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Appraiser commmits fatal error

Incorrect valuation date leads to dismissal of petition in property assessment case

BY JAMES V. D'ANZA
Daily Record Columnist

In a tax certiorari proceeding, the failure of the petitioner's appraiser to use the correct valuation date is a fatal error and requires dismissal of the petition at trial, the New York State Supreme Court recently ruled in *Markham v. Board of Assessment Review of the Town of Jerusalem*.

The petitioner filed a Real Property Tax Law (RPTL) Article 7 petition challenging and seeking review of the town's assessments for the years 2004 and 2005 on the petitioner's real property, claiming that the assessments were erroneous and sought refunds from the town. A trial was conducted in Yates County Supreme Court in March.

Pursuant to the New York Rules of Court § 202.59(g), both parties had the property independently appraised for the subject years and exchanged the appraisal reports after filing them with the court. At the commencement of the trial, the petitioner called his independent appraiser as his first witness and began direct examination regarding his appraisal. Soon after, he attempted to enter the appraisal report into evidence. At this point, the respondent objected to its admission.

The respondent argued that as of Dec. 8, 2004 the law was changed in New York such that the taxable valuation date was changed. Pursuant to RPTL § 301, "[a]ll real property subject to taxation, and assesses as of a March 1 taxable status date, shall be valued as of the preceding first day of July."

In the instant case, the petitioner's appraiser had testified that his appraisal conclusion for 2005 was based on a Jan. 1 valuation date, thus violating the RPTL statute.

The petitioner requested that his witness be allowed to orally amend the report to state the proper July 1 valuation date, but the respondent again objected, citing the New York Rules of Court § 202.59(h). That rule states that "[u]pon the trial, expert witness shall be limited in their proof of appraisal value to details set forth in their respective appraisal reports ... [a]ny party who fails to serve an appraisal report as required by this section shall be precluded from offering any expert testimony on value. ..."

As a result, the respondent argued, the incorrect date was not correctable through testimony, and the report as it related to 2005 was not admissible.

To support its argument that the wrong date was enough to yield the appraisal inadmissible, the respondent relied on *SKM Enterprises*

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v. Town of Monroe, 784 NYS2d 924 (2004). In that case, the petitioner's initial 1996 tax proceeding was dismissed for failure to file a Note of Issue within the applicable time period. In 1997, the petitioner commenced a new proceeding, meeting the Note of Issue requirements. However, the petitioner recycled its 1996 appraisal without modification in the new 1997 proceeding.

At trial, the respondent made a motion to dismiss based on the faulty date. In response, the petitioner's appraiser testified that there would be no difference between the fair market value of the subject property he determined in 1996 and the fair market value he determined in 1997, but the court opined that this belief was "disingenuous, at best."

The petitioner also made a cross-motion seeking to amend the date "since it was a clerical error subject to correction and based on the facts and circumstances of the case." The court rejected this argument as well stating that "no such evidence has been presented that any such error exists" and that "inadvertence or oversight is not good cause."

Ultimately, the court ruled the appraisal inadmissible, and granted the respondent's motion for dismissal, stating that the petitioner's "failure to file an appraisal not only prevents it from rebutting the presumption of the assessment's validity but is itself a separate grounds for dismissal of its petition and 1997 tax proceeding."

Following this precedent, and the applicable New York Rules of Court cited by the respondent, the court in *Markham* similarly ruled, granting the respondent's objection to the admission of the 2005 appraisal and dismissed the petitioner's 2005 case.

The lesson for litigators involved in tax certiorari proceedings is that while there have been holdings that the strict rules of evidence do not apply to these matters, it is still strictly controlled by statute on the types of proof that are admissible and the procedures that must be followed.

Specifically, as stated in Lee and LeForestier's treatise *Review and Reduction of Real Property Assessments in New York*, "[t]he importance of the appraisal reports cannot be overemphasized, nor can the need to have the reports meet the requirements of the Uniform Rules."

As demonstrated, the court will rule harshly with even the smallest omission or error — even if it is the wrong date.

James V. D'Anza is an attorney in Underberg & Kessler's Litigation and Municipal Practice Groups, where he focuses his legal practice in the area of general civil litigation, including business, employment and municipal law.