1989

First National Bank of Boston v. Coutny oBoard of Equalization of Salt Lake County, Sate of Utah; Utah State Tax Commision : Reply Brief

Utah Supreme Court

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IN THE SUPREME COURT

OF THE STATE OF UTAH

First National Bank of Boston, Petitioner,	:	
v.	:	REPLY BRIEF
County Board of Equalization of Salt Lake County, State of Utah; Utah State Tax Commission,	:	Docket No. 890278
	:	Priority 14a
Respondents	:	

APPEAL FROM THE UTAH STATE TAX COMMISSION

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SUMMARY OF ARGUMENT

Findings of the State Tax Commission ("the Commission") are entitled to deference to this extent: they will not be overturned so long as they are supported by substantial evidence. Neither the Commission nor the Salt Lake County Board of Equalization ("the County") has cited substantial or any other evidence to support the finding of the Commission with respect to expenses on the Property as issue here. It must therefore be overturned.

ARGUMENT

NEITHER THE TAX COMMISSION NOR THE COUNTY HAS CITED A SCINTILLA OF EVIDENCE TO SUPPORT THE TAX COMMISSION'S FINDING

As the Commission admits (Brief of the Commission, pp. 5-6), this Court may overturn any finding of the Commission not supported by substantial evidence. Utah Code Ann. § 63-46b-16(4)(g); Hurley v. Industrial Commission, 767 P.2d 524, 526 (Utah 1988).

At issue here is the Commission's finding of a 25% expense ratio for calculating the value of the office building situated at 4516 South 700 East, Salt Lake City, Utah ("the Property"). This figure translates to $2.92 per foot, or total monthly expenses of only $170,095.

Neither the Commission nor the County has cited a scintilla of evidence in support of this finding.

The reason they have not is that there is none. As observed in Appellant's Brief (pp. 5-6), the only explanation that accounts for the Commission's finding is that it resulted from a simple miscalculation.

The County argues that the Commission is not bound to adopt the expense figure urged by either party, but is free to make its own independent determination of expenses (Brief of County, pp. 9-10). The Commission certainly did depart from the expense figures proposed by the parties in this case, as the following chart illustrates[1]:

	Monthly Total	Per Foot	Expense Ratio
ACTUAL EXPENSES	$209,252	$3.60	31%
COUNTY'S ESTIMATE OF EXPENSES	202,134	3.47	30%
COMMISSION'S FINDING	170,095	2.92	25%

The Owner agrees that the Commission may depart from the figures urged by the parties, but only so long as its finding is supported by the evidence. It is not free to disregard the

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[1] This chart summarizes information set forth on page 4 of Brief of Appellant.

figures of the parties in favor of one wholly unsupported by any evidence. Yet that is precisely what the Commission did here.

The briefs of the County and the Commission both claim that the Commission's finding is based on evidence (Brief of the Commission, p. 9; Brief of the County, p. 9), yet neither cites any. That silence is more persuasive than any general claim that evidence exists somewhere. Nor do they ever attempt to address the questions that stick to their position like barnacles:

-What evidence did the Commission rely on in departing so widely from the parties' own conclusions?

-How could the Commission arrive at an expense figure of $2.92 per foot based on comparables from which the County's own appraiser derived an expense figure of $3.47 per foot?

-What comparables, or any other evidence, support an expense figure of $2.92?

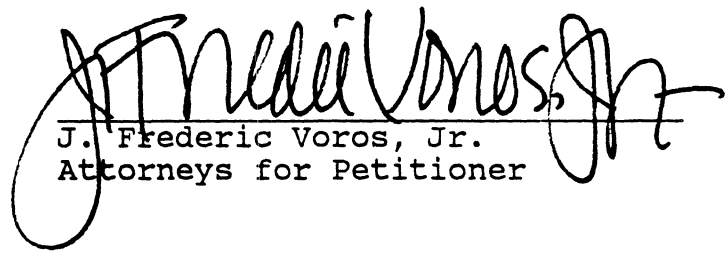
The only plausible explanation--in fact, the only explanation of any sort--for the County's finding is that the Commission inadvertently used the wrong rental rate in its calculation. Dividing the County's estimate of expenses per foot ($3.47) by the <u>unadjusted</u> rental rate of $14.00 yields an expense ratio of 25% (3.47/14.00 = .2478571). But this calculation ignores the Commission's own (correct) ruling that the proper rental rate to use in calculating value is $11.67.

CONCLUSION

Clearly, not only is the Commission's finding not supported by substantial evidence, it is not supported by any evidence whatever. It must therefore be reversed.

RESPECTFULLY SUBMITTED this January 24, 1990.

POOLE & SMITH



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MAILING CERTIFICATE

I hereby certify that ten copies of the foregoing Reply Brief of Appellant were filed with the Utah Supreme Court, and four true and correct copies of the foregoing Reply Brief were hand-delivered this 24 day of January, 1990 to the following:

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