

OHIO BOARD OF TAX APPEALS

Board of Education of the)	CASE NO. 2006-H-1622
Columbus City Schools,)	
)	(REAL PROPERTY TAX)
Appellant,)	
)	DECISION AND ORDER
vs.)	
)	
Franklin County Board of Revision,)	
the Franklin County Auditor, and)	
Bashir Jara,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant Bd. of Edn. -	-	Rich & Gillis, LLC James Gorry 300 East Broad Street, Suite 300 Columbus, Ohio 43215
For the County Appellees	-	Ron O'Brien Franklin County Prosecuting Attorney Paul Stickel Assistant Prosecuting Attorney 373 South High Street, 20 th Fl Columbus, Ohio 43215
For the Appellee Property Owner	-	Ermel R. Luckett, Jr., Esq. 24 North High Street Columbus, Ohio 43215

Entered April 28, 2009

Ms. Margulies, Mr. Johrendt, and Mr. Dunlap concur.

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed by appellant Board of Education of the Columbus City Schools (“BOE”) from a decision of appellee Franklin County Board of Revision (“BOR”). It is submitted upon the statutory transcript (“S.T.”) certified to

this board by the BOR, the record of the hearing before this board (“H.R.”), and the briefs of the BOE and property owner.

This appeal involves the 2005 taxable value of real property located in the Columbus city schools taxing district and further identified as parcel numbers 010-070190, 010-07019, 010-00438, and 010-030494. The contested parcels comprise commercial property improved with a convenience store and a shop operated as a used tire business. S.T. at Ex. 6; H.R. at 10-11, 18-19.

The combined value of the subject parcels for 2005, as originally assigned by the Franklin County Auditor (“auditor”), is \$148,100. The BOE filed a complaint with the BOR asserting that the property had recently transferred and value should be increased to equal the \$265,000 sale price. Bashir Jara (“property owner”) filed a counter-complaint asserting that the sale price does not reflect the market price.

At the hearing before the BOR, the BOE presented a copy of a real property conveyance fee statement and general warranty deed evidencing the transfer of the subject property on September 7, 2005 for the amount of \$265,000. S.T. at Ex. 7. Jara testified before the BOR that the subject property was transferred as the record indicates, but claimed that the purchase was made under duress. S.T. at audio recording of BOR hearing. Following its hearing, the BOR decided the sale was not at arm’s length and retained the auditor’s combined value. Id.

In its appeal of the BOR’s determination, the BOE maintains that the sale was at arm’s length and the transfer provides the best evidence of the subject’s value. At the hearing before this board, Jara again testified that he acquired an existing

convenience store business in 2000, which included inventory and equipment, such as coolers, but did not include the subject real property. H.R. at 16, 20. In June 2000, Jara negotiated a five-year lease for his store with the subject's then owner Peter Bush that contained a renewal provision for an additional five years. H.R. at 9, 26-27; appellee's Ex. 1. Jara testified that in 2005 Bush refused to renew the lease but offered to sell him the property for \$270,000. Jara said Bush told him he had a third party interested in purchasing the property. H.R. at 13, 15. While considering the offer, Jara said he did not contact an attorney to enforce the lease or real estate professionals about possible space to relocate his business. Instead, he and his friend looked around the neighborhood and were unable to find any empty stores available. H.R. at 27-29. Jara said he did not obtain estimates on the cost to relocate his business. H.R. at 30. Jara testified "[t]hat was very risky to go to a new place to take all of the equipment out to establish the business from zero. *** I did not ask nobody, but I know if you take your equipment, it will cost lot of money. It is better to buy the expensive property instead of moving to new place." [sic] Id.

We begin our review of this matter by noting that a party who asserts a right to an increase or decrease in the value of real property has the burden to prove the right to the value asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336; *Crow v. Cuyahoga Cty. Bd. of Revision* (1990), 50 Ohio St.3d 55; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318. Consequently, it is incumbent upon an appellant challenging the decision of a board of revision to come forward and offer evidence that demonstrates

its right to the value sought. *Cleveland Bd. of Edn.*, supra; *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493. Once an appellant has presented competent and probative evidence of true value, other parties asserting a different value then have a corresponding burden of providing sufficient evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn.*, supra; *Mentor Exempted Village Bd. of Edn.*, supra. Accordingly, this board must proceed to examine the available record and to determine value based on the evidence before it. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In doing so, we will determine the weight and credibility to be accorded to the evidence presented. *Cardinal Fed. S.& L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

As we review the statutory transcript certified to this board by the BOR, we note the BOE presented copies of a conveyance fee statement and general warranty deed evidencing the transfer of the subject property on September 7, 2005 for the amount of \$265,000. S.T. at Ex. 7.

R.C. 5713.03 provides, in pertinent part, that:

“In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price *** to be the true value for taxation purposes.”

As the party asserting that the valuation determined by the BOR should be increased, the BOE bears the burden of proving that the value it alleges should be the true value. The BOE met that burden by introducing documents establishing that

the property sold on September 7, 2005 for the amount of \$265,000. *Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 107 Ohio St.3d 250, 252, 2005-Ohio-6434. It is well established that when property has been the subject of a recent arm's-length sale between a willing buyer and a willing seller, the sale price of the property shall be the true value for taxation purposes.¹ *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 45, 2008-Ohio-1588; *Rhodes v. Hamilton Cty. Bd. of Revision*, 117 Ohio St.3d 532, 2008-Ohio-1595; *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473; *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 271-272, 2005-Ohio-4979; *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129, at the syllabus; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410.

Although the presumption exists that the sale price is the best evidence of true value, that presumption may be rebutted where the sale is not an arm's-length sale. *Cleveland Mun. School Dist. Bd. of Edn.*, *supra*, citing *Lakeside Ave. Ltd. Partnership v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 540, 544. In *Walters v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, syllabus, the court held

¹ We find the evidence of the sale of the subject eight months after the tax lien date is sufficiently recent for tax valuation purposes. See R.C. 5713.03; *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36; *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57; *Bd. of Edn. for Orange City School Dist. v. Cuyahoga Cty. Bd. of Revision* (May 17, 2002), BTA Nos. 2000-R-880, et seq., unreported; *Equity Strongsville II. v. Cuyahoga Cty. Bd. of Revision* (Feb. 2, 1996), BTA Nos. 1994-M-163, et seq., unreported.

that “an arm’s-length sale is characterized by these elements: it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest.” The property owner contends the transfer was not an arm’s-length sale since the price paid for the subject was the result of economic duress. Based on Jara’s testimony, the property owner’s alleged duress stemmed from his belief that he had no choice but to purchase the subject at an inflated asking price.

Assertions of duress have been considered numerous times by the courts and this board. In determining whether a sale is the result of compulsion or duress, the “subjective motives” of the buyer and seller must be examined. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Sept. 29, 1992), Franklin App. No. 92AP-281, unreported; *Dublin City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (May 5, 1995), BTA No. 1993-T-1107, unreported, affirmed (Mar. 7, 1996), Franklin App. No. 95APH06-718, unreported. In making this determination, the party seeking to rely on economic duress has the burden of establishing that he or she was not a “willing buyer.” *Dublin, supra, Cobblestone Square Co., Ltd. v. Lorain Cty. Bd. of Revision*, 106 Ohio St.3d 305, 2005-Ohio-5128. Cf. *Tele-Media Co. v. Lindley* (1982), 70 Ohio St.2d 284.

In *Lakeside, supra*, for example, the court held that certain compelling business circumstances can establish either that a recent sale was not made at arm’s length or that the sale was not representative of value. The court found in *Lakeside* that the purchaser had no choice but to purchase the property because its business was dependent on a railroad ramp located on the property. The purchaser could not simply

move to another location, as it had to remain where the railroad tracks, and thus its business, were located. The court noted the purchaser faced the loss of a significant portion of its business that would have resulted in the purchaser's bankruptcy. "The choice between *** survival on one hand and swift and sure corporate death on the other hand presented Lakeside with no true alternative but to pay the price demanded by the seller." *Id.* at 549. See, also, *Columbus Bd. of Edn. v. Grange Mutual Casualty Co.* (Jan. 28, 1992), Franklin App. No. 90AP-317, unreported.

Comparable to the facts in the case before us, *Dublin*, *supra*, involved an automotive dealership that had leased its location for more than ten years. At the conclusion of the lease, the dealer and the property owner entered into negotiations to either renew the lease or sell the property to the dealer. The dealer ultimately purchased the property but argued that he paid more than market value because the property owner, knowing of the dealer's desire to remain at the location, had pressured him to pay more than market value. In short, the dealer argued that if he did not purchase the property at an inflated amount, the alternative would have been a substantial rent increase. While acknowledging that the dealer's motivations affected the decision to purchase the property, we concluded the factors did not rise to the level of compulsion or duress. We further found that the record lacked support for the dealer's claims that failure to purchase would result in economic harm, i.e., bankruptcy.

In this case, we are also unable to find that the property owner has established that he was not a willing buyer or that failure to purchase the subject would

have resulted in significant economic harm. Jara purchased his business and negotiated a five-year lease for commercial space to operate his store. As noted above, the addendum to Jara's lease contained a renewal provision for an additional five years with specified rent amounts. H.R. at 9, 26-27; appellee's Ex. 1. Jara testified that in 2005 he did not consult with an attorney to enforce the lease. *Id.* He testified that he did not attempt to relocate his business and he presented no evidence of specific relocation costs. Finally, he testified "It is better to buy the expensive property instead of moving to new place."

The testimony in *Lakeside*, *supra*, was that failure to purchase the property would have resulted in bankruptcy. Even if we assume Jara would have incurred relocation expenses if he had to move, there was no evidence that his convenience store could not be relocated or that losing this particular location would cause him to go out of business. Given his testimony, we must conclude Jara simply decided that purchasing the subject property made better sense from a business or economic perspective than potentially having to enforce the lease's renewal provision or relocate. The property owner may have made questionable business judgments, e.g., purchasing a business operated out of leased space without first negotiating a purchase option or ensuring a long-term lease was in place. However, we do not find that he has demonstrated that his purchase of the property was made under economic duress or that the sale price fails to represent true value. *Cleveland Mun. School Dist. Bd. of Edn.*, *supra*; *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 112 Ohio St.3d 309, 2007-Ohio-6.

The BOR found that the sale was not at arm's length, focusing on the fact the property was not listed by a realtor on the open market. However, this board has held that sale offers not made on the open market in the traditional sense, i.e., listed by a realtor, do not necessarily render a sale less than arm's length. See *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (July 20, 2001), BTA No. 1999-T-1808, unreported (sale between landlord/seller and tenant/purchaser); *Griesemer v. Montgomery Cty. Bd. of Revision* (Aug. 29, 2003), BTA No. 2002-A-1949, unreported (sale between executor/seller and former neighbor/purchaser); *DePrie v. Hamilton County Board of Revision* (Mar. 26, 2004), BTA No. 2003-M-337, unreported (sale between executor of estate and private party). Cf. *Kroger Co. v. Hamilton Cty. Bd. of Revision* (1993), 67 Ohio St.3d 145 (finding a loan secured by property, arranged as a sale-leaseback transaction, was not an arm's-length sale because the property was not offered on the open market).

We find that the transaction in this case qualifies as an open-market listing. *Walters*, supra. It appears Jara was able to negotiate the initial \$270,000 offer to the \$265,000 sale price. Presumably, Jara believed he was in competition for the property with another prospective buyer and, therefore, agreed to the purchase. See *South-Western City Schools Bd. of Edn.*, supra (distinguishing a duress sale from a sale involving a landlord/seller who, dealing from a position of strength, is a difficult negotiator). Thus, we find the sale to be at arm's length and, based on the record, we further find the property owner has not provided probative evidence to rebut the

presumption that the sale represents the best evidence of value. Accordingly, this board finds that the value of the subject property is its September 2005 sale price.

Therefore, based upon the preponderance of competent and probative evidence before this board, the value of the subject parcels as of January 1, 2005 shall be:

Permanent Parcel No. 010-070190

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$24,680	\$8,640
Building	<u>0</u>	<u>0</u>
Total	\$24,680	\$8,640

Permanent Parcel No. 010-070191

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$27,400	\$9,590
Building	<u>0</u>	<u>0</u>
Total	\$27,400	\$9,590

Permanent Parcel No. 010-004387

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$53,320	\$18,660
Building	<u>45,080</u>	<u>15,780</u>
Total	\$98,400	\$34,440

Permanent Parcel No. 010-030494

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 26,120	\$ 9,140
Building	<u>88,400</u>	<u>30,940</u>
Total	\$114,520	\$40,080

The Auditor of Franklin County is hereby ordered to cause his records to reflect the value determined herein for the subject real property and to assess the same in accordance therewith as provided by law.

ohiosearchkeybta