

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Shree Raj Corp.,
Petitioner,

v

MTT Docket No. 314441

Township of Plainfield,
Respondent.

Tribunal Judge Presiding
Rachel J. Asbury

FINAL OPINION AND JUDGMENT

INTRODUCTION

On January 3, 2006, the Tribunal entered an Order of Default in the above-captioned case, finding that Respondent had failed to file an Answer to the petition as required by TTR 245. Respondent failed to cure the default. On October 25, 2007, the Tribunal issued an Order Scheduling Default Hearing. A default hearing, pursuant to TTR 247, was held on December 20, 2007. Petitioner was represented by James O'Neil, Accountant for Petitioner, and Mani Patel, owner of the subject property. Respondent was not represented at the hearing and did not appear.

BACKGROUND

Petitioner appeals the true cash value, assessed value, and taxable value of parcel no. 41-10-32-476-005, commercial real property, for the 2005 tax year only.

Petitioner's contentions of true cash value, assessed value, and taxable value are:

Parcel Number: 41-10-32-476-005

| Year | TCV | AV | TV |
|------|-----------|-----------|-----------|
| 2005 | \$600,000 | \$300,000 | \$200,000 |

Respondent's contentions of true cash value, assessed value, and taxable value are:

Parcel Number: 41-10-32-476-005

| Year | TCV | AV | TV |
|------|-----------|-----------|-----------|
| 2005 | \$692,800 | \$346,400 | \$268,125 |

PETITIONER'S CONTENTIONS

In support of its position, Petitioner presented the following:

1. 2005 U.S. Income Tax Return for an S Corporation, Form 1120S, for Pural Corp
2. 2006 U.S. Income Tax Return for an S Corporation, Form 1120S, for Pural Corp
3. 2005 U.S. Income Tax Return for an S Corporation, Form 1120S, for Shree Raj Corporation
4. 2006 U.S. Income Tax Return for an S Corporation, Form 1120S, for Shree Raj Corporation
5. Typed document with column labeled "Shree Raj Motel, Plainfield Motel" and a second column labeled "Pural Corp Lazy T Motel"

Petitioner contends that he has "comparable properties, and one township has a value that far exceeds the other township. And it's unfair."¹ Petitioner asserts that for the two hotels he owns, "everything else compares out, the same number of rooms, the revenues which you have . . . on the tax returns are the same."² Mr. Patel testified that he purchased the subject property in 1997.³

Mr. Patel testified that the sale price of the hotel used as a "comparison"⁴ was \$375,000 in July of 2007. Petitioner's counsel presented "an income analysis based on tax returns"⁵ as the basis for Petitioner's estimate of value. Petitioner asserted that another Tribunal case was "currently under the Tribunal. . . about a half a mile farther. . ."⁶ but did not provide the Tribunal with evidence related to that property. Mr. Patel testified that his belief was that "[t]he reasonable

¹ Transcript page 12, ll 9-10

² Transcript page 12, ll 13-16

³ Transcript page 17, ll 2-4

⁴ Transcript page 19, l 5

⁵ Transcript page 21, ll 16-17

⁶ Transcript page 22, ll 5-8

cash value is like \$343,000, which is a change, . . .”⁷ Mr. Patel’s closing request to the Tribunal was that he “would like to have a tax . . . go down, you know, so I can afford to pay the bill.”⁸

RESPONDENT’S CONTENTIONS

Based upon its default, Respondent was precluded from offering evidence and testimony.

FINDINGS OF FACT

The Tribunal's factual findings must be supported by competent, material, and substantial evidence. *Antisdale v Galesburg*, 420 Mich 265; 362 NW2d 632 (1984). In that regard, the Tribunal finds that Petitioner presented 2005 tax returns for the subject property and one other property to the Tribunal at hearing. Petitioner presented a typed, attributed but unsigned, and undated document that compared two motels, listing for each the year built, number of rooms, 2006 revenues, acreage, frontage, assessed values for 2007, and taxable values for the 2005 through 2007 tax years. The owner of the subject property also owned the hotel used for income comparison purposes for the tax year at issue.

The Tribunal accepts Mr. Patel’s opinion that the income generated by the two properties is the same, as he is the owner of both properties. Mr. Patel did not, however, provide the Tribunal with the underlying information on which he based that opinion. The Form 1120S submitted by Petitioner for both properties provided an amount of gross receipts for each property. That in itself, without underlying financial information, analysis, and conclusion, does not provide support for Mr. Patel’s conclusion of value for the subject property.

⁷ Transcript page 39, ll 9-10

⁸ Transcript page 41, ll 12-14

Additionally, the Tribunal was not given evidence or documentation that supported Mr. Patel's testimony that both hotels had the same number of rooms, that both motels charged the same rates, that the amenities at each were the same, or other information on which he based his assertion that the two properties were the same. Further, one hotel was 10 years older than the other. It is not clear when Petitioner purchased each of the properties, or if any additions were made or losses experienced. More importantly, Mr. Patel did not provide the Tribunal with the calculations upon which he arrived at his opinion of value for the subject property. The document that compared the two motels did not offer a final estimate of value. As such, no raw data was given from which the Tribunal could even attempt to extrapolate a value based upon an income method of valuation.

The Tribunal finds that Petitioner did not produce reliable, credible evidence or documentation of value to support his testimony or estimate of value. Although he is owner of both, and thus familiar with the properties, his testimony alone, without the underlying supporting data, was not sufficient to meet his burden of proof to establish, by a preponderance of the evidence, a value other than that as assessed.

CONCLUSIONS OF LAW

The Michigan Court of Appeals has recognized that "the power of the tax tribunal to dismiss a petition because of a party's noncompliance with a rule or order of the tribunal is unquestionable," and stated that "the Tribunal's actions are reviewable for abuse of discretion." *Stevens v Bangor Township*, 150 Mich App 756, 761; 389 NW2d 176 (1986).

In determining whether the Tribunal has abused its discretion, the Court of Appeals also stated in *Professional Plaza, LLC v City of Detroit* 250 Mich App 473, 475; 647 NW2d 529 (2002), that an abuse of discretion exists where the result is “so palpably and grossly violative of fact and logic that it indicates a perversity of will, a defiance of judgment, or the exercise of passion or bias.”

Prior to the holding in *Stevens*, the Tribunal did not have a default process. Rather, the Tribunal would exercise its discretion and dismiss a case or conduct a default hearing for a party’s failure to comply with a Tribunal rule or order without giving notice to that party of its failure and an opportunity to cure the failure.

Notwithstanding the above, the Tribunal’s exercise of such discretion has never been result driven, but rather focused on the party’s failure to comply with a Tribunal rule or order. More specifically, the fact that a party may prevail does not change the fact that the party has failed to properly comply with a Tribunal rule or order. Nevertheless, the Tribunal, in response to the holding in *Stevens* (i.e., “the Tribunal’s imposition of the harshest available sanction was an abuse of discretion”) and to avoid any future such *Stevens* “abuses,” developed a default process and revised its Rules of Practice and Procedure in 1996 to provide parties with notice of their failure to comply with a Tribunal rule or order and a reasonable opportunity to cure that failure before the dismissal of their case or the conducting of a default hearing, as appropriate, for a party’s failure to timely cure its default. See TTR 247. See also the unpublished decision in *Cassar Group v City of Keego Harbor*, COA Docket No. 282115 (February 3, 2009). As such, the exercise of the discretion noted in *Stevens* is now uniformly governed by rule.

TTR 247 provides:

- (1) If a party has failed to plead, appear, or otherwise proceed as provided by these rules or as required by the Tribunal, then the party may be held in default by the tribunal on motion of another party or on the initiative of the Tribunal. A party placed in default shall cure the default as provided by the order placing the party in default and file a motion to set aside the default accompanied by the appropriate fee within 21 days of entry of the order placing the party in default or as otherwise ordered by the Tribunal. Failure to comply with an order of default may result in the dismissal of the case or the scheduling of a default hearing as provided in this rule.
- (2) For purposes of this rule, “default hearing” means a hearing at which the defaulted party is precluded from presenting any testimony or submitting any evidence not submitted to the Tribunal before the entry of the order placing the party in default and may not, unless otherwise ordered by the Tribunal, examine the other party’s witness.

As such, the Tribunal decides this matter based only on the file and testimony and evidence presented by Petitioner at hearing.

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value. The Michigan Legislature has defined true cash value to mean the usual selling price at the place where the property to which the term is applied is at the time of the assessment, being the price which could be obtained for the property at private sale, and not forced or auction sale. See MCL 211.27(1). The Michigan Supreme Court in *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450 (1974), has also held that true cash value is synonymous with fair market value.

In that regard, the Tribunal is charged in such cases with finding a property’s true cash

value to determine the property's lawful assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767 (1981). The determination of the lawful assessment will, in turn, facilitate the calculation of the property's taxable value as provided by MCL 211.27a. "The petitioner has the burden of proof in establishing the property's true cash value." MCL 205.737(3); *Kern v Pontiac Twp*, 93 Mich App 612; 287 NW2d 603 (1979).

The assessment of real property in Michigan shall not exceed 50% of its true cash value. Michigan Const 1963, art IX, sec 3. "True cash value" means "the usual selling price...." MCL 211.27(1). "True cash value" means "fair market value." *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450; 221 NW2d 588, 592 (1974).

The Tribunal is required to make an independent determination of true cash value. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348; 483 NW2d 416 (1992). "We note that the tribunal is not bound to accept either of the parties' theories of valuation. It may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination." *Id.*, p 356.

The Tribunal is required to select the valuation methodology that is accurate and bears a reasonable relationship to the property's true cash value. *Safran Printing Co v Detroit*, 88 Mich App 376; 276 NW2d 602 (1979).

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. *Meadowlanes*

Limited Dividend Housing Assn v City of Holland, 437, 484-485; 473 NW2d 636 (1991); *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (1966); 380 Mich 390; 157 NW2d 293 (1968); *Antisdale v City of Galesburg*, 420 Mich 265, 276; 362 NW2d 632 (1984). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in the marketplace trading. *Antisdale* at 276, n 1. The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale*, at 277.

The Tribunal finds Respondent's cost less depreciation method of valuation, as evidenced by its property record card, to be the most reliable indicator of value.

Based upon the file, the applicable statutory and case law, and the testimony and evidence presented, the Tribunal concludes that Petitioner has failed to meet its burden of proof to establish that the true cash value, assessed value, and taxable value of the subject property are other than that as assessed. Therefore, the Tribunal concludes that the true cash value, assessed value, and taxable value, as assessed for the 2005 tax year, are affirmed as follows:

Parcel Number: 41-10-32-476-005

| Year | TCV | AV | TV |
|------|-----------|-----------|-----------|
| 2005 | \$692,800 | \$346,400 | \$268,125 |

JUDGMENT

IT IS ORDERED that the properties' state equalized, assessed and taxable values for the subject property shall be those set forth in the *Conclusions of Law* portion of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the assessed and taxable values in the amounts as finally shown in the "Final Values" section of this Opinion and Judgment, subject to the processes of equalization, within 20 days of the entry of this Order. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Final Opinion and Judgment within 90 days of the entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Opinion and Judgment. As provided by 1994 PA 254

and 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest shall accrue at an interest rate set monthly at a per annum rate based on the auction rate of the 91-day discount treasury bill rate for the first Monday in each month, plus 1%. After December 1, 1995, interest shall accrue at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue: (i) after December 31, 2001, at the rate of 5.56% for calendar year 2002; (ii) after December 31, 2002 at the rate of 2.78% for calendar year 2003; (iii) after December 31, 2003, at the rate of 2.16% for calendar year 2004; (iv) after December 31, 2004, at the rate of 2.07% for calendar year 2005; (v) after December 31, 2005, at the rate of 3.66% for calendar year 2006; (vi) after December 31, 2006, at the rate of 5.42% for calendar year 2007; (vii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and (viii) after December 31, 2008, at the rate of 3.31% for calendar year 2009.

This Opinion and Judgment resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: April 21, 2009

By: Rachel Asbury