

**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**JASON GOLDBERG**

**v.**

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

Docket Nos. F339910  
F342280  
F346278

Promulgated:  
January 11, 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 a condominium unit owned by and assessed to Jason Goldberg ("appellant") for fiscal years 2020, 2021, and 2022 ("fiscal years at issue").

Chairman DeFrancisco heard these appeals. He was joined by Commissioners Good, Elliott, Metzger, and Bernier in the decisions for the appellant.

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.34.

*Charles R. Tevnan, Esq., 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 these appeals, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2019, January 1, 2020, and January 1, 2021, the relevant valuation and assessment dates for the fiscal years at issue, the appellant was the assessed owner of Condominium Unit 7 located at 400 Marlborough Street in the City of Boston ("subject unit"). The appellant rents the subject unit to tenants. The relevant jurisdictional information for these appeals is summarized in the following chart:

Fiscal year	Assessed value	Tax rate Tax amount <sup>1</sup>	Timely paid Y/N	Abatement application filed	Abatement application denied	Petition to the Board
FY2020	\$504,900	\$10.56/\$1,000 \$5,374.50	Y	01/10/2020	02/24/2020	05/14/2020 <sup>2</sup>
FY2021	\$497,100	\$10.67/\$1,000 \$5,346.43	Y	01/27/2021	04/14/2021	05/04/2021
FY2022	\$514,700	\$10.88/\$1,000 \$5,645.06	Y	01/25/2022	03/22/2022	06/10/2022 <sup>3</sup>

Based on the above information, the Board found and ruled that it had jurisdiction to hear and decide the instant appeals.

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<sup>1</sup> Total tax amounts for the subject unit are inclusive of Community Preservation Act ("CPA") surcharges.

<sup>2</sup> While the Petition was stamped as having been docketed by the Board on May 26, 2020, the envelope containing the appeal bore a United States Postal Service postmark of May 14, 2020. Pursuant to G.L. c. 58A, § 7, the Board considered the date of postmark to be the date of filing.

<sup>3</sup> While the Petition was stamped as having been docketed by the Board on June 29, 2022, the envelope containing the appeal bore a United States Postal Service postmark of June 10, 2022. Pursuant to G.L. c. 58A, § 7, the Board considered the date of postmark to be the date of filing.

The appellant presented his case through his testimony and documentary evidence, including the property record cards, deeds, and pictures of purportedly comparable condominium units.

The subject unit is a third-floor, walk-up condominium unit containing 520 square feet of living space, which is comprised of two rooms, including one bedroom, as well as one full bathroom. The subject unit's building was constructed in 1870, and the appellant has made no updates to the subject unit other than painting and repairs since its purchase in 1998. The property record cards for the fiscal years at issue characterize the subject unit's interior as in average condition with standard finishes, but with a semi-modern kitchen and bathroom. They also erroneously characterize the subject unit as front-facing; the subject unit has a view of an alley and utility wires.

The appellant presented a comparable-assessment analysis consisting of purportedly comparable condominium units on the same street as the subject unit. The appellant pointed out that the subject unit's lowest assessment for the fiscal years at issue - fiscal year 2021 - was \$956 per square foot. In contrast, Unit 4 of neighboring 404 Marlborough Street, similarly sized to the subject unit at 505 square feet, was assessed at around \$500 per square foot or less during the fiscal years at issue. The other units at 404 Marlborough Street were also assessed at lower rates, ranging from \$373 per square foot to \$447 per square foot, while

units at 355 Marlborough Street, directly across the street from the subject unit, were also assessed at less than half of the subject unit's per-square-foot value for the fiscal years at issue. The appellant opined that the units at both 404 and 355 Marlborough Street are superior to the subject unit, as these units have central air conditioning and finer finishes and can therefore command a higher rent than the subject unit.

The appellant further pointed out errors on the subject unit's property record cards. He noted that they listed the subject unit as front facing, but that after inspection by the assessor, the fiscal year 2023 property record card now correctly lists the orientation as rear facing. The appellant further disputes the characterization of the subject unit's kitchen and bathroom as semi-modern, testifying that the fixtures are merely basic.

The appellant's opinion of value for the subject unit for each fiscal year at issue is \$252,400, the fiscal year 2021 assessed value of Unit 4 at 404 Marlborough Street, which is nearly the same size as the subject unit.

The appellee chose not to present an affirmative case to support the assessed values, relying instead on the presumed validity of the assessments at issue.

Based on the evidence presented, the Board found that the appellant met his burden of proving a fair cash value for the subject unit that was less than its assessed value for each of the

fiscal years at issue. The Board found the appellant's testimony to be credible. Because neither party submitted evidence of comparable sales, the appellant's comparable assessments were the best evidence of the subject unit's fair cash value. The Board found that the appellant's comparable-assessment condominium units were sufficiently comparable, even slightly superior to the subject unit. The appellant's comparable-assessment analysis thus demonstrated that the subject unit was being assessed for more than its fair cash value as compared with other sufficiently similar condominium units. The Board found persuasive the appellant's evidence establishing that the subject unit should be assessed no more than the similarly sized and sufficiently comparable Unit 4 at neighboring 404 Marlborough Street. The Board thus found and ruled that \$252,400 reflected a fair cash value for the subject unit for each of the fiscal years at issue.

Accordingly, the Board issued decisions for the appellant and ordered abatements as follows: \$2,693.06 for fiscal year 2020; \$2,637.06 for fiscal year 2021; and \$2,882.36 for fiscal year 2022.<sup>4</sup>

#### **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

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<sup>4</sup> These amounts are inclusive of the appropriate portion of CPA surcharges.

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 [an] 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)).

As evidence of value for the subject unit, the appellant presented a comparable-assessment analysis using numerous condominium units from buildings on the same street as the subject unit. An analysis of comparable properties' assessments may form

the basis for an abatement. See G.L. c. 58A, § 12B<sup>5</sup> and ***John Alden Sands v. Assessors of Bourne***, Mass. ATB Findings of Fact and Reports 2007-1098, 1106 ("The introduction of such evidence may provide adequate support for either the granting or denial of an abatement.").

The Board found that the condominium units upon which the appellant's analysis relied were sufficiently comparable, even somewhat superior, to the subject unit, and yet they were assessed far less per square foot than the subject unit. The Board thus found and ruled that the appellant's comparable condominium assessments, one in particular, supported a fair cash value of \$252,400, the appellant's opinion of the subject unit's fair cash value for each fiscal year at issue.

Accordingly, the Board issued decisions for the appellant and ordered abatements as defined above for each fiscal year at issue.

**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

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<sup>5</sup> General Laws c. 58A, § 12B provides that: "At 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."