

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

GEORGE H. MORTH, JR.
KAREN E. MORTH, ESQ.

v.

**BOARD OF ASSESSORS OF
THE TOWN OF REHOBOTH**

Docket No. F339312

Promulgated:
July 15, 2020

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 Town of Rehoboth ("appellee" or "assessors"), to abate a tax on certain real property in the Town of Rehoboth owned by and assessed to George H. Morth, Jr. and Karen E. Morth, Esq. ("appellants") under G.L. c. 59, §§ 11 and 38 for fiscal year 2019 ("fiscal year at issue").

Chairman Hammond heard the appellee's motion to dismiss the appeal for lack of jurisdiction. Commissioners Rose, Good, Elliott and Metzger joined him in allowing the motion and issuing a decision 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.

George H. Morth, Jr. and Karen E. Morth, Esq. for the appellants.

Adam J. Costa, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

Based on motions and exhibits submitted by the parties, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2018, the relevant assessment date for the fiscal year at issue, the appellants were the owners of a parcel of land improved with a single-family residence located at 133 Winthrop Street in the Town of Rehoboth ("subject property"). For the fiscal year at issue, the appellee assessed the subject property at \$319,800.

The appellants filed an abatement application with the appellee on January 30, 2019, which the appellee denied on April 29, 2019. On July 29, 2019, the appellants seasonably filed their Petition Under Formal Procedure ("petition") with the Board.

The appellants' petition states: "Valuation of property not in issue." Therefore, while they filed the instant appeal within the timeframe for the fiscal year at issue, the appellants admitted that they were not contesting the assessment of the subject property for that fiscal year.

Instead, the appellants complained that the appellee had previously over-assessed the subject property for an unknown period of time by erroneously classifying the subject property's residence as having an "expansion attic finished," with a unit valuation of \$41.27 for 576 square feet of attic living area. The appellants informed the appellee of the error by written

correspondence in September 2017. The appellee subsequently, and in advance of the fiscal year at issue, adjusted the property record card by replacing "expansion attic finished" with "unfinished attic." The appellee valued the subject property's 1,152 gross feet of attic area at a unit rate of \$13.51. The adjusted property record card indicated a total value of \$319,800, which was the assessment of the subject property for the fiscal year at issue.

The appellants, asserting previous overbillings, wanted the assessors to apply alleged tax overpayments for prior fiscal years as a credit against their tax liability for the fiscal year at issue.

On December 27, 2019, the appellee filed a motion to dismiss, contending that the Board lacked jurisdiction to hear the instant appeal because the appellants were seeking a refund of taxes paid in years for which they had not filed abatement applications. The appellants opposed this motion, arguing that the appellee's motion to dismiss was not timely filed in accordance with Rule 1.12 of the Board's Rules of Practice and Procedure, at 831 CMR 1.12, which requires that the appellee either file an answer within thirty days of the appellants' filing of their petition, or file a motion to dismiss - which they asserted was required to be filed within the same thirty-day period. The appellants filed their petition on

July 29, 2019 and the appellee filed their motion to dismiss on December 26, 2019, more than thirty days later.

The appellants further maintained that they were appealing their taxes for the fiscal year at issue because they were seeking to have overages from prior tax years applied as a credit against their fiscal year 2019 tax bill.

For reasons discussed more fully in the Opinion, the Board found that the issue of jurisdiction may be brought to the Board at any time and thus, the appellee's motion to dismiss was not untimely. The Board, therefore, had authority to rule on the motion.

The Board further found that, even though the appellants were seeking a reduction in their tax bill for the fiscal year at issue, the appellants' abatement request did not challenge the valuation of the subject property for that year. Instead, the appellants were contesting the valuation of the subject property for prior fiscal years. However, the appellants did not file abatement applications for those prior years. As discussed more fully in the Opinion, the filing of an abatement application is a statutory prerequisite to the Board's jurisdiction over an appeal. Therefore, the Board found that it lacked jurisdiction to hear the instant appeal.

Accordingly, the Board allowed the appellee's motion to dismiss the appeal and issued a decision for the appellee.

OPINION

The issue presented for consideration was whether the Board had jurisdiction to hear and decide the instant appeal, where the appellants were disputing the valuation of the subject property for years prior to the fiscal year at issue for which they did not submit abatement applications.

As a preliminary matter, the appellants maintained that the appellee filed its motion to dismiss more than thirty days from the filing of the petition, which the appellants contended violated the Board's Rule 1.12. However, it is well settled that the question of jurisdiction can be raised at any time and at any stage of the proceedings. *Assessors of Boston v. Suffolk Law School*, 295 Mass. 489, 495 (1936). Moreover, although the Board's Rule 1.12 establishes a thirty-day time period within which an answer must be filed, the period for filing an answer can be extended by the Board, and Rule 1.12 does not establish a stated time period within which an appellee must file a motion to dismiss. The Board found and ruled that the appellee's motion to dismiss was not untimely and, therefore, the Board had authority to rule on this motion.

The abatement remedy is created by statute and, therefore, the Board has only that jurisdiction conferred on it by statute. *Id.* at 492 ("Since the remedy by abatement is created by statute the board . . . has no jurisdiction to entertain proceedings for relief by abatement begun at a later time or prosecuted in a

different manner than is prescribed by the statute."). The timely filing of an abatement application with the assessors is a crucial step to the Board's jurisdiction over an appeal. ***New Bedford Gas & Edison Light Co. v. Board of Assessors of Dartmouth***, 368 Mass. 745, 747 (1975) ("Adherence to the schedule of application incorporated in G.L. c. 59, § 59, is an essential prerequisite to effective application for abatement of taxes and to prosecution of appeal from refusals to abate taxes."). Therefore, "there can be no appeal to the board on the merits after the right to apply to the assessors for abatement has been lost through failure to follow statutory procedures." *Id.* at 748.

In the present appeal, the appellants' petition stated that "[v]aluation of property [was] not in issue" for the fiscal year at issue. Instead, the appellants were contesting the subject property's valuation and assessment for years prior to the fiscal year at issue. Filing an abatement application is a statutory prerequisite to the Board's jurisdiction over an appeal pursuant to G.L. c. 59, § 59. The appellants did not file abatement applications for those prior years, and the timeframe for doing so had expired before the appellants filed their abatement application for the fiscal year at issue. See G.L. c. 59, § 59. Having lost their right to apply to the assessors for an abatement with respect to those prior years, the appellants had no right to appeal to the Board seeking a credit on account of taxes paid in

those prior years. *New Bedford Gas & Edison Light Co.*, 368 Mass. at 748; see also *Coyle v. Assessors of Kingston*, Mass. ATB Findings of Fact and Reports 2020-312, 318. Therefore, the Board ruled that it lacked jurisdiction to hear this appeal.

Accordingly, the Board allowed the appellee's motion to dismiss.

THE APPELLATE TAX BOARD

By: /s/ Thomas W. Hammond
Thomas W. Hammond, Jr., Chairman

A true copy,

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