

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

GABAY REALTY, LLC

v.

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

Docket No. F342314

Promulgated:
February 27, 2023

This is an appeal 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 a tax on real estate owned by and assessed to Gabay Realty, LLC ("appellant") for fiscal year 2021 ("fiscal year at issue").

Commissioner Good heard the appeal. She was joined by Chairman DeFrancisco and Commissioners Elliott and Metzger in the decision for the appellee.

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.

Marcia Weiss, pro se, for the appellant.

Laura Caltenco, Esq., for the appellee.

FINDINGS OF FACT AND REPORT

Based on testimony and documentary evidence submitted by the parties during the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2020, the appellant was the assessed owner of a 1,462-square-foot parcel of land improved with a two-family dwelling located at 236 W. Fifth Street in the City of Boston ("subject property"). For the fiscal year at issue, the assessors valued the subject property at \$1,743,700 and assessed a tax thereon, at the rate of \$10.67 per \$1,000, in the total amount of \$18,780.66, inclusive of the Community Preservation Act surcharge. The appellant timely paid the tax assessed without incurring interest. On January 22, 2021, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application with the assessors, which the appellee denied on April 22, 2021. On May 11, 2021, the appellant seasonably filed an appeal with the Board. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide the instant appeal.

The subject property is improved with a 2,322-square-foot, two-family dwelling that was newly constructed in 2014 and is in excellent condition, with modern kitchen and bathroom finishes ("subject dwelling"). The subject dwelling's two units both have two bedrooms and two full bathrooms as well as a deck. A two-car attached garage provides direct entry into the subject dwelling.

The appellant presented its case through the testimony of Marcia Weiss, the appellant's manager, along with her written statement and property record cards for her comparable-assessment properties.

Ms. Weiss testified that for the prior fiscal year, the subject property had been assessed at \$1,638,900, but upon filing for abatement, the assessors reduced the assessment to \$1,302,700. According to Ms. Weiss, the primary reason for that abatement was that the property record card had incorrectly listed the subject property's living area as 3,207 square feet when it only has 2,322 square feet. Ms. Weiss maintained that the assessors did not fix the square-footage error for the fiscal year at issue, citing the online version of the property record card, which continued to list the living area as 3,207 square feet.

On cross-examination, it was determined that, while the online version had not been updated, the actual property record card on file with the appellee included the corrected square-footage living area for the subject property.

Next, Ms. Weiss presented a comparison to three other multi-family properties on West Fifth Street. These purportedly comparable properties range in size from 2,449 square feet of living area to 2,943 square feet of living area. Two of the properties are three-family homes, and all three properties were constructed between 1890 and 1900 with remodels in 1954. These

purportedly comparable properties were assessed from \$949,200 to \$1,168,500 for the fiscal year at issue.

The appellee presented the requisite jurisdictional documents and cross-examined Ms. Weiss but otherwise rested on the validity of the assessment.

Based on the evidence presented, the Board found that the appellant failed to present evidence sufficient to meet its burden of proving a fair cash value for the subject property that was lower than its assessed value for the fiscal year at issue. Because the Board found that the official version of the property record card for the subject property included the corrected square-foot living area for the subject property, the appellant failed to establish any errors in the subject property's assessment. With respect to her comparable-assessment analysis, two of Ms. Weiss' properties, unlike the subject property, were three-family homes, and none of her properties was newly constructed or modernly finished like the subject property. Moreover, none of the comparable properties had a two-car garage with direct access into the building. Thus, their comparability with the subject property was questionable. Further, because Ms. Weiss failed to adjust her comparable-assessment values to compensate for these key differences, the analysis lacked probative value.

Accordingly, the Board issued a decision for the appellee in the instant appeal.

OPINION

The assessors are required to assess real estate at its fair cash value. G.L. c. 59, § 38. Fair cash value is defined as the price on which a willing seller and a willing buyer will agree if both are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956). A taxpayer has the burden of proving that the property at issue has a lower value than that assessed. "The burden of proof is upon the petitioner to make out its right as [a] matter of law to abatement of the tax." ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974) (quoting ***Judson Freight Forwarding Co. v. Commonwealth***, 242 Mass. 47, 55 (1922)). "[T]he board is entitled to 'presume that the valuation made by the assessors [is] valid unless the taxpayer[] sustain[s] the burden of proving the contrary.'" ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (quoting ***Schlaiker***, 365 Mass. at 245).

In appeals before the Board, a taxpayer "may present persuasive evidence of overvaluation either by exposing flaws or errors in the assessors' method of valuation, or by introducing affirmative evidence of value which undermines the assessors' valuation." ***General Electric Co.***, 393 Mass. at 600 (quoting ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)).

In the present appeal, the Board found and ruled that the appellant failed to provide sufficient, credible evidence to

establish that the subject property was assessed for more than its fair cash value. Because the Board found that the official property record card for the subject property included the corrected square-foot living area for the subject property, the appellant failed to establish any errors in the subject assessment.

The appellant further failed to prove a lower fair cash value through its comparable-assessment analysis. General Laws Chapter 58A, § 12B provides in pertinent part that “[a]t any hearing relative to the assessed fair cash valuation or classification of property, evidence as to the fair cash valuation or classification of property at which assessors have assessed other property of a comparable nature or class shall be admissible.” “The introduction of ample and substantial evidence in this regard may provide adequate support for abatement.” ***Chouinard v. Assessors of Natick***, Mass. ATB Findings of Fact and Reports 1998-299, 307-8 (citing ***Garvey v. Assessors of West Newbury***, Mass. ATB Findings of Fact and Reports 1995-129, 135-36; ***Swartz v. Assessors of Tisbury***, Mass. ATB Findings of Fact and Reports 1993-271, 279-80); see also ***Turner v. Assessors of Natick***, Mass. ATB Findings of Fact and Reports 1998-309, 317-18. To be probative of a subject property's value, the assessments in a comparable-assessment analysis must be adjusted to account for differences with the subject property. See ***Heitin v. Assessors of Sharon***, Mass. ATB Findings of Fact and Reports 2002-323, 334 (“Further, the appellant did not adjust for

differences between the comparable properties and the subject property in order to properly impute a value to the subject property using the assessed values of the comparables.").

With respect to her comparable-assessment analysis, two of Ms. Weiss' properties, unlike the subject property, were improved with three-family homes, and none of her properties was newly constructed and modernly finished like the subject property or had a two-car garage with direct access into the building, thus calling into question the comparability of her comparison properties. More importantly, Ms. Weiss failed to account for differences between the comparison properties and the subject property that affect fair cash value. Therefore, the Board found and ruled that her comparable-assessment analysis lacked probative value for determining the fair cash value of the subject property.

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Based on the foregoing, the Board found and ruled that the appellant did not meet its burden of proving that the assessed value of the subject property was greater than its fair cash value for the fiscal year at issue.

Accordingly, the Board issued a decision for the appellee in this appeal.

THE APPELLATE TAX BOARD

By: /s/ Mark J. DeFrancisco
Mark J. DeFrancisco, Chairman

A true copy,

Attest: /s/ William J. Doherty
Clerk of the Board