

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

VITAL & KATIA DEPINA

v.

**BOARD OF ASSESSORS OF
THE CITY OF BOSTON**

Docket Nos. F347174 & F347176

Promulgated:
August 2, 2024

These are appeals filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65 from the refusal of the Board of Assessors of the City of Boston ("appellee" or "assessors") to abate taxes on two parcels of real estate owned by and assessed to Vital Depina and Katia Depina ("appellants") for fiscal year 2022 ("fiscal year at issue").

Chairman DeFrancisco heard the appellee's Motions to Dismiss for Lack of Jurisdiction ("Motions to Dismiss"). He was joined by Commissioners Good, Elliott, Metzger, and Bernier in the decisions for the appellee.

These findings of fact and report are made pursuant to a request by the appellants under G.L. c. 58A, § 13 and 831 CMR 1.32.¹

Vital and Katia Depina, pro se, for the appellants.

Laura Caltenco, Esq., for the appellee.

¹ This citation is to the regulation in effect prior to January 5, 2024.

FINDINGS OF FACT AND REPORT

Based on testimony and documentary evidence submitted during the hearing of the Motions to Dismiss, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2021, the relevant valuation and assessment date for the fiscal year at issue, the appellants were the assessed owners of three condominium units located at 162 Quincy Street ("Unit 1 Quincy Street," "Unit 2 Quincy Street," and "Unit 3 Quincy Street") (collectively "Quincy Street units") and land improved with a multi-family building located at 45 Homes Avenue ("Homes Avenue building") in Dorchester (together "subject properties"). For the fiscal year at issue, the assessors valued Unit 1 Quincy Street at \$218,900, Unit 2 Quincy Street at \$246,800, and Unit 3 Quincy Street at \$243,500. The appellee assessed taxes thereon, at the rate of \$10.88 per \$1,000, in the total amounts of \$2,394.57 for Unit 1 Quincy Street, \$2,701.15 for Unit 2 Quincy Street, and \$2,664.89 for Unit 3 Quincy Street.² For the fiscal year at issue, the assessors valued the Homes Avenue building at \$931,400 and assessed a tax thereon, at the rate of \$10.88 per \$1,000, in the total amount of \$10,224.09.³

² These amounts are inclusive of Community Preservation Act ("CPA") surcharges.

³ This amount is inclusive of a CPA surcharge.

On February 1, 2022,⁴ the appellants filed abatement applications with the assessors for the subject properties. By notices dated April 5, 2022, the appellee notified the appellants that it failed to act upon their abatement requests by April 1, 2022. The notices to the appellants were sent to 45 Clarence Street in Roxbury.

The appellants subsequently filed petitions with the Board regarding the assessments for the Quincy Street units and the Holmes Avenue building. The appellants' petitions acknowledged that they had paid interest on the real estate taxes due on the subject properties, having made late payments of the taxes. Additionally, the petitions were stamped as having been received by the Board on July 13, 2022. The envelope that contained the petitions has a postage stamp but does not bear a postmark from the United States Postal Service. The appellants included a letter with their petitions admitting that the petitions were filed late but claiming that the deemed denials had been mailed to the wrong address.

⁴ The abatement applications were stamped by the assessors as having been received on February 2, 2022. However, at a hearing on the appellee's prior motions to dismiss that were filed on May 22, 2023, Katia Depina testified that she had attempted to file the applications in person at the assessors' office on February 1, 2022, but that the window to which she was directed by a city employee was closed, so she left the applications at the window with a note asking that they be filed as of that day. Ms. Depina submitted timed and dated pictures to document her attempt to file the applications in this manner. The Board found this evidence to be credible and denied the May 22, 2023 motions.

On August 30, 2023, the appellee filed Motions to Dismiss, citing late payments of real estate taxes for the Homes Avenue building⁵ and late filing of the petitions for both appeals. The assessors produced a sworn affidavit from the city collector stating that the first-quarter, second-quarter, and fourth-quarter installments on the Homes Avenue building were paid late. The assessors also submitted evidence showing that the average of the prior three years' taxes on the Homes Avenue building was \$6,132.46, and that the appellants failed to make the necessary payments to satisfy the statutory three-year average provision, because they did not pay any tax timely for the first quarter and they paid less than 50 percent of the three-year average for the second quarter. See G.L. c. 59, §§ 64 and 65. The appellee then produced copies of the abatement applications for the subject properties showing that the appellants had indicated their address as 45 Clarence Street in Roxbury.

Pursuant to the parties' agreement, the Board scheduled a hearing on the assessors' Motions to Dismiss. The appellee presented its arguments at the hearing, but the appellants failed to appear.

⁵ Late payment of taxes on the Quincy Street units tax bills did not impact the Board's jurisdiction. See *infra*, note 6.

For the reasons explained in the Opinion below, the Board granted the Motions to Dismiss and issued decisions for the appellee in the instant appeals.

OPINION

The Board has only that jurisdiction conferred on it by statute. ***Stilson v. Assessors of Gloucester***, 385 Mass. 724, 732 (1982). Adherence to statutory prerequisites is essential “to prosecution of appeal from refusals to abate taxes.” ***New Bedford Gas & Edison Light Co. v. Assessors of Dartmouth***, 368 Mass. 745, 747 (1975); see also ***Old Colony R. R. Co. v. Assessors of Quincy***, 305 Mass. 509, 511-12 (1940).

The Board has no jurisdiction over an appeal when: (1) the tax due for the fiscal year exceeds \$5,000;⁶ (2) interest is incurred on the tax bill; and (3) the three-year average provision under G.L. c. 59, §§ 64 and 65 is not met. See, e.g., ***Massachusetts Inst. of Tech. v. Assessors of Cambridge***, 422 Mass. 447, 451-52 (1996); ***Columbia Pontiac Co., Inc. v. Assessors of Boston***, 395 Mass. 1010, 1011 (1985) (ruling that payment of the full amount of the tax due without incurring interest charges is a condition precedent to the Board’s jurisdiction over an abatement appeal).

⁶ Although the taxes on the Quincy Street units had accrued interest, the tax bills were less than \$5,000. Accordingly, late payment of the Quincy Street units’ tax bills did not jeopardize the Board’s jurisdiction over those properties. See G.L. c. 59, §§ 64 and 65.

Here, the tax on the Homes Avenue building exceeded \$5,000, interest was accrued due to the late payment of the first, second, and fourth-quarter installments, and the appellants failed to make payments sufficient to satisfy the three-year average provision of G.L. c. 59, §§ 64 and 65. Accordingly, the Board lacks jurisdiction over the appeal in Docket No. F347176.

Additionally, G.L. c. 59, §§ 64 and 65 provide that a taxpayer who is aggrieved by the assessors' refusal to abate a tax on real estate may appeal to this Board "within three months after the date of the assessors' decision on an application for abatement . . . or within three months after the time when the application for abatement is deemed to be denied." See also ***The Berkshire Gas Co. v. Assessors of Williamstown***, 361 Mass. 873 (1972); ***Ades v. Assessors of New Bedford***, Mass. ATB Findings of Fact and Reports 1996-287. Applications for abatement are deemed denied at the expiration of three months from the date the application for abatement was filed if the assessors have taken no action on the application. G.L. c. 58A, § 6 and G.L. c. 59, §§ 64 and 65. "The time limit provided for filing the petition is jurisdictional and a failure to comply with it will result in dismissal of the appeal." ***Ades***, Mass. ATB Findings of Fact and Reports at 1996-290, (citing ***Cheney v. Inhabitants of Dover***, 205 Mass. 501 (1910) and ***Berkshire Gas***, 361 Mass. at 873). Here, the abatement applications for the subject properties were deemed denied on April 1, 2022,

and notices of the denials were sent to the appellants.⁷ The petitions were not filed within three months of the deemed denial date.

Pursuant to G.L. c. 58A, § 7 and G.L. c. 59, § 64, if a petition is delivered by mail, the date of the United States mail postmark or other substantiating mark affixed on the envelope shall be deemed the date of delivery. Here, the envelope containing the petitions did not bear a postmark. Moreover, the petitions were stamped by the Board twelve days after the due date. Therefore, the Board cannot infer timely mailing of the petitions to the Board. See 831 CMR 1.13.⁸

The appellants alleged that the notices of deemed denial were sent to the wrong address. However, on the abatement applications for the subject properties, the appellants themselves indicated their address to be 45 Clarence Street in Roxbury. Moreover, the appellants failed to appear at the hearing of the Motions to Dismiss to support their argument.

By paying the tax late on the Homes Avenue building and filing the petitions for both appeals untimely, the appellants failed to comply with the statutory prerequisites for appealing the


⁷ Assessors are required to send a notice of inaction if they fail to act on an abatement application. If they fail to send the notice within ten days following the deemed denial of an abatement application, and as a result a taxpayer fails to file an appeal within three months of the deemed denial, the taxpayer may file a petition for late entry of appeal. See G.L. c. 59, § 65C. Because the assessors sent notices of their inaction, G.L. c. 59, § 65C does not apply.

⁸ This citation is to the regulation in effect prior to January 5, 2024.

assessors' denials of their abatement requests for the fiscal year at issue.

Accordingly, the Board granted the Motions to Dismiss and issued decisions for the appellee in the instant appeals.

THE APPELLATE TAX BOARD

By: /S/ 
Mark J. DeFrancisco, Chairman

A true copy,

Attest: /S/ 
Clerk of the Board