduced by the Superior Court. Consequently, the Court rejected the 1974 assessment stating, "It is clear that the 1974 figure was not based upon a reassessment utilizing updated sources of information, but rather was simply a routine repetition of the challenged 1973 assessment," Id. at 1056 n. 8. The Court went on to state that

> the District may not validly contend that a new 'valuation according to law' has been satisfactorily achieved by the mere mailing of a later notice of assessment based upon the identical, voided figure. Congress surely envisioned a valuation process with more substance than when it employed the statutory phrase 'according to law'.

Id. at 1057-1058.

In D. C. Redevelopment Land Agency v. District of Columbia, 106 D.W.L.R. 2257 (Super. Ct. 1978) ("DCRLA"),

the court held that "new assessments may be based upon a variety of factors but in order to have a new assessment there must be some affirmative action by the assessor". Id. at 2257. In DCRLA, affidavits were filed by the District in opposition to a motion for summary judgment on behalf of the Petitioner. These affidavits signed by the assessors stated that the assessors "'reviewed the best information made available during the year 1975'... including the 'assessment for prior years and the files of the Board of Equalization and Review pertaining to these subject properties.'" Each assessor stated that after reviewing the available data he "concluded that there was no basis to change my previous estimate of the value recorded for prior years and I assigned that value for tax year 1977." Id. at 2257 (Emphasis in original). The court concluded that

> the affidavits contain no affirmative representations that new assessments were made for Fiscal Year 1977 [the tax year at issue]; in fact, they make it clear that the contrary is true. Each assessor has stated that he had no reason to change this prior assessment and that he assigned the same value for Fiscal Year 1977. Id. (Emphasis in original).

This was held by the court to be insufficient to constitute new assessments and the assessments were consequently nullified.

In Heller, et al. v. District of Columbia, No. 3201-83, slip op. at 2 (Super. Ct. March 10, 1985), aff'd, 510 A.2d 1037 (D.C. App. 1986), the court held

> that Burlington created a presumption that when a tax assessment for the same property is identical to a figure obtained from the previous year and that assessment figure has already been declared void, no lawful valuation was conducted for the later year.

The rationale offered by the court in Burlington for this proposition was cited with approval in Heller:

> [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 valid future applicability. See Hamilton Natural Bank v. District of Columbia [156 F.2d 843, 847 (1946)].

The Heller court went on to hold that "if respondent can show a deliberative process was employed other than mere reliance on a previous year's voided figure, then the presumption of invalidity is rebutted." Id. The court in the Heller case found that while the assessor was aware of the prior voided assessment figure he did not utilize it in his subsequent assessment. Because the assessor had conducted a thorough review of all available information and had not relied on the previously voided assessment, the court concluded that the subsequent assessment was in fact valid. Id.

Respondent maintains that the facts in the case at bar are readily distinguishable from the facts in the Burlington, Heller and D.C.R.L.A. cases in that (1) those cases all had court decisions on the property's valuation; (2) there was an intervening assessment in the cases which did not take into consideration the court's decision or the Board's decision and (3) there was no intervening Board decision which considered the valuation of the property.

These cases make clear, however, the affirmative duty of the District to establish a new assessment "according to law." The process mandated by the statutes and regulations has been upheld and enforced by the courts. These precedents hold that a "routine repetition" of a previously

voided assessment will not be countenanced. In order for an assessment to be valid it must be arrived at by utilizing "updated sources of information." Reviewing "the best information available during [a prior Tax Year] ... including the assessment for prior years and the files of the Board" is not sufficient. There must be "some affirmative action by the assessor." An assessment cannot be "based upon [an] identical voided figure." In fact, the reimposition of the identical voided figure gives rise to a "presumption" ... [that] no lawful valuation was conducted for the later year." In order to rebut the presumption of invalidity, the District must show that nothing short of a "deliberative process" was employed.

In the cases at bar, it is all too clear that the Tax Year 1986 assessment figures were based on the identical voided figures from the previous year. Mr. Robert L. Klugel was the responsible assessor for the subject property for Tax Years 1985 and 1986. Mr. Klugel testified that in determining the Tax Year 1986 value for the subject property he restored the value he proposed for Tax Year 1985 which was voided by the Board. Specifically, he has testified that he did not perform a new valuation of the property believing that the Board erred in its reduction of the assessment for Tax Year 1985. In the usual course of the assessment process, the line assessor prepares a worksheet which reflects their valuation analysis. The line assessor responsible for the subject property for 1986 was instructed by Mr. Klugel to use the identical figures, breakdown, and calculations used on the 1985 office building worksheet on the 1986 office building worksheet. Such a practice cannot be endorsed by this Court. The law is clear and undisputed. A new assessment must be performed

annually. This assessment process is considerably more involved than that which took place in preparation of the Tax Year 1986 assessments of the subject property.

THE BOARD'S ASSESSMENT

On or before April 15th of each year, any taxpayer may appeal the amount of his assessment for the forthcoming fiscal year to the Board. D.C. Code Ann. § 47-825(e) (1981), 9 DCMR § 2608.1. The Code specifies that the Board "shall attempt to assure that all real property is assessed at the estimated market value." D.C. Code Ann. § 47-825(f) (1981). The Board is composed of 15 members appointed by the Mayor. None of the members may be officers of the District government and their terms are staggered. D.C. Code Ann. § 47-825(a) (1981). These last two requirements clearly indicate congressional intent to develop an insulated and independent body for the review, and not the establishment, of assessments in the District.[5/]

---

5/ As discussed previously, only the Department of Finance and Revenue and the assessors within such department are charged with the assessment of real estate in the District of Columbia.

At the Board hearing, the burden of proof is on the petitioner to establish the incorrectness of the assessment of the property which is the subject of his petition. 9 DCMR § 2014.1. The Board's hearing procedures specify that "[a]fter the petitioner has been given an opportunity to present the appeal, the Director may, in his or her discretion present exhibits, documents, and testimony." 9 DCMR § 2016.2. In addition, "the Board ... shall have the opportunity to question the petitioner ... the Director ... and any witnesses called upon to testify at the hearing." 9 DCMR § 2015.1. Finally, the Board shall raise or lower the estimated market value of any real property which it finds to be more than five percent (5%) above or below the estimated market value developed by the Director. D.C. Code Ann. § 47-825(f) (1981). This is the one limitation placed on the Board in assuring that all real property is assessed at the estimated market value. Thus, the Board has the ability to independently determine a new assessment within the perimeters of § 47-825(f) (1981).

Respondent argues that a valid assessment according to law has been performed in the case at bar because the Board sustained the Director's 1986 assessments. Presumably, Respondent would have this Court rule that any misfeasance on the part of the Director in developing an assessment is somehow "cured" by the Board's independent review. This is clearly not the case. Respondent's argument must fail in light of the impact that such conduct by the Director would have on the intent of the statute.

The Board is the first level of appeal for a taxpayer aggrieved by his tax assessment. Subsequent appeals may be taken to the Superior Court, the Court of

Appeals and the Supreme Court. D.C. Code Ann. §§ 47-3303 and 47-3304 (1981). The Board proceeding is an adversarial one with the taxpayer and Director presenting their opposing cases and the Board serving as arbiter. The burden of proof is on the taxpayer to prove the incorrectness of the assessment. It is the Director's function to defend it. This allocation of the burden of proof can only stem from the assessment's presumed validity. Validity can only be achieved if the Director formulates an assessment according to law. Without such a valid assessment the Board process places an unfair burden upon the taxpayer and raises serious due process questions about the Board's determination.

Furthermore, there is no avenue at the Board level for challenging the legality of the procedure employed by the Director in developing an assessment. Consequently, the taxpayer is hampered at the Board hearing in rebutting the presumption of validity attendant to the Director's estimated market value. Moreover, the taxpayer must go to the Board as a prerequisite to a hearing before the Court. D.C. Code Ann. § 47-825(i) (1981). If the Court were now to hold that the Board's decision somehow cured any invalid assessment developed by the Director or that this decision itself constituted a valid assessment, the taxpayer would forever be foreclosed from challenging the Director's actions.[6/] This would mean that when an invalid assessment is made by the Director, the assessment is invalid but effective unless and until it is appealed to the Board, then it becomes valid and effective.

---

6/ Courts disfavor any determination that the actions of an administrative agency are not reviewable for legal error. See Basiliko v. Government of the District of Columbia, 283 A.2d 816, 818 (1971), Abbott Laboratories v. Gardner, 387 U.S. 136, 141 (1967).

The DCRLA court, in keeping with the applicable statutory and case law, also rejected the notion that the Board's use of an invalid figure was curative of a flawed assessment or a legitimate method of arriving at a legal assessment. DCRLA was a consolidation of three tax dockets. In that case, the court considered the validity of Tax Year 1977 assessments which were identical to those rejected by the court for 1975 and 1976. The reproposed 1975 and 1976 figures were sustained by the Board for 1977 in two of the three dockets considered. The Court rejected the reimplemented, void figures for all three of the dockets despite the fact that two of these assessments were sustained by the Board. The court, citing Burlington, concluded that the 1976 assessments, the last assessments made according to law, were the applicable assessments. The fact that the Board had sustained these previously voided assessments was of no consequence whatsoever. DCRLA is directly in point.

The Board is charged with the responsibility of reviewing and equalizing assessments, not performing the Director's duties. Where the Director clearly testifies that no new assessment was done for the Tax Year in question, the Director must be determined to have failed in his legal obligations. His assessment must be rejected as a nullity.

D.C. Code § 47-3305 authorizes the trial court to affirm, cancel, reduce or increase an assessment. As the court in Heller noted:

> The decision whether to hold a further evidentiary hearing or to cancel the proposed assessment is entrusted to the discretion of the trial court, [District of Columbia v. Burlington Apartment House, 375 A.2d 1052 at 1057 (1977)] (trial court permitted broad action to insure lawful and fair imposition of taxes) and we will reverse the court's decision only for abuse of discretion.

Wherefore, it is this 16th day of March, 1988,

ORDERED that the 1986 tax assessment of $19,744,000 is void, and it is

FURTHER ORDERED that the 1985 tax assessment of $15,940,598 remains in place until the District conducts a valuation according to law; and it is

FURTHER ORDERED that the Petitioner present a proposed order for refund, with interest from the dates of payment of the tax, no later than ten (10) days from the date this Order is signed.

SO ORDERED.

JUDGE IRALINE G. BARNES

Copies to:

Stanley J. Fineman, Esquire
Charles A. Camalier, Esquire
Wilkes, Artis, Hedrick & Lane
1666 K Street, N. W., Suite 600
Washington, D. C. 20006

Denise Dengler, Esquire
Assistant Corporation Counsel
1133 North Capitol Street, N. E., Room 238
Washington, D. C. 20002