

2007 CarswellOnt 8202, 58 O.M.B.R. 51

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Swedak v. Municipal Property Assessment Corp., Region No. 15

In the matter of Section 40 of the Assessment Act, R.S.O. 1990, c. A.31, as amended

In the matter of complaints with respect to taxation year 2006 on premises known municipally as per Schedule "A" attached

See Schedule "A" attached, Moving Parties and The Municipal Property Assessment Corporation Region No. 15 and the Town of Oakville, Respondents

Ontario Assessment Review Board

I.A. Birnie Member

Heard: September 10, 2007

Judgment: December 11, 2007

Docket: DM 65104

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Counsel: R. **Baranowski** (Agent), for Moving Parties

R. Campbell, for Municipal Property Assessment Corporation

S. Price, for Municipality

Subject: Public; Tax — Miscellaneous; Property

Municipal law

Real property

I.A. Birnie:

1 This motion came before the Assessment Review Board on September 10, 2007 in the Town of Oakville.

Issue

2 The Motion before the Board is for the reinstatement of complaint numbers 1860905, 1869088; 1860933, 1869124, 1860904, 1867995, which were set for hearing on a peremptory basis on January 24, 2007, when no one appeared for the complainants and the Presiding Member declined to grant an adjournment, proceeded to Hear the complaints in the ab-

sence of the complainants or their representative, and confirmed the assessments of the subject properties for taxation year 2006.

Disposition of Motion

Hearing on January 24, 2007

3 These complainants came before the Board in the Town of Oakville on January 24, 2007, and the presiding Member's Written Reasons numbers: WR57647, WR57648, WR57649, WR57650, WR57651 and WR57652, all released on April 13, 2007, state that:

- At the hearing on January 24, 2007, the Municipal Property Assessment Corporation (MPAC) and the Municipality were represented, but no one appeared on behalf of the complainants;
- The assessor informed the Board that the complainants, through their representative, and MPAC had agreed that the complaints be adjourned and placed in the pre-hearing stream, with the first pre-hearing being scheduled for April 30, 2007;
- The Municipality's representative indicated that the Municipality was not opposed to the request for an adjournment, but did oppose the placing of the complaints into the pre-hearing stream;
- The Presiding Member reviewed the files and noted that:
 - (a) On November 9, 2006, a request was submitted that the complaints be placed in the pre-hearing stream, but the Board rejected that request and adjourned the complaints to December 6, 2006 to be heard on a peremptory basis;
 - (b) The parties agreed on November 9, 2006 that a Statement of Issues should be served by November 20, 2006, with Responses to be served by November 30, 2006;
 - (c) On December 6, 2006, the complainants' representative requested an adjournment in view of the fact that MPAC was doing inspections and measurements and he wished to discuss issues with his clients;
 - (d) The Board granted a further adjournment, but ordered "no further adjournment — if not settled, hearing to proceed";
- In those circumstances, the Presiding Member declined to grant an adjournment;
- In support of his decision not to grant an adjournment, the Presiding Member cites the following Rules from the Board's Rules of Practice and Procedure, namely:
 - (a) Rule 60, which provides that fixed hearing events will take place on the date set unless the Board agrees to an adjournment;
 - (b) Rule 61, which provides that even if all the parties consent to an adjournment, the Board may require that the parties attend in person to argue for an adjournment;
 - (c) Rule 63, which provides that the Board will grant last minute adjournments only for unavoidable emergencies;

(d) Rule 64, which sets out the powers of the Board upon an adjournment request, and permits the Board to deny the request, even if all parties have consented;

Amended pursuant to Rule 108 of the Assessment Review Board Rules of Practice and Procedure January 7, 2008.

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- The Presiding Member notes that the complainants were seeking not only an adjournment, but a transfer of the complaints to the pre-hearing stream, notwithstanding that the January 26, 2007 hearing date was peremptory and that the Board had denied an earlier request to transfer these complaints into the pre-hearing stream;
- The Presiding Member also notes that the adjournment request was not received by the Board until the hearings were about to start, and there was no suggestion of any emergency of the kind contemplated by Rule 63;
- At page 5 of each of his six Written Decisions, the Presiding Member states:

By not appearing before the Board, it appears to the Board that the complainants and their agent are trying to thwart the previous orders of the Board denying the conversion to a pre-hearing and providing that the January 26, 2007 hearing date is peremptory.

- Having denied the request for an adjournment, the Presiding Member proceeded to hear the complaints in the absence of the complainants and the complainants' representative;
- MPAC presented similar properties in the vicinity, which the Presiding Member found supported the fairness of the assessments;
- In regard to the property at 1044 Valley Crest Circle, MPAC also presented evidence that it sold in September 2004 for more than its current value assessment;
- Absent any evidence from or on behalf of the complainants and in view of the evidence tendered by MPAC, the Presiding Member confirmed the assessments of the subject properties for the 2006 taxation year.

Notice of Motion

5 The complainants' Notice of Motion seeks the reinstatement of the complaints on the following grounds:

- (a) That they were dismissed in error without regard to the written agreement between their agent and MPAC to adjourn them and stream them into mass Pre-Hearing, Number 130570 on April 30, 2007, even though MPAC had initiated procedure to have them so streamed;
- (b) That the Presiding Member's Written Decisions contain erroneous findings that are against the evident facts;
- (c) Rules 31 to 36 and Rules 115 and 116 of the Board's Rules of Practice and Procedure.

Oral Submissions on Behalf of the Complainants

6 The complainants' representative, Mr. Robert **Baranowski** of Canadian Agency for Tax Relief (CAFTR), stated that he did not appear at the hearing on January 24, 2007, as he understood that the complaints would be adjourned in ac-

cordance with his agreement with MPAC, reached shortly before the date of the hearing.

7 He submitted the following letters from Mr. Doug Adams of MPAC's Case Management, Legal and Policy section, namely:

1. E-mail dated January 15, 2007 from Mr. Adams to Gail Corman, the Board's Scheduler for Region 15 and Shirley Lee Collins, the Boards Registrar, with copies to Mr. **Baranowski** and others, asking that the Board proceed to schedule all appeals for AO15 by *Canadian Agency for Tax Relief* onto one mass *Pre-Hearing* docket".

2. Letter dated January 17, 2007 from Mr Adams to Mr. **Baranowski** and others with copies to Gail Corman, the Board's Scheduler for Region 15 and to Susan Price, representing the Town of Oakville, stating that Pre-Hearing Number 130570 on April 30, 2007 in Mississauga had been set by the Board as a mass pre-hearing for appeals by CAFTR in AO 15 and that, as agreed, MPAC would arrange staff to meet with Mr. **Baranowski** throughout the months prior to April 30th and that all necessary documents (GRAD, comparables, SOI where necessary, etc.) would be exchanged during the meetings, and that it was MPAC's hope that these meetings would be productive and lead to negotiations and settlements, which would result *in the number of appeals being significantly reduced* at the April 30, 2007 event.

3. E-mail dated January 24, 2007 from Mr. Adams to Shirley Lee Collins, the Board's Registrar, referring to the hearing earlier that day, asking that the Board overrule the Presiding Member's decisions confirming the assessments and add these complaints to the docket for the mass Pre-Hearing Number 130570 on April 30, 2007; explaining that MPAC had agreed to attend hearings and request adjournments to the July 30, 2007 pre-hearing, where the Board had not had time to cancel the hearings or amend the dockets, and stressing that MPAC had made commitments to CAFTR in this regard.

Amended pursuant to Rule 108 of the Assessment Review Board Rules of Practice and Procedure January 7, 2008.

8 Mr. **Baranowski** stated that he was no longer asking for the complaints to go into the pre-hearing stream, but wished them to be scheduled for hearing, preferably along with the deemed complaints for the 2007 taxation year.

9 Cross-examined by Ms. Susan Price on behalf of the Municipality, Mr. **Baranowski** stated that he was not saying that the Presiding Member made an error in law or a wrong decision, but his decision was based on incomplete information. He did not allege that the Presiding Member had made erroneous findings, and his whole case was that the requested adjournment should have been granted.

10 Questioned by the Board, Mr. **Baranowski** confirmed that, he was aware that the January 24, 2007 hearing was peremptory, but explained that he did not think it was necessary for him to attend because he understood that Mr. Adams had been in touch with staff at the Board to have the complaints included in the mass Pre-Hearing on April 30, 2007, and because MPAC had assured him that an MPAC representative would attend and have the complaints adjourned.

11 He was *most* apologetic for his failure to appear and stressed that he intended no disrespect to the Board.

MPAC's Position

12 Ms. Rose Campbell, representing MPAC, stated that MPAC supported the request to have the complaints reinstated and referred to the third paragraph of Mr. Adam's letter of January 26, 2007 to the Board's Chair, which states:

Amended pursuant to Rule 108 of the Assessment Review Board Rules of Practice and Procedure January 7, 2008.

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The ARB Scheduler indicated that dockets with a number of appeals by Canadian Agency for Tax Relief had already been created. To avoid further time spent issuing amended dockets, it was agreed that if these complaints could not be settled prior to the docket date, a MPAC representative would appear and request that the complaints on the docket of the day be adjourned to the mass Pre-Hearing #130570 April 30th list.

The Municipality's Position

14 The Town of Oakville's representative, Ms. Susan Price; stated that she did not support the request for reinstatement of the complaints as she agreed with the Presiding Member's decision.

Analysis and Conclusion

15 At the hearing on January 24, 2007, no one appeared on behalf of the complainants, although the complaints were set for hearing on a peremptory basis; and MPAC's representative stated that the complainants' agent and MPAC had agreed that the complaints be converted to the pre-hearing stream and adjourned to a pre-hearing on April 30, 2007.

16 The Presiding Member pointed out that the Board had previously rejected a request to place the complaints in the pre-hearing stream, and had set the complaints for hearing on a peremptory basis.

17 In the circumstances, the Presiding Member concluded that the complainants and their agent were trying to thwart the previous Orders of the Board denying conversion to the pre-hearing stream and making the hearing peremptory.

18 He denied the requested adjournment, proceeded to hear the complaints in the absence of the complainants and their agent and confirmed the assessments. He did not dismiss the complaints as stated in the Notice of Motion.

19 On the face of it, the Presiding Member was justified in denying the adjournment and proceeding to hear the complaints. While it is highly desirable that all parties have an opportunity to present evidence and make submissions, it is also important that the Board's Orders should not be flaunted. When the Board has ordered that a hearing is peremptory, any party failing to appear does so at their peril.

20 A new light, however, is thrown on matters by Mr. Adam's letters, presented at this Motion Hearing, which show that MPAC was the instigator of the attempt to have the complaints adjourned to a pre-hearing, despite the Board's previous Orders, that MPAC had contacted staff at the Board in this regard, and that MPAC had told the complainants' agent that an MPAC representative would attend the hearing on January 24, 2007, explain the situation, and request an adjournment.

21 In view of these letters, it appears that the complainants and their agent were not trying to thwart the Board's Orders, but were simply going along with what MPAC proposed.

22 MPAC's representatives must appreciate that it is the Board, not MPAC that decides how complaints are to be handled. While there may have been merit in Mr. Adam's proposal to adjourn the complaints to a pre-hearing to allow for settlement discussions, the Board had already ruled against conversion to the pre-hearing stream and had set the complaints for hearing on a peremptory basis. In these circumstances, it is totally unacceptable for MPAC's representative to ignore the Board's Orders or to try to *Amended pursuant to Rule 108 of the Assessment Review Board Rules of Practice and Procedure January 7, 2008.* circumvent them. The Board trusts that MPAC will take whatever action is necessary to ensure that this does not happen again.

23 While the complainants' agent must accept some responsibility for agreeing to MPAC's proposal and for failing to appear at the hearing on January 24, 2007, it is clear that the driving force in this matter was Mr. Adams, not the complainants' agent.

24 In these circumstances, it would be wrong to punish the complainants and reward MPAC by confirming the assessments, without giving the complainants an opportunity to present evidence and make submissions.

25 Rule 114 of the Board's Rules of Practice and Procedure provides:

114. **Reasons for Review** The Board will hear a motion to review a decision or grant a rehearing without/ithditi a motion only if the reasons provided in the request raise an arguable case that the Board,

- (a) acted outside its jurisdiction;
- (b) violated the rules of natural justice or procedural fairness, including allegations of bias;
- (c) made an error of law or fact such that the Board would likely have reached a different decision;
- (d) should consider new evidence which was not available at the time of the hearing, but that is credible and could have affected the result; or
- (e) heard false or misleading evidence from a party or witness, which was discovered only after the hearing and could have affected the result.

26 In this case, the Board finds that the Presiding Member did not make an error of law or fact, but finds that the letters from Mr. Adams of MPAC constitute new evidence which was not available at the hearing on January 24, 2007, but that is credible and could have affected the Presiding Member's decision not to grant an adjournment and to proceed to hear the complaints in the absence of the complainants and their agent.

27 Rule 111 of the Board's Rules of Practice and Procedure provides:

111. **Board's Powers on Review** The Board may review all or part of a decision, and may confirm, vary, suspend or cancel the decision. It may order a rehearing before a different Member.

28 Pursuant to Rule 111, the Board cancels Decisions WR57647, WR57648, WR57649, WR57650, WR57651 and WR57652, all released on April 13, 2007, and orders a rehearing before a different Member on a peremptory basis.

29 The reinstated complaints are adjourned to a pre-hearing on January 8, 2008, at 1:00 p.m. at the Mississauga Civic Centre, Hearing Room, 300 City Centre Drive, Mississauga, ON L5B 3C1 (Pre-hearing Number 140366). The purpose of this prehearing is to agree among the parties dates for the full hearing of these complaints and other complaints.

Schedule A

| Written Reason No | Request Type | Release Date | Hearing No |
|-------------------|--------------|-------------------|------------|
| 65104 | Reserved | December 11, 2007 | 136063 |

| Complaint No | Roll Number | Property Address | Region | |
|--------------|-------------------------|--------------------------|--------|----------------------------------|
| 1969195 | 2401 010 030 89506 0000 | 1044 VALLEY CREST CIR | 15 | SWEDAK MI- CHAEL JOHN |
| 1969194 | 2401 010 030 89942 0000 | 486 BERKLEY CRT | 15 | LEE BUM SIK |
| 1969196 | 2401 010 030 89973 0000 | 2190 HAMPSTEAD RD | 15 | GREWAL MANJINDER SINGH |
| 1969197 | 2401 010 030 89981 0000 | 2174 HAMPSTEAD RD | 15 | CUSSEN MAURICE GERARD |
| 1969192 | 2401 020 010 12600 0000 | 165 WESTDALE RD | 15 | TYNDORF RICHARD JOSEPH |
| 1969193 | 2401 040 040 09300 0000 | 276 GLOUCESTER AVE | 15 | MCPHERSON STEPHANIE LOUISE |

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