

**COMMONWEALTH OF MASSACHUSETTS
APPELLATE TAX BOARD**

NICHOLAS MANGO

v.

**BOARD OF ASSESSORS OF
THE TOWN OF MARBLEHEAD**

Docket Nos. F339722 & F342517

Promulgated:
June 27, 2023

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 Town of Marblehead ("assessors" or "appellee") to abate a tax on certain real estate owned by and assessed to Nicholas Mango ("appellant") and Elizabeth A. Garthe ("Ms. Garthe"), under G.L. c. 59, §§ 11 and 38, for fiscal years 2020 and 2021 ("fiscal years at issue").¹

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

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

Robert J. Gaines, Esq., for the appellant.

Karen Bertolino, Assistant Assessor, for the appellee.

¹Although the subject unit is co-owned by Nicholas Mango and his spouse, Elizabeth Garthe, this appeal was filed solely in the name of Nicholas Mango.

FINDINGS OF FACT AND REPORT

Based on testimony and exhibits offered into evidence at the hearing of these appeals, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2019, and January 1, 2020, the respective dates of valuation and assessment for the fiscal years at issue, the appellant was the assessed co-owner of a waterfront residential condominium unit with an address of 7B Skinners Path in Marblehead ("subject unit"). The appellant purchased the subject unit in 1982, and Ms. Garthe became co-owner with the appellant in 2015.

The subject unit is one of four units located in Building 21 ("Building 21") within the Glover Landing Condominium ("Glover Landing"), which is overseen by a Board of Governors ("Board of Governors").² Building 21 was built in approximately 1967. The subject unit is a two-story unit with an ocean view, consisting of 1,800 square feet of living area, which is comprised of five rooms, including three bedrooms, as well as two full bathrooms and one half bathroom. The attic, as well as the exterior of the subject unit, including the fire escape and the roof, are common areas under the control and maintenance of the Board of Governors.

²Building 21 is one of thirty-four residential buildings which, together with one commercial building, comprise Glover Landing.

While the property record cards for the subject unit for the fiscal years at issue indicate the overall grade was "Good +", individual categories were rated as "Poor" or "Fair."

The following chart details the jurisdictional information for these appeals.

Fiscal Year	FY2020	FY2021
Original Assessed Value	\$490,200	\$408,000
Abated Assessed Value	\$453,300	N/A
Tax Rate	\$10.39	\$10.42
Tax Assessed	Orig. \$5,093.18 Abated \$4,709.79	\$4,251.36
Taxes Timely Paid w/o Interest	Yes	Yes
Abatement Application Timely Filed ³	01/30/2020	01/28/21
Date of Decision	Partially Granted 03/04/20	Denied 04/13/21
Petition Timely Filed	04/29/20	05/25/21

Based on the information above, the Board found and ruled that it had jurisdiction to hear and decide the appeals for the fiscal years at issue.

The Appellant's Case

The appellant presented his case through documentary evidence and through testimony, primarily that of the appellant and Ms.

³While the abatement application for fiscal year 2020 was received by the assessors on February 6, 2020, it was mailed in an envelope postmarked January 30, 2020. Likewise, the abatement application for fiscal year 2021 was received by the assessors on February 8, 2021, but the postmark date was January 28, 2021. Under G.L. c. 59, § 59, the postmark date is deemed to be the date of delivery.

Garthe. Corey Brett, structural engineer, and Jeffrey Klein, certified residential appraiser ("appraiser"), whom the Board qualified as an expert witness, also testified.

The appellant contended that the fair cash value of the subject unit for the fiscal years at issue was zero dollars. He based this opinion of value on his belief that the subject unit was "uninhabitable, unsafe and dangerous to occupy" due to two primary defective conditions. He identified the purportedly defective conditions as: (1) the lack of a second legal means of egress from the subject unit and (2) leaks resulting in water intrusion from the roof of the building into the subject unit.

The appellant introduced evidence asserting that as of the dates of valuation, the Board of Governors was aware that the subject unit required a certified fire escape or a code compliant sprinkler system and that the fire escape that was in place was non-compliant for fiscal year 2021. The appellant detailed the efforts made by the Board of Governors to rectify the issue and recognized that a redesigned fire escape system was in operation as of January 1, 2019, although deficiencies with that system had been identified by January 1, 2020, the valuation date for fiscal year 2021. The appellant introduced an order that was issued by the Massachusetts Building Code Appeals Board on August 21, 2019, which stated that the redesigned fire escape system did not provide an adequate means of egress but suggested optimism that a solution

was expected through the engagement of a professional design consultant.

The other issue identified by the appellant as affecting his opinion of value involved roof water leakage. The appellant testified that he and Ms. Garthe vacated the subject unit in 2015 following a winter thaw that resulted in roof water infiltration due to a frozen drain and subsequent ceiling damage to the interior of the subject unit. Having not since inhabited the subject unit, the appellant and Ms. Garthe were unable to state with certainty whether there was continuing water leakage due to a frozen roof drain. The appellant noted that prior to the 2015 leak, the Board of Governors had acted to relocate the roof drain in an effort to improve the water flow. Though this effort, according to the appellant, proved unsuccessful, the Board of Governors did attempt to take measures to address issues as they arose.

The appellant also asserted that mold had developed in the attic, but he failed to confirm its presence through the introduction of any evidence that testing for mold was performed. The appellant contended that because the issues originated in common areas, he and Ms. Garthe had no authority to take corrective action. He presented the position that because outstanding issues had not been fully remediated by the initial attempts of the Board of Governors, the subject unit was rendered uninhabitable, had no value, and should be assessed as such. The appellant opined that

the subject unit was neither rentable nor saleable with these two issues outstanding, but he failed to substantiate this opinion with credible evidence. He further asserted that the subject unit was both uninsured by Glover Landing and uninsurable by the owners, but he failed to submit evidence establishing that to be the case.

The appellant presented no reliable evidence to establish that issues regarding the fire escape system and water leakage were incurable or cost prohibitive. He offered no estimates of the cost of curing the issues, and he offered only his opinion, unsupported by objective evidence, that one could not live in the subject unit. Similarly, the appellant's appraiser offered only his unsubstantiated view that the subject unit was not habitable. He further asserted that a reliable value appraisal of the subject unit could not be made, as an appraisal of the subject unit would be speculative or unreliable.

The Assessors' Case

The assessors presented their case primarily through the testimony of Karen Bertolino, Assistant Assessor. They also submitted relevant jurisdictional documents and various other documents.

The assessors asserted that the subject unit was appropriately assessed for \$453,300 and \$408,000, respectively, for the fiscal years at issue. Although they acknowledged defects in the fire escape system and water leakage issues at the time of

the valuation for the fiscal years at issue, the assessors credibly maintained that those deficiencies had been adequately accounted for in the assessed values. The initially assessed value of \$900,000 for fiscal year 2016 was significantly reduced for that year and in subsequent years, with assessed values ranging from \$458,100 to \$408,000 in fiscal years 2018 through 2021, in recognition of repairs needed to the common areas. The assessors disputed the appellant's assertions that the subject unit was unsafe, unsaleable, and uninsurable. They agreed that issues regarding the fire escape system and water leakage diminished the value of the subject unit, as reflected in the reduced valuations, but they maintained that the defects did not render the subject unit without value altogether.

The Board's Findings and Rulings

The Board found and ruled that the appellant failed to establish overvaluation of the subject unit. The appellant's argument that the subject unit had no value was based on his assertion that it suffered from structural defects that made it unsafe to inhabit and that the defects were irreparable because they were not within the owners' control to remediate. The Board found and ruled that there was no credible evidence that the structural issues, specifically the non-compliant fire escape system and the roof leaks, rose to the level that the subject unit

should be deemed uninhabitable or that these issues were irreparable.

The evidence indicated that the Board of Governors had taken significant steps to remedy the issues, including having redesigned the fire escape and having relocated the roof drain, and credibly indicated that there was no reason to believe that the Board of Governors would not continue to work toward effective solutions, particularly where an order had been issued by the Massachusetts Building Code Appeals Board to develop a compliant fire escape.

The appellant focused solely on the assertion that the subject unit was worth zero dollars. He presented no alternative proposal for abatement, and he did not otherwise concede that the subject unit had a fair market value that was more than zero but less than the assessed value. Furthermore, the assessors credibly and reasonably accounted for deficiencies in the common areas affecting the subject unit through their assessed values, including previously applied adjustments. Based on the record, the Board found and ruled that the appellant failed to meet his burden of establishing that the fair cash value of the subject unit was lower than its assessed value for the fiscal years at issue. Accordingly, the Board issued a decision for the appellee in these appeals.

OPINION

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 upon which a willing seller and a willing buyer agree if both of them 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 proof in establishing that the property at issue has a lower value than its assessed value. "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)).

The fair cash value of property may be determined by recent sales of comparable properties in the market. See ***Correia v. New Bedford Redevelopment Authority***, 375 Mass. 360, 362 (1978). Properties are "comparable" to the subject property when they share "fundamental similarities" with the subject property, including similar age, location, and size. ***Lattuca v. Robsham***, 442 Mass. 205, 216 (2004). "Once basic comparability is established, it is then necessary to make adjustments for the differences, looking primarily to the relative quality of the properties, to develop a market indicator of value." ***New Boston Garden Corp. v. Assessors of Boston***, 383 Mass. 456, 470 (1981).

In the instant appeals, the Board found and ruled that the appellant failed to meet his burden of proof to establish that the subject unit had a lower fair cash value than its assessed value for the fiscal years at issue. Namely, the appellant offered no sales of properties as potential comparables, nor did he submit any estimates of the cost to fix the problems with the fire escape system and the water leakage. The Board therefore had no basis to determine further abatement.

The appellant based his argument, instead, on the premise that the subject unit was worthless because, in his opinion, it was uninhabitable due to what he deemed to be safety and water intrusion issues that were beyond his control to remediate. However, he pointed to no legal documentation stating that the

subject unit was uninhabitable. Even if the subject unit were deemed uninhabitable, which was not established to be the case here, the Board has previously concluded that "uninhabitable is not the same as unsalvageable and some value may still be attributed to the dwelling as long as the assessors have properly taken into account the extent of any damage." ***Christopher Smith d/b/a Solar Fields LLC v. Assessors of Hatfield***, Mass. ATB Findings of Fact and Reports 2014-587, 595. Consistent with this principle, in the current appeals, the subject unit was assessed at 45% to 50% of its originally assessed fiscal year 2016 value to account for the structural defects that required remediation.

Based on the foregoing, the Board found and ruled that the appellant failed to meet his burden of proving that the fair cash value of the subject unit for the fiscal years at issue was lower than its assessed value. Accordingly, the Board issued a decision for the appellee in these appeals.

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