

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3437-05T1

JOHN M. SEWELL,

Plaintiff-Appellant,

v.

CITY OF MARGATE,

Defendant-Respondent.

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Telephonically argued November 16, 2006 -  
Decided January 22, 2007

Before Judges Skillman and Grall.

On appeal from the Tax Court of New Jersey,  
Docket No. 5979-2005.

John M. Sewell, appellant, argued the cause  
pro se.

Hank N. Rovillard argued the cause for  
respondent (Rovillard & Blee, attorneys;  
Mr. Rovillard, on the brief).

PER CURIAM

Plaintiff John M. Sewell appeals from a decision of the Tax Court increasing the assessed value of his real property. The final order was entered following a trial on a petition by Sewell and a cross-petition by the City of Margate for review of the assessment after it was approved by the Atlantic County

Board of Taxation. Because we are unable to determine whether the Tax Court determined that the evidence was adequate to overcome the presumption of validity that is afforded a tax assessment, we remand.

Sewell purchased the property at issue in 1991 for \$40,000. In 2004, the City revalued all property for the 2005 tax year. The valuation date was October 1, 2004. Sewell's property, which includes an eighty-year-old, three-bedroom, two-bath, two-story residence of 1,990 square feet, was assessed at \$360,000. Feeling aggrieved by the assessed valuation of his property, Sewell appealed to the Atlantic County Board of Taxation, as authorized by N.J.S.A. 54:3-21. The Board approved the assessed value. As authorized by N.J.S.A. 54:3-26b, Sewell sought review by the Tax Court and the City filed a cross-appeal.

The trial on the petition and cross-petition was conducted on December 21, 2005. Sewell submitted evidence of the price at which five properties that he deemed comparable to his had sold. The sale prices ranged between a high of \$226,000 and a low of \$152,500. Three of the properties were sold in 2000, one in 2001 and one in 2002. He also submitted evidence that under calculations used by the Federal Office of Housing Enterprise Oversight (FOHEO), his property would be valued at \$79,423.63 or \$198,757.64, depending upon whether the value was calculated

based on the date and price of purchase or the date and value of the last assessment.

At the conclusion of Sewell's case, the City moved to dismiss his petition on the ground that he had not provided sufficient competent evidence to overcome the presumption of validity. See R. 4:37-2(b). Viewing the evidence in the light most favorable to Sewell, the judge concluded that there was inadequate evidence of basis for the FOHEO calculation to permit him to rely upon that evidence. He found the evidence of comparable sales Sewell introduced unpersuasive because of the date of the sales and absence of any comparison between those properties and the Sewell property. The judge concluded that he "could not find evidence which is definite, positive, and certain as to quantity and quality to disturb the County Board judgment." Nonetheless, the judge denied the motion to dismiss on the ground that "if it is at all possible for a . . . factfinder[,] other than someone such as myself, to find that the property was over-assessed, no matter how flawed or faulty their reasoning," the law precludes dismissal of the case.

The City presented the testimony of a certified general appraiser, whom the judge accepted as a valuation expert. The expert valued Sewell's property at \$410,000. Using a sales comparison approach to valuation, the expert identified five