SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

| | | |
|---|---|---|
| IVREA CORPORATION | * | |
| Petitioner | * | |
| | * | Tax Docket No. 6691-95 |
| v. | * | |
| | * | |
| DISTRICT OF COLUMBIA | * | |
| Respondent | * | |

ORDER

This matter comes before the Court on petitioner, Ivera Corporation's, appeal of the assessed value of a commercial property identified as 1331 G Street, N.W., square 252, lot 837, (the "Property") for Tax Year 1995. The District of Columbia assessed the Property at $3,694,000.00. Petitioner disputed this assessment and appealed to the District of Columbia Board of Real Property Assessments Appeals ("Board") on or about April 29, 1994. The Board reduced the assessment, however, the Petitioner was still unsatisfied. The Petitioner contested the Board's assessment and subsequently this proceeding was brought before the Court. Petitioner prays that this Court reduce the assessment and valuation of the Property.

The trial in this matter began on April 29, 1997. During the course of the trial, the Court heard several days of testimony. At the close of Petitioner's case, the District, Respondent, moved to dismiss on the grounds that Petitioner failed to sustain its burden of proof. This Court has the authority to sustain a Motion to Dismiss pursuant to Rule 41 (b) of the Superior Court Civil Rules. Super. Ct. Civ. R. 41(b). Rule 41(b) provides, in pertinent part, that:

> For failure of the plaintiff to prosecute ... the Court may, sua sponte, enter an order dismissing the action or any claim against the defendant or any claim therein. Unless the Court in its order for dismissal otherwise specifies, a dismissal under this subdivision ... operates as an adjudication upon the merits. Id.

Furthermore, when a defendant makes a Rule 41(b) motion in a nonjury trial, the Court, as the trier of fact, is not required to view the evidence in the light most favorable to the plaintiff. See Marshall v. District of Columbia, 391 A.2d 1374 (D.C. App. 1978). Rather, the Court's duty is to weigh the evidence and consider the credibility just as it would at the end of the trial. See id.; See also Perry v. District of Columbia, 474 A.2d 824 (D.C. App. 1984); Montgomery Ward & Co. v. Smith, 412 A.2d 728 (D.C. App. 1980)(overruled on other

grounds); Warner Corp. v. Magazine Realty Co., 255 A.2d 479 (D.C. App. 1969).

In an appeal of real property taxes in the District of Columbia, as in this case, "[t]he burden of proof shall be upon the petitioner." Sup. Ct. Rule 12(b). See also Wyner v. District of Columbia, 411 A.2d 59 (D.C. App. 1980). Specifically, the petitioner has the burden to establish, by a preponderance of the evidence, that the assessment is incorrect or illegal. See Brisker v. District of Columbia, 510 A.2d 1037, 1039 (D.C. App. 1986); Safeway Stores v. District of Columbia, 525 A.2d 207, 211 (D.C. App. 1987).

Simply providing an alternative assessment value is not sufficient to prove that the assessment is flawed because it is possible for assessors using identical information to arrive at varying results due to the use of different assessment methods. See Safeway at 211. In a case such as this, expert witness testimony is required in order for Petitioner to satisfy its burden of proof. The District of Columbia Court of Appeals has stated that "expert testimony is required when the subject presented is so 'distinctly related to some science, profession, business or occupation as to be beyond the ken of the average layman.'" Hughes v. District of

Columbia, 425 A.2d 1299, 1303 (D.C. App. 1981), citing District of Columbia v. Davis, 386 A.2d 1195, 1200 (D.C. App. 1978). See also Waggaman v. Forstmann, 217 A.2d 310 (D.C. App. 1966).

The Court has given full consideration to all of the documentary evidence presented at trial, the Court jacket, the testimony of the witnesses, and the relevant law. The Court finds that Petitioner did not meet its burden of proof.

In an attempt to meet its burden of proof, Petitioner utilized the testimony of three witnesses: Steve Yetso, Ron Hudson, and Quinton Harvell. This Court finds that Petitioner was unsuccessful, however, because none of Petitioner's witnesses were qualified as experts. Petitioner's Rule 26(b)(4) statement did not qualify as experts any of the witnesses called by Petitioner at trial[1]. Thus, due to the fact that Petitioner did not present an expert witness,

[1] The Court notes that Petitioner filed a motion on May 6, 1997, well after the beginning of the trial, to amend Petitioner's Rule 26(b)(4) statement and witness list. This motion was objected to by Respondent in Respondent's motion of May 9, 1997, and later denied by the Court. The Court found that Petitioner had sufficient time within which to find an expert for this trial, given that the date for submission of the Rule 26(b)(4) statement was December 20, 1996, and the first day of trial was April 29, 1997.

Petitioner's witnesses were, for the purposes of this trial, merely fact witnesses.

**A. Steve Yetso**

Steve Yetso is the Chief Financial Officer ("CFO") of 1331 G Street Associates Limited Partnership ("Associates"). Associates has a fifty (50) year lease on the subject property and acts as the Petitioner's authorized agent on all real estate and tax matters affecting the subject property. Mr. Yetso testified that he is substantially familiar with the poor condition of the building and that, in his opinion, the value of the subject property is $1,148,588.00. He stated that the building is a historically designated site and, therefore, subject to the government imposed restrictions requiring permission from the Historical Preservation Review Board (HPRB) to raze or redevelop the property. Furthermore, Mr. Yetso testified that, due to both the poor condition of the subject property and its historical designation, enormous costs would have to be incurred in razing or redeveloping the property and obtaining the necessary approvals from HPRB and related government agencies.

Despite Mr. Yetso's familiarity with the real estate at

issue, the Court finds that Mr. Yetso's opinion and conclusions are unqualified due to the fact that Mr. Yetso is not qualified as an expert in the area of commercial real estate tax assessment. Furthermore, the Court notes, as pointed out above, that Petitioner did not qualify Mr. Yetso as an expert assessor of commercial property. Therefore, the Court must find that Mr. Yetso is not qualified to render an expert opinion as to the assessed value of the commercial real estate in this matter.

**B. Ron Hudson**

Petitioner's second witness was Ron Hudson. Mr. Hudson has been the Executive Director of RDP Assessment Appeal Services, Inc. ("RDP") since 1995. RDP provides real estate appeal services to commercial building owners who challenge D.C. real estate tax assessments before the Board of Real Property Assessments and Appeals ("Board").

With respect to the subject property, Mr. Hudson testified that he reviewed the Districts assessment of the subject property and expressed his disapproval of the Comparable Sales Approach. Mr. Hudson stated that the Comparable Sales Approach, based on his experience, tends to

result in substantial errors and flaws in valuing commercial properties.

This Court notes that property assessors and appraisers are typically not qualified to be experts in commercial real estate tax assessment. Generally, these individuals have neither the level of training, nor the teaching or publication experience found in those assessors/appraisers historically qualified as experts in Superior Court. See Bresler and Reiner, Inc. v. District of Columbia, No. 5778-93, slip op. at 29 (D.C. Super. Ct. Jan. 31, 1997). However, even if Mr. Hudson possessed the qualifications necessary to be considered an expert witness, Mr. Hudson was not qualified as an expert in this proceeding. Neither this Court, nor Respondent has any information before it showing that Petitioner followed Court rules and procedures in qualifying Mr. Hudson as an expert. Thus, like Mr. Yetso, Mr. Hudson was merely a fact witness in this proceeding. Therefore, Mr. Hudson's opinions and conclusions are unqualified with respect to the assessed value of the Property.

**C. Quinton Harvel**

Petitioner's final witness was Quinton Harvel, the

District's assessor. Mr. Harvel testified that he assessed the property and concluded that the land value was $3,346,536.00 and the improvement value equaled $359,464.00.[2] Clearly, Petitioner cannot not seek to rely on the District assessor's, Mr. Harvel's, merely factual testimony. Mr. Harvel's testimony supported his assessment. However, there was no expert witness available to provide testimony to controvert Mr. Harvel's approach and resulting assessment. Furthermore, as is the case with Mr. Yetso and Mr. Hudson, Mr. Harvel's opinions and conclusions are unqualified.

Lacking the testimony of an expert witness, petitioner is neither able to offer opinions and conclusions as to the significance of the land sales used in the petitioner's Board Appeals, nor able to offer opinions on the issue of whether the assessor used the correct comparable sales. Thus, absent qualified, expert witness testimony elaborating on the facts and opining to errors committed by the assessor in his

---

[2] Mr. Harvell testified that he calculated the improvement value by using $8.00 to $10.00 per square foot times the gross building area (GBA). The Court finds that calculating $8.486 times 42,356 (GBA) yields $359,464.00 which is consistent with this witness' testimony. The Court notes that Mr. Harvell was unable to calculate the figures on the witness stand.

assessment, Petitioner fails to meet its burden of proof. Indeed, Petitioner cannot simply rely on alternative assessment values in order to meet its burden of proof. Rather, expert testimony is required in order for Petitioner to satisfy its burden of proof.

Therefore, it is this 6th day of August 1997,

**ORDERED**, that the Respondent's Motion to Dismiss for Failure of Petitioner to Establish a Prima Facie Case is **GRANTED**; and it is

**FURTHER ORDERED**, that Petitioner's Opposition to Respondent's Motion to Dismiss for Failure to Establish a Prima Facie Case is **DENIED**.

**SO ORDERED.**

JUDGE KAYE K. CHRISTIAN
(Signed in Chambers)

**Copies to:**

A. Scott Bolden
Reed Smith Shaw & McClay
1301 K Street, N.W.
Suite 110 (East Tower)
Washington, D.C. 20005

Randle B. Pollard

Assistant Corporation Counsel, D.C.
441 4th Street, N.W.
Suite 6N84
Washington, D.C. 20001