TAX COURT OF NEW JERSEY

**Kathi F. Fiamingo**
**Judge**

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THE TAX COURT COMMITTEE ON OPINIONS

March 28, 2016

Mr. Khalid M. Mir
P.O. Box 15462
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John Emolo, Esq.
155 Market Street
Paterson, NJ 07505-1405

Re: Khalid M. Mir v. Paterson City
Docket No. 011494-2015

Messrs. Mir and Emolo:

This letter constitutes the court's opinion after trial in the above-referenced matter challenging the 2015 tax year assessment on plaintiff's single-family residence. For the reasons stated more fully below, the assessment is affirmed.

## I. Factual Background

Plaintiff Khalid M. Mir is the owner of the single-family home located at 308-318 E. 37th Street, City of Paterson, Passaic County, New Jersey, which is known as Lot 3 in Block 8110 on the official tax map of the City of Paterson. For the 2015 tax year, the subject property was assessed as follows:

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|---|---|
| Land: | $136,000 |
| Improvements: | 219,900 |
| Total | $355,900 |

For 2015 the City of Paterson engaged in a revaluation and thus the Chapter 123 ratio for that year is 100%.

Plaintiff filed a petition of appeal with the Passaic County Board of Taxation challenging the assessment on the subject property and on July 7, 2015 a Memorandum of Judgment affirming the assessment was entered. Plaintiff timely filed a small claims complaint with the Tax Court. No counterclaim was filed by the City.

In accordance with its standard practice, the Tax Court sent a Notice to both plaintiff and counsel for the City that the case had been assigned for trial before the undersigned on Thursday, March 3, 2016 at 9:00 a.m. Accordingly, plaintiff appeared on the assigned date and time with his expert appraiser. After conferring with the City's expert in an effort to resolve the matter without resorting to trial, the parties informed the court that they were unable to settle the matter. Plaintiff indicated to the court that he wished to proceed with the trial.

The matter was therefore tried to conclusion. Plaintiff presented his expert, a certified real estate appraiser, who testified and submitted his expert report into evidence. The City presented no witnesses and instead relied on its assessment.

The subject property is a 2.5 story 3,312 square foot colonial style single-family home with a brick exterior and detached two-car garage. It is approximately 100 years old and is situated on a lot containing 15,000 square feet. The home consists of a total of nine rooms, including four

bedrooms and one full and two half bathrooms, central air conditioning, a finished basement, patio and porch. The subject property is located in an R-1 residential zone and is conforming.

The expert employed the sales comparison approach to value the property as of October 1, 2014 and arrived at a conclusion of value of $270,000. Following completion of the plaintiff's expert's testimony, defendant made a motion to dismiss for failure to overcome the presumption of validity. The court reserved a decision on the motion. Defendant rested, presenting no evidence and instead relying on the presumption of validity of its assessment. The court advised the parties that a decision would be forthcoming.

The following morning, plaintiff telephoned the court's staff advising that he wanted to accept the offer that the City had made prior to the trial. Staff informed plaintiff that he would have to contact the City's counsel to determine if the offer was still available and, if so, a Stipulation of Settlement would be required.[1]

Because plaintiff indicated that he was having some difficulty in getting a response from the City, the court held a telephone conference call with plaintiff and counsel for the City. During that call, plaintiff alleged that prior to the trial, he asked counsel for the City to "prepare the papers" for him to accept the City's offer, but that counsel "yelled" at him and told plaintiff he was "defending my case."

City counsel acknowledged that the City had made a settlement offer to plaintiff but that plaintiff advised that he was not satisfied with the offered settlement and had rejected it. Counsel denied that plaintiff ever told him that he wanted to accept the offer. He also denied that he refused to allow plaintiff to accept an offer. Counsel stated that the only reason to try the case was because

[1] Plaintiff also appeared at chambers wanting to file documentation with the court. Upon learning that the documentation may contain details of the settlement discussions between plaintiff and the City, the court directed its staff not to accept the filing.

plaintiff refused the offer made by the City. Counsel indicated that he felt pressured by plaintiff to try the case once the offer was rejected. While insisting that he had never rejected the offer, plaintiff stated that he believed "negotiations" were ongoing.

When asked why he did not tell the Court that he wanted to settle the case and not go to trial, plaintiff stated that his mind was "paralyzed." He then referenced R. 8:6-8 and stated that he thought the purpose of the March 3, 2016 court date was to engage in a mandatory settlement conference.[2] The court explained to plaintiff that the mandatory settlement conference referenced in R. 8:6-8 is applicable only to cases assigned to the Standard Track and that plaintiff's matter was a small claims matter. When the court questioned plaintiff as to when he became aware of R. 8:6-8, an answer was not forthcoming.

In any event, counsel for the City advised the court that any settlement offer that was made prior to the trial had since been withdrawn because plaintiff had rejected the offer and had elected to proceed to trial. The court advised the parties that in light of the foregoing, the court would proceed to issue an opinion based on the evidence adduced at trial.

## II. Findings

### a. Procedure

The court records reflect that plaintiff received a Case Management Plan in September 2015, which designated March, 2016 as the "Trial Month/Year." That document also designated plaintiff's case as a "Small-Single Family Track" matter. Even assuming that plaintiff believed that he was required to engage in a Mandatory Settlement Conference, R. 8:6-8 requires that the conference be held no later than four months before the schedule trial month set forth in the Case

[2] R. 8:6-8 requires parties in all property tax cases assigned to the standard track to hold a mandatory settlement conference not later than 4 months before the "scheduled trial month as set forth in the case management notice."

Management Plan. This would mean that a settlement conference, had it been required, would have had to have been held in November 2015. The court finds plaintiff's feigned reliance on R. 8:6-8 is disingenuous.

The court records further reflect that plaintiff received a notice from the Tax Court Management Office which stated that the case was assigned to the undersigned for trial on March 3, 2016. In the face of these notices, it is not credible that plaintiff misunderstood the purpose of the March 3, 2016 court date.

The court finds that plaintiff attended the March 3, 2016 court date with his expert fully prepared to try the case if his efforts at settlement were unsuccessful and does not find plaintiff's claim that he did not expect to try the case on that date credible. The court also finds that plaintiff rejected the offer made by the City prior to trial.

**b. Plaintiff's Valuation Evidence**

Plaintiff offered the testimony of a state certified residential real estate appraiser. After some *voir dire*, defendant accepted plaintiff as an expert. Plaintiff's expert testified and submitted a report in which he relied on the sale of three homes, all located in Paterson, to arrive at his conclusion of value.

Comparable sale one, located at 606-612 Park Ave, sold May 27, 2014 for a price of $214,000. This comparable was .5 miles from the subject property and was a single-family home with nine rooms, four bedrooms and two full baths on a 16,800 square-foot lot. It was approximately 100 years old and contained 3,057 square feet of gross living area. Plaintiff's expert made an adjustment of -$1,800 ($1.00 per square foot) for the difference in lot size, +10,000 for the quality of construction, +$8,925 ($35 per square foot) for the difference in gross living area, +$5,000 for central air conditioning and -$3,000 for amenities (the comparable had a fireplace and

deck). The total gross adjustments of 13.4% and the net adjustments of 8.9% ($19,125) resulted in an adjusted sales price of $233,125. This comparable was not listed in the multiple listing service but the expert obtained information regarding the sale from public records and the property record card. He testified that it was not marked non-usable, and that he confirmed the sale with the participants, deeming it an arms-length transaction. He did not know how long the property had been marketed.

Comparable sale two was located at 823 Broadway Avenue, approximately .44 miles from the subject, and sold on June 16, 2014 for $280,000. This single-family home contained eight rooms, including four bedrooms and three and a half baths, 2,652 square feet of gross living area and was on a 8,800 square foot lot. It was approximately 105 years old and had "numerous updates" including an updated kitchen and baths. The expert testified that its condition was "much superior" to that of the subject. The expert made the following adjustments: +$14,000 (5%) for its location on a "busy road," +$6,200 for lot size, -$28,000 (10%) for the upgrades in the kitchen and baths, -$15,000 for bathrooms, +$23,100 for gross living area, +$2,500 for partially finished basement, and -$3,000 for amenities (fireplace, patio, built in BBQ). Total gross adjustments were 32.8% with net adjustments of -$200 (0.1%) for an adjusted sales price of $279,800.

Comparable sale three was located at 42 13th Avenue and sold on August 25, 2014 for $290,000. This single-family home was located .38 miles from the subject and contained ten rooms, four bedrooms and three baths on a 6,200 square foot lot. It included 2,777 square feet of gross living area. It was approximately 90 years old and had an updated kitchen and baths. It had been marketed for 462 days. The following adjustments were made: -$10,150 for concessions made to the buyer on the sale for closing costs for a "VA" loan, +$14,500 (5%) for slightly inferior location near a hospital (5%), +$8,800 for lot size, +10,000 for quality of exterior frame

construction, -$29,000 for its far superior condition due to many updates such as updated kitchen/baths, +$18,725 for gross living area and -$25,000 for finished attic. Gross adjustments were 40.1% and net adjustments were 4.2% (-$12,125) for an adjusted sales price of $277,875.

The expert testified that he relied more heavily on comparable sales two and three and concluded a value of $270,000.

Plaintiff's expert supported his various adjustments generally on "pattern recognition of historical paired sales" over his thirty years of experience of analyzing "thousands and thousands" of sales. As a result of this analysis and the comparable sales, he made his various adjustments. The lot size adjustment was based on his conclusion that vacant land sold at $1.00 per square foot in Paterson. No documentation to support his conclusion was provided.

The expert calculated the gross living area adjustment, again relying on his experience, at $70.00 per square foot. He then testified that the subject was larger than the typical home in Paterson and based on his observations there would be "diminishing returns" on the excess square footage. He therefore reduced the gross living area adjustment by 50% to $35.00 per square foot in recognition of the diminishing returns.

In support of the location adjustment, the expert indicated there would be a 5% adjustment for external obsolescence. This adjustment was again based on his observation of the market over a period of thirty years.

The expert made condition adjustments of 10% to both comparable sale two (updated kitchen/baths and refinished flooring) and three (updated kitchen/bath), which he verified from photos on the multiple listing as well as information contained in the property record cards. He testified that he would give the updates a contributory dollar value, but through his "pattern recognition" data he was able to assign an adjustment of 10% for the updates.

The finished attic adjustment of $25,000 was based on his opinion that it was a significant feature that added more living area. The expert did not indicate the amount of gross living area added as a result of the completed area. Similarly, the expert assigned a value of $2,500 for the partially finished basement at comparable sale two but did not provide any square footage calculation or methodology to support this adjustment.

On cross-examination, the expert acknowledged that the subject sold in late 2011 for $400,000, but that he did not examine values as of 2011 and had no opinion as to whether the sales price represented fair market value.

## II. Conclusions of Law

### a. Presumption of Validity

The court's analysis begins with the well-established principle that "[o]riginal assessments and judgments of county boards of taxation are entitled to a presumption of validity." MSGW Real Estate Fund, LLC v. Borough of Mountain Lakes, 18 N.J. Tax 364, 373 (Tax 1998). The appealing taxpayer has the burden of proving that the assessment is erroneous." Pantasote Co. v. City of Passaic, 100 N.J. 408, 413 (1985) (citing Riverview Gardens v. North Arlington Borough, 9 N.J. 167, 174 (1952)). The evidence must be "definite, positive and certain in quality and quantity to overcome the presumption." MSGW Real Estate Fund, L.L.C. v. Borough of Mountain Lakes, supra, 18 N.J. Tax at 373.

At the close of plaintiff's case, defendant moved to dismiss for plaintiff's failure to overcome the presumption of correctness. The court reserved decision. Defendant then rested, relying on its assessment.

The court finds that plaintiff produced sufficient evidence to overcome the presumption of correctness attached to the assessment. If taken as true, plaintiff's expert's testimony created a

debatable question about the correctness of the assessment. Giving the plaintiff's expert's testimony every positive inference, the court concludes that the presumption of correctness has been overcome.

However, concluding that the presumption of correctness has been overcome does not equate to a finding by the court that the assessment is erroneous. Once the presumption is overcome, "the court must then turn to a consideration of the evidence adduced on behalf of both parties and conclude the matter based on a fair preponderance of the evidence." Ford Motor Co. v. Township of Edison, 127 N.J. 290, 312 (1992). The taxpayer continues to bear the burden of persuading the court that the "judgment under review" is erroneous. Id. at 314–15.

Accordingly, the court will evaluate and weigh the evidence presented to determine if plaintiff met the requisite burden of persuading a change in the assessment.

**b. Plaintiff's Proofs**

For an expert's testimony to be of any value to the trier of fact it must have a proper foundation. See Peer v. City of Newark, 71 N.J. Super. 12, 21 (App. Div. 1961), certif. denied, 36 N.J. 300 (1962). When an expert "offers an opinion without providing specific underlying reasons . . . he ceases to be an aid to the trier of fact." Jimenez v. GNOC, Corp., 286 N.J. Super. 533, 540 (App. Div. 1996). An expert witness is required to "give the why and wherefore of his expert opinion, not just a mere conclusion." Id. at 540. The weight to be afforded an expert's testimony relative to adjustments "depends upon the facts and reasoning which form the basis of the opinion. An expert's conclusion can rise no higher than the data providing the foundation. If the bases for the adjustments are not made evident the court cannot extrapolate value." Inmar Associates v. Edison Township, 2 N.J. Tax 59, 66 (Tax 1980) (internal citation omitted). "Without explanation as to the basis, the opinion of the expert is entitled to little weight in this regard." Dworman v.

Tinton Falls, 1 N.J. Tax 445, 458 (Tax 1980) (citing Passaic v. Gera Mills, 55 N.J. Super. 73 (App. Div. 1959), certif. denied, 30 N.J. 153 (1959)).

> [D]ifferences between a comparable property and the subject property are anticipated. They are dealt with by adjustments recognizing and explaining these differences, and then relating the two properties to each other in a meaningful way so that an estimate of the value of one can be determined from the value of the other.
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> [U.S. Life Realty Corp. v. Jackson Township, 9 N.J. Tax 66, 72 (Tax 1987); see also Congoleum Corp. v. Township of Hamilton, 7 N.J. Tax 436, 451 (Tax 1985) (concluding that adjustments must be sufficiently supported by objective data).]

The court recognizes that to some extent an appraiser's opinion is based upon his or her experience and recognition of market reaction to certain standard aspects of differences in real estate. However, the court must also point out that in order for the court to determine the soundness of an expert's opinion, it must have a basis to evaluate that opinion. The objective data supporting that opinion must be provided.

The expert in this matter relied on facts that were not in the record but that he observed over his decades as an appraiser. The court does not discount the expert's knowledge or experience, but is unable to gauge the accuracy of those observations because the facts supporting such observations were not provided to the court, either in his report or in his testimony.

The expert maintained that he met the requirements established in "Judge Andresini's ruling" that his report contain support for how he arrived at his adjustments. He referenced the section of his report entitled "Support for Adjustments," which states:

> All adjustments are derived and supported by a method of Pattern Recognition via paired sales analysis data collected over the appraisers 29 years of appraisal experience. The collection of data supports typical percentage and dollar adjustments for individual line item comparisons for properties in certain price ranges, locations, and other significant features. The appraiser has also applied the bracketing method with both the unadjusted and adjusted sales price ranges supporting the value indication and adjustments. All adjustments reflect the

> estimated market reaction to differences where warranted and supported and are considered practical and reasonable for the differences noted.

In referring to "Judge Andresini's ruling," the court presumes that the expert means Greenblatt v. Englewood City, 26 N.J. Tax 41 (Tax 2010). The expert, misreads the court's opinion in that matter. In Greenblatt, Judge Andresini reiterated the requirement that there must be an explanation of the methodology and assumptions used in arriving at an expert's adjustments. Id. at 20. The Judge rejected the opinions of the experts in that matter because "no 'whys' and no 'wherefores' by which [the expert's] adjustment can be measured" was provided. Id. at 19.

Simply referring to data collected over decades, which may exist in the expert's office files, does not provide the court with the necessary explanation of the methodology and assumptions used in arriving at the adjustments. The expert must provide the data, not just refer to it, in order to support adjustments underlying an opinion of value.

"[A]lthough the Tax Court has the responsibility to make an independent determination of value that 'right is not boundless.'" Global Terminal & Container Services v. Jersey City, 15 N.J. Tax 698, 703 (App. Div. 1996) (citing F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 430 (1985)). "The court need not make such determination in the absence of 'sufficient compliant evidence' to overcome the presumption." Ibid. (citing Ford Motor Co. v. Township of Edison, 127 N.J. 290, 312, (1992)); accord Samuel Hird & Sons, Inc. v. Garfield, 87 N.J. Super. 65 (App. Div.1965); WCI-Westinghouse v. Edison, 7 N.J. Tax 610, 631 (Tax 1985), aff'd, 9 N.J. Tax 86 (App. Div. 1986).

The court is without sufficient competent evidence in this matter to make a determination of value. As a result, the assessment is affirmed and judgement is entered accordingly.

Very truly yours,

Kathi F. Fiamingo, J.T.C.