



STATE TAX COMMISSION OF MISSOURI

GEORGE OBRIEN,) Appeal No. 21-110469
) Parcel/locator No: 23P320601
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 Complainant,)
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 v.)
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)
 JAKE ZIMMERMAN, ASSESSOR,)
 ST. LOUIS COUNTY, MISSOURI,)
 Respondent.)

ORDER AFFIRMING HEARING OFFICER DECISION UPON APPLICATION FOR REVIEW

HOLDING

On September 9, 2022, State Tax Commission (STC) Senior Hearing Officer Benjamin Slawson (Hearing Officer) entered a Decision and Order (Decision) affirming the St. Louis County Board of Equalization’s (BOE) assessment of the subject property as of January 1, 2021. George O’Brien (Complainant) timely filed an Application for Review of the Decision and Order of the Hearing Officer. Jake Zimmerman, Assessor, St. Louis County, Missouri, (Respondent) filed a Response.

We AFFIRM the Decision of the Hearing Officer. Segments of the Hearing

Officer's Decision may have been incorporated into our Order without further reference.

FINDINGS OF FACT AND PROCEDURAL HISTORY

The subject property is identified by Parcel Locator No. 23P320601. The subject property is further identified as being located at 2779 Barrett Station Road, St. Louis County, Missouri. The subject property is residential property improved by a single family home with two bedrooms, one bathroom, and a rental rate of \$950 per month.

Respondent assessed the subject property as residential property as of January 1, 2021, with a true value in money (TVM) of \$184,500.¹ Complainant appealed Respondent's assessment to the BOE, and the BOE determined the total TVM of the subject property as of January 1, 2021, was \$172,500.

Complainant timely filed an appeal of the BOE's assessment to the STC. The appeal proceeded to an Evidentiary Hearing. Complainant failed to appear at the Evidentiary Hearing while Respondent appeared by counsel. Complainant did not introduce any evidence into the record. Complainant did not seek a continuance or otherwise communicate any intent to proceed with the appeal. The Hearing Officer subsequently issued the Decision finding that Complainant had failed to appear and had not presented substantial and persuasive evidence to rebut the BOE's valuation and to place a different value on the subject property. The Decision affirmed the BOE's decision finding that the

¹ Missouri operates on a two-year reassessment cycle for valuing real property. *See* Section 137.115.1 RSMo. Absent new construction or improvements to a parcel of real property, the assessed value as of January 1 of the odd year remains the assessed value as of January 1 of the following even year. *Id.* All statutory references are to RSMo. 2000, as amended, unless otherwise indicated.

TVM of the subject property as of January 1, 2021, was \$172,500.

Complainant timely filed an application for review. The STC thereafter issued its Order allowing the application for review and granting Respondent time to file a response. Respondent filed a response.

CONCLUSIONS OF LAW

Complainant's Application for Review re-stated the timeline leading up to the Evidentiary Hearing. Complainant did not allege any error in the Hearing Officer's Decision. Respondent's Response noted that Complainant's Application for Review did not allege any error in the Hearing Officer's Decision.

Standard of Review

A party subject to a Decision and Order of a hearing officer of the STC may file an application requesting the case be reviewed by the STC. Section 138.432. The STC may then summarily allow or deny the request. Section 138.432. The STC may affirm, modify, reverse, set aside, deny, or remand to the Hearing Officer the Decision and Order of the Hearing Officer on the basis of the evidence previously submitted or based on additional evidence taken before the STC. Section 138.432.

Commission's Ruling

For the reasons that follow, the Commission finds Complainant's Application for Review to be unpersuasive. The Commission, having thoroughly reviewed the whole record and having considered the Hearing Officer's Decision, the application for review of Complainant, and the response of Respondent, affirms the Hearing Officer's decision.

There is a presumption of validity, good faith and correctness of assessment by the BOE. *Hermel, Inc. v. STC*, 564 S.W.2d 888, 895 (Mo. banc 1978); *Chicago, Burlington & Quincy Railroad Co. v. STC*, 436 S.W.2d 650, 656 (Mo. 1968); *May Department Stores Co. v. STC*, 308 S.W.2d 748, 759 (Mo. 1958). This presumption is a rebuttable rather than a conclusive presumption. The presumption of correct assessment is rebutted when the taxpayer presents substantial and persuasive evidence to establish that the BOE's assessment is erroneous and what assessment should have been placed on the property. *Id.*

The taxpayer in a STC appeal, not the assessor, bears the burden of proof. The taxpayer is the moving party seeking affirmative relief. Therefore, Complainant bears the burden of proving by substantial and persuasive evidence the vital elements of the case, i.e., the assessment was "unlawful, unfair, improper, arbitrary, or capricious." See, *Westwood Partnership v. Gogarty*, 103 S.W.3d 152 (Mo. App. E.D. 2003); *Daly v. P.D. George Co.*, 77 S.W.3d 645 (Mo. App. E.D. 2002); *Reeves v. Snider*, 115 S.W.3d 375 (Mo. App. S.D. 2003); *Industrial Development Authority of Kansas City v. State Tax Comm'n*, 804 S.W.2d 387, 392 (Mo. App. W.D. 1991). *Substantial evidence* can be defined as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Cupples Hesse Corp. v. State Tax Comm'n*, 329 S.W.2d 696, 702 (Mo. 1959). *Persuasive evidence* is evidence that has sufficient weight and probative value to convince the trier of fact. *Cupples Hesse Corp.*, 329 S.W.2d at 702. The persuasiveness of evidence does not depend on the quantity or amount thereof but on its effect in inducing belief. *Brooks v. General Motors Assembly Division*, 527 S.W.2d 50, 53 (Mo. App. 1975).

Here, Complainant had the burden of proving that the BOE's determination regarding the TVM of the subject property was erroneous and establishing the correct TVM to be placed upon the subject property. The record reveals, however, that Complainant did not appear at the Evidentiary Hearing and did not present any evidence to rebut the presumption that the BOE's determination of value was correct and to support an alternative value. The record further reveals that Complainant's Application for Review did not allege any error in the Hearing Officer's Decision. Consequently, the Commission is left with nothing to review. The Decision of the Hearing Officer is supported by the record. The Commission finds that a reasonable mind could have conscientiously reached the same result as the Hearing Officer's Decision based on a review of the entire record, particularly the lack of any evidence to support Complainant's claim of overvaluation. *See Hermel*, 564 S.W.2d at 895-96; *Black v. Lombardi*, 970 S.W.2d 378 (Mo. App. E.D. 1998). The Hearing Officer did not err affirming the BOE's valuation and finding the TVM of the subject property was \$172,500, as of January 1, 2021.

ORDER

The Decision of the Hearing Officer is AFFIRMED. Segments of the Decision and Order of the Hearing Officer, including the findings of fact and conclusions of law therein, may have been incorporated by reference, as if set out in full, in this final decision of the Commission.

Judicial review of this Order may be had in the manner provided in Sections 138.432 and 536.100 to 536.140 within 30 days of the mailing date set forth in the Certificate of Service for this Order.

If judicial review of this decision is made, any protested taxes presently in an escrow account in accordance with this appeal shall be held pending the final decision of the courts unless disbursed pursuant to Section 139.031.8.

If no judicial review is made within 30 days, this decision and order is deemed final and the Collector of St. Louis County, as well as the collectors of all affected political subdivisions therein, shall disburse the protested taxes presently in an escrow account in accord with the decision on the underlying assessment in this appeal.

SO ORDERED February 10, 2023.

STATE TAX COMMISSION OF MISSOURI

Gary Romine, Chairman

Victor Callahan, Commissioner

Debbi McGinnis, Commissioner

Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on February 10, 2023, to: Complainant(s) and/or Counsel for Complainant(s), Respondent and/or Counsel for Respondent and County Collector.

Amy S. Westermann
Chief Counsel



STATE TAX COMMISSION OF MISSOURI

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DECISION AND ORDER

George OBrien (Complainant) appeals the St. Louis County Board of Equalization's (BOE) decision finding the true value in money (TVM) of the subject residential property on January 1, 2021, was \$172,500. Complainant alleges overvaluation and argued that the TVM as of that date was \$133,000. Complainant did not produce substantial and persuasive evidence to support the asserted claim of overvaluation. The assessment of the BOE is affirmed.²

Facts

²Complainant timely filed a complaint for review of assessment. The State Tax Commission (STC) has authority to hear and decide Complainant's appeal. Mo. Const. art. X, sec. 14; Section 138.430.1, RSMo 2000. All statutory citations are to RSMo 2000, as amended.

The evidentiary hearing was scheduled for August 25, 2022, at 4:00 P.M. Respondent timely appeared at the evidentiary hearing in person and through counsel Tim Bowe. Complainant did not appear. Complainant did not seek a continuance or otherwise communicate any intent to proceed with the appeal.

Complainant Did Not Prove Overvaluation

The taxpayer bears the burden of proof and must show by a preponderance of the evidence that the property was overvalued. *Westwood P'ship v. Gogarty*, 103 S.W.3d 152, 161 (Mo. App. E.D. 2003). Complainant did not appear at the evidentiary hearing and produced no evidence admitted into the record to support the overvaluation claim. Complainant's failure to appear and to present any evidence necessarily means Complainant fails to meet Complainant's burden of proof.³

CONCLUSION AND ORDER

The assessment made by the BOE is affirmed. The TVM of the subject property as of January 1, 2021, is \$172,500, classified as residential property.

Application for Review

A party may file with the STC an application for review of this decision within 30 days of the mailing date set forth in the certificate of service for this decision. The application "shall contain specific detailed grounds upon which it is claimed the decision is erroneous." Section 138.432. The application must be in writing, and may be mailed to

³ For over 150 years, Missouri law has recognized the self-evident proposition that "if there be no evidence sufficient in law to make a prima facie case on this issue, plaintiff cannot be entitled to recover." *Callahan v. Warne*, 40 Mo. 131, 135 (Mo. 1867).

the State Tax Commission, P.O. Box 146, Jefferson City, MO 65102-0146, or emailed to Legal@stc.mo.gov. A copy of the application must be sent to each person listed below in the certificate of service.

Failure to state specific facts or law upon which the application for review is based will result in summary denial. Section 138.432.

Disputed Taxes

The Collector of St. Louis County, as well as the collectors of all affected political subdivisions therein, shall continue to hold the disputed taxes pending the possible filing of an application for review, unless said taxes have been disbursed pursuant to a court order under the provisions of section 139.031.

SO ORDERED September 9, 2022.
STATE TAX COMMISSION OF MISSOURI

Benjamin C. Slawson
Senior Hearing Officer

Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on September 9, 2022.

Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent and County Collector.

Noah Shepard
Legal Coordinator