STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Research Park of Novi II, LLC,
Petitioner,

v MTT Docket No. 431808

City of Novi, Tribunal Judge Presiding
Respondent. Kimbal R. Smith III

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING RESPONDENT'S REQUEST FOR COST AND FEES

On July 16, 2013, Respondent filed Motions requesting that the Tribunal enter summary disposition in its favor and award it costs. In support of its Motions, Respondent states that the above-captioned appeal is an untimely uncapping and valuation appeal. "Petitioner misunderstands and misuses the legal terms 'qualified error', 'mutual mistake of fact' and 'clerical error', and when these misuses are corrected it is clear no 'qualified error' has occurred such that the Tribunal has jurisdiction under MCL 211.53b." Respondent's Motion, p 5.

Petitioner has not filed a response to Respondent's Motion for Summary Disposition.

The Tribunal has considered the Motions and the case file and finds that granting the Motion for Summary Disposition is appropriate under MCR 2.116(C)(4). Dismissal under this court rule is appropriate when the "court lacks jurisdiction of the subject matter." MCR 2.116(C)(4). When presented with a motion pursuant to MCR 2.116(C)(4), the Tribunal must consider any and all affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties. See MCR 2.116(G)(5). In addition, the evidence offered in support of or in opposition to a party's motion will only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion. See MCR 2.116(G)(6). A motion under MCR 2.116(C)(4) is appropriate where the plaintiff has failed to exhaust administrative remedies. See

Citizens for Common Sense in Gov't v Attorney Gen, 243 Mich App 43; 620 NW2d 546 (2000).

Petitioner filed its Entire Tribunal Petition on January 13, 2012. In its Petition, Petitioner contends that it appealed the 2010 assessment, and in that appeal, the parties reached a stipulation. Petitioner also states that "the 2011 assessments were incorrectly based on the original 2010 assessments, rather than the revised 2010 assessments set forth in the Stipulation." Petitioner's Petition, p 2. Petitioner indicates that the Tribunal has jurisdiction over this matter under MCL 211.53b because the assessment "constitutes a mutual mistake of fact, clerical or computation error, or other qualified error under MCL 211.53b." *Id.* Petitioner claims that it tried to protest at the 2011 December Board of Review but "Respondent refused to render a decision regarding Petitioner's Notice by Property Owner of Qualified Error." Petitioner's Petition, p 3. Petitioner claims it timely filed within 35 days of the Board of Review meeting. The Tribunal finds that filing within 35 days of this refusal would be a timely filing only if there was, in fact, a qualified error.

In reviewing the file, the Tribunal finds that the above-captioned case appears to be an appeal of the property's state equalized and taxable values for the 2011 tax year. Petitioner has not indicated that it was not properly served with the notice of assessment or otherwise notified of the increase in the 2011 assessment prior to the statutory filing deadline. Rather, Respondent has submitted an Affidavit of Glenn Lemmon, Respondent's Assessor, which clearly states that "[t]he property owner in this case was timely provided notice of the 2011 assessment which showed the assessments as they now exist for 2011 and the uncapping of taxable value." Respondent's Motion, Exhibit C, p 1. Thus, Petitioner received notice of both the uncapping due to its 2010 purchase of the subject and the 2011 state equalized and taxable values. Yet Petitioner did not timely file its appeal. More specifically, the subject property is classified as commercial real. MCL 205.735a indicates that appeals of valuation of commercial property must be filed by May 31 of the tax year at issue. Here, this was May 31, 2011. Thus, the Tribunal finds that it has no authority over Petitioner's assessment appeal for the 2011 tax year under MCL 205.735a, as Petitioner did not file its appeal until January 13, 2012. See *Electronic Data Systems Corp v Flint Twp*, 253 Mich App 538; 656 NW2d 215 (2002).

Contrary to Petitioner's contentions in its Petition, the facts alleged by Petitioner do not support a finding that the assessments were established as the result of a clerical error (i.e., "an error of a transpositional, typographical, or mathematical nature") or a mutual mistake of fact (i.e., "an erroneous belief, which is shared and

relied on by both parties”). See *Int’l Place Apartments – IV v Ypsilanti Twp*, 216 Mich App 104, 109; 548 NW2d 668 (1996), *Ford Motor Co v Woodhaven*, 475 Mich 425, 442; 716 NW2d 247 (2006), *Eltel Assoc, LLC v City of Pontiac*, 278 Mich App 588; 752 NW2d 492 (2008), and *Briggs Tax Service, LLC v Detroit Public Schools,* 485 Mich 69; 780 NW2d 753 (2010). Rather, the facts alleged indicate a valuation dispute which does not give the Tribunal jurisdiction over the 2011 tax year. It also appears that Petitioner attempted to appeal this matter to the State Tax Commission and was denied for lack of jurisdiction. The letter explaining the dismissal indicates that “the matter in contention is a valuation dispute, over which the Commission does not have jurisdiction.” See Respondent’s Motion, Exhibit E. In addition, the subject property was purchased in 2010. The taxable value, therefore, uncapped for the 2011 tax year. See MCL 211.27a. There is no exception to uncapping listed in MCL 211.27a regarding properties that had values stipulated to in the previous tax years. Due to the purchase, the subject was properly uncapped for 2011.

Other “qualified errors” in MCL 211.53b include an error in measurement, error of inclusion, and errors of omission, none of which were specifically pleaded by Petitioner to indicate that either Respondent’s December Board of Review or the Tribunal would have jurisdiction over this matter. Petitioner has cited no authority to indicate that an assessment, in a tax year following a reduction, based upon a stipulation, must be based upon that stipulation. Nor has Petitioner cited any authority that the failure to do such “constitutes a mutual mistake of fact, clerical or computation error, or other qualified error under MCL 211.53b.” As such, the Tribunal finds that the appeal was untimely and that it lacks jurisdiction over Petitioner’s valuation claims. Summary disposition under MCR 2.116(C)(4) is, therefore, appropriate.

Respondent is also seeking costs and attorney fees associated with this tax appeal. MCL 205.752 states that “[c]osts may be awarded in the discretion of the tribunal.” The Tribunal adopted this statute in its procedural rule TTR 209. This rule states that “[t]he tribunal may, upon motion or its own initiative, award costs in a proceeding, as provided by section 52 of the act, MCL 205.752.” TTR 209(1).

The rule itself, however, provides no guidelines or criteria by which the Tribunal is to measure whether costs should be awarded. The Court of Appeals in *Aberdeen of Brighton, LLC v City of Brighton*, unpublished opinion per curiam of the Court of Appeals, issued October 16, 2012 (Docket No. 301826), p 5, found that the respondent contended that the Tribunal “may only award costs under [former] TTR 145 if the requesting party shows good cause or the action or defense was

frivolous." The Court held that the language of former TTR 145 is unambiguous and its plain language indicates that a prevailing party may request costs and does not indicate that a showing of good cause or a frivolous defense is necessary.

The Tribunal's revised rule, TTR 209, no longer limits the award of costs to a prevailing party. Rather, the Tribunal may award costs to any party. While the Michigan Court Rules and the Administrative Procedures Act provide the Tribunal with some criteria in determining whether an award of fees is appropriate, the decision to award fees is solely within the discretion of the Tribunal member. The Tribunal finds that Respondent has not demonstrated good cause to justify an award of costs. As such, this request is denied.

IT IS ORDERED that Respondent's Motion for Summary Disposition is GRANTED.

IT IS ORDERED that Respondent's Motion for Costs is DENIED.

This Order resolves all pending claims and closes this case.

Entered: By: Kimbal R. Smith III
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