

OHIO BOARD OF TAX APPEALS

Board of Education of the Westerville)
City Schools,)
)
Appellant,)
)
vs.)
)
Franklin County Board of Revision,)
Franklin County Auditor, and Robert E.)
and Margaret J. Ruhl,)
)
Appellees.)

CASE NO. 1007-A-162
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Appellant - Rich, Crites & Dittmer, LLC
Joseph E. Schmansky
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For the County Appellees - Ron O'Brien
Franklin County Prosecuting Attorney
William J. Stehle
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For the Appellee Property Owners - Fred J. Milligan
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Entered April 28, 2009

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant from a

decision of the Franklin County Board of Revision. In said decision, the board of revision determined the taxable value of the subject property for tax year 2005.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the county board of revision, the record of the testimony and evidence presented at a hearing before this board, and the briefs filed by counsel to the appellant and to the property owners.

The subject real property, two office/warehouse buildings, is located in the city of Westerville-Westerville City school district taxing district, Franklin County, Ohio. The value of the parcel, #080-009294, as determined by the auditor and by the board of revision, is as follows:

	AUDITOR	
	TRUE VALUE	TAXABLE VALUE
Land	\$ 52,000	\$ 18,200
Bldg	398,000	151,240
Total	\$ 450,000	\$ 169,440

	BOARD OF REVISION	
	TRUE VALUE	TAXABLE VALUE
Land	\$ 52,000	\$ 18,200
Bldg	358,000	125,300
Total	\$ 410,000	\$ 143,500

The appellant board of education contends that the board of revision has undervalued the parcel in question by not relying upon the sale of the subject on February 20, 2003 from Melvin D. Hatch to appellees Robert E. and Margaret J. Ruhl (hereinafter "Mr. and Mrs. Ruhl") for \$575,000, as an indicator of its value.

Before turning to the merits herein, we will review how this matter came to this board on appeal. Specifically, the Board of Education of the Westerville City Schools filed an original complaint against the valuation of the subject property with the Franklin County Board of Revision seeking to increase the subject's value to reflect its sale price obtained in February 2003. A counter-complaint was filed by the property owners seeking to retain the auditor's valuation of the subject property, as supported by an appraisal of the subject. The board of revision decreased the valuation of the subject property to reflect the \$410,000 value for the real estate, as opined by the property owner's appraiser. The board of education, dissatisfied with the BOR's decision, appealed such determination to this board.

At the outset, we note the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, 337, and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, 495, wherein the Supreme Court held that an appealing party has the burden of coming forward with evidence in support of the value which it has claimed. Once competent and probative evidence of true value has been presented, the opposing parties then have a corresponding burden of providing evidence which rebuts appellant's evidence of value. *Id.*; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319.

As we consider the valuation question before us, we acknowledge that 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.”

The Ohio Supreme Court has consistently held that the best evidence of true value of real property is an actual, recent, arm's-length sale. Specifically, in *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, the Supreme Court held “that when the property has been the subject of a recent arm's-length sale between a willing seller and a willing buyer, the sale price of the property shall be ‘the true value for taxation purposes.’ R.C. 5713.03.” *Berea*, at 5. See, also, *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Hilliard City School Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. 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.” *Walters v. Knox County Bd. of Revision* (1988), 47 Ohio St.3d 23.

It is also well established that when a sale occurs, there is a rebuttable presumption the sale price reflects the true value of the property in question. Consequently, a rebuttable presumption extends to all of the requirements which characterize true value. It is then the burden of the party who claims that a sale is other than arm's length to counter such presumption. However, the burden of persuasion does not change, as it is still on the appealing party to establish, through the

presentation of competent and probative evidence, a different value than that found by the board of revision. See *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325; *Bd. of Edn. of the Columbus City School Dist. v. Franklin Cty. Bd. of Revision* (Nov. 28, 1997), BTA No. 1996-S-93, unreported.

Initially, we have reviewed the evidence of the sale of the subject, including the deed and conveyance fee statement, the purchase contract and settlement statement, and the testimony before this board and the BOR of Mr. Ruhl, the property owner. S.T. at Ex. 7; Exs. B, E. At this board's hearing, Mr. Ruhl testified to the circumstances surrounding the purchase of the subject. H.R. at 11-26. Specifically, Mr. Ruhl testified that he and his wife owned a car wash that they leased to an individual, who suddenly wanted to exercise his option to purchase it. H.R. at 11-12. After learning of the possible tax consequences from the sale of the car wash, Mr. Ruhl decided he wanted to enter into a 1031 exchange, and purchase another property, to avoid costly tax obligations from the sale of the car wash. H.R. at 12. Under the deadlines for the 1031 exchange, Mr. and Mrs. Ruhl had to name the property they wanted to purchase in forty-five days. H.R. at 13-14; Ex. A. The Ruhls were not represented by a realtor or attorney and Mr. Ruhl testified that he had no prior experience purchasing real estate, other than two car washes. H.R. at 15, 17. Mr. Ruhl indicated that they could not find an acceptable property to purchase and that the subject property was not offered for sale on the market when he called the owner to ask if he wanted to sell it. H.R. 15. Mr. Ruhl testified that the sale price was dictated by the owner, with no negotiation. H.R. at 17. Mr. Ruhl stated that he felt pressured

to find a suitable property that he and his wife wanted to purchase “because the time was running out and if the time runs out, there was no recourse. You pay the taxes on the sale of the car wash property and then you go about purchasing something else, if you want to.” H.R. at 19. The parties agreed to the terms of sale and a written offer was drawn up and accepted and was forwarded to a title company to effect the 1031 exchange. H.R. at 18-20; Exs. B, C, D.

In consideration of the foregoing, we must first evaluate whether all of the elements of an arm’s-length transaction have been met. First, with regard to whether the subject sale took place in an open market, Mr. Ruhl testified that the subject was not offered on the market and that he approached the current owner regarding his possible interest in selling the subject. We are mindful that the Supreme Court, in *Walters*, supra, when considering what constitutes an arm’s-length sale, indicated that arm’s-length transactions “generally” take place in an open market, thus not necessarily “always.” This board has repeatedly held that just because a sale was not advertised to the general public, it is not necessarily rendered other than arm’s length. *Beatley v. Franklin Cty. Bd. of Revision* (June 18, 1999), BTA Nos. 1997-M-262, 263, unreported. In *Bd. of Edn. of Plain Local Schools v. Franklin Cty. Bd. of Revision* (June 9, 1995), BTA No. 1994-S-361, unreported, we rejected the notion that sales must *always* occur in such a manner in order to constitute the best evidence of a property’s value:

“The county appellees assert that this sale was not an arm’s-length transaction because the property was not offered for sale on the open market. We disagree. While the lack of advertisement on the open market may have

influenced the price paid for the subject property, it does not necessitate a finding that the subject sale was not arm's length in nature." *Id.* at 10.

See, also, *Willoughby-Eastlake City School Dist. Bd. of Edn. v. Lake Cty. Bd. of Revision* (May 20, 2005), BTA No. 2003-B-1654, unreported; *Dublin City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (May 5, 1995), BTA No. 1993-T-1107, unreported, affirm'd (Mar. 7, 1996), Franklin App. No. 95APH06-718, unreported; *MACQ, Inc. v. Marion Cty. Bd. of Revision* (Sept. 11, 1998), BTA No. 1996-K-1457, unreported; *Poley v. Montgomery Cty. Bd. of Revision* (Sept. 24, 2004), BTA No. 2003-M-1784, unreported. There is no indication in the record that by not being offered on the market, the resultant sale price was based on non-market-driven forces, and accordingly, without something in the record to indicate otherwise, we find that the first requirement of an arm's-length transaction has been met.

Further, if it is Mr. Ruhl's contention that he and his wife were compelled to purchase the subject, and, as such, did not act voluntarily, we find no evidence of such level of duress in the record. In *Lakeside Avenue Ltd. Partnership v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 540, the Supreme Court held that certain compelling business circumstances were sufficient to establish that a recent sale was not arm's length or representative of true value. The court found from the evidence the purchase price was not negotiable and the purchaser's only choice was between the purchase of the property and corporate death. The compulsion or duress the property owner felt was caused by the owner's dire financial straits which caused it to agree to a non-negotiable sales price in order to save its business, regardless of the

fact that the price was well beyond that which the market dictated. See, also, *Columbus Bd. of Edn. v. Grange Mutual Casualty Co.* (Jan. 28, 1992), Franklin App. No. 90AP-317, unreported; *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Sept. 29, 1992), Franklin App. No. 92AP-281, unreported. But compare *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Jan. 30, 1998), BTA No. 1996-A-986, unreported, where this board relied upon the presumption, finding the property owner did not establish that he entered into a sale agreement under duress, but only purchased a particular property for competitive business reasons.

Herein, while we acknowledge that Mr. Ruhl was clearly operating under tight time constraints in order to accomplish the 1031 exchange, we must also note that he chose to represent himself in not only the search for the property to purchase, but also the actual purchase. The purchase contract terms were voluntarily agreed to by Mr. Ruhl and there has been no demonstration that the purchase price was not reflective of the market. We find nothing in the record before us to indicate that the sale price paid by Mr. and Mrs. Ruhl was not reached voluntarily, with Mr. Ruhl acting on behalf of the Ruhls in his own self interest in making his own business decisions. Considering the information provided, there is not sufficient, competent and probative evidence before us which could support a finding that the Ruhls were in any way required to purchase the property under compelling circumstances which would have made the price paid unreflective of true value. *Lakeside*, supra. As such, we find any suggestion that Mr. and Mrs. Ruhl acted out of duress in making the instant purchase to be unsupported in the record. Clearly, Mr. Ruhl was making a business

decision that the purchase of the subject property was critical for the tax consequences associated with the purchase and was willing to pay the sale price to ensure the positive tax consequences and to complete the 1031 exchange. Simply participating in a 1031 exchange does not automatically make the transaction subject to duress; the time constraints are a known factor that must be taken into consideration by any party choosing to buy/sell property in such a manner. See, also, *Bd. of Edn. of the Hilliard City Schools v. Franklin Cty. Bd. of Revision* (Jan. 13, 2009), BTA No. 2006-T-1804, unreported.

Finally, in considering whether such sale can be considered recent enough to be indicative of the value of the subject, we note that the Supreme Court has recognized that a sale may be considered recent for purposes of R.C. 5713.03 even though the sale occurs months either before or after tax lien date. See *R.R.Z. Associates v. Cuyahoga Cty. Bd. of Revision* (1988), 35 Ohio St.3d 198; *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57; *W.S. Tyler Co. v. Lake Cty. Bd. of Revision* (1991), 57 Ohio St.3d 57. Without any evidence in the record to establish that the market significantly changed during the time between the subject sale and the tax lien date in question, we find that the instant sale, which occurred within twenty-three months of the tax lien date under consideration, constitutes a recent sale.

Thus, based upon the foregoing, this board finds that the subject sale had all the indicia of, and consequently was, an arm's-length sale. Thus, we find the price paid by the property owner for the subject property represents the true value of the

property for tax year 2005. Accordingly, we need not consider any other evidence of value, including the property owners' appraisal. Therefore, with no competent or probative evidence in the record rebutting the presumption that the sale price is the best evidence of value, the value of the subject for tax year 2005 shall be \$575,000, based upon the subject's sale price, specifically:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 52,000	\$ 18,200
Bldg	523,000 ¹	183,050
Total	\$ 575,000	\$ 201,250

Thus, it is the decision and order of the Board of Tax Appeals that the Franklin County Auditor shall list and assess the subject property in conformity with this decision.

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¹ Consistent with the action taken by the BOR, we have attributed the increase in value to the improvements.