Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-445

MAY TERM, 2010

Arthur Curcillo	}	APPEALED FROM:
	}	
v.	}	Property Valuation and Review Division
	}	
Town of Eden	}	DOCKET NO. PVR 2008-98

In the above-entitled cause, the Clerk will enter:

Taxpayer appeals pro se from the state appraiser's assessment of the value of his real property. We affirm.

Taxpayer owns real property in the Town of Eden. In 2008, the town listers assessed his property at $314,540. Taxpayer grieved this assessment to the town board of civil authority (BCA), which upheld the listers' decision. Taxpayer then appealed to the state appraiser. A hearing was held in late September 2009, and the parties presented evidence as to the fair market value of taxpayer's property. Several days after the hearing, taxpayer became aware of a procedural error committed by the BCA during its inspection of his property. By statute, three members of the BCA must inspect a taxpayer's property and in this case, only two members had done so. See 32 V.S.A. § 4404(c). Taxpayer apparently became aware of this flaw after the appraiser brought it to his attention in a different tax case.

On September 28, 2009, taxpayer wrote to the appraiser apprising him of the procedural flaw and stating that had he known of this error at the hearing, he would have taken the option of "rolling back" his taxes to the 2007 value as provided by statute.* See id. (if the BCA does not substantially comply with requirements of subsection (c) and if the appeal is not withdrawn, "the grand list of the appellant for the year for which the appeal is being made shall remain at the amount set before the appealed change was made by the listers; except, if there has been a complete reappraisal, the grand list of the appellant for the year for which the appeal is being made shall be set at a value which will produce a tax liability equal to the tax liability for the preceding year"); see also Villeneuve v. Town of Cambridge, 148 Vt. 15, 16-17 (1987) (upholding imposition of statutory rollback remedy where the BCA did not strictly adhere to inspection provision). The appraiser did not address the rollback remedy in his October 3, 2009

* As part of his docketing statement, taxpayer included a copy of this letter and a certified mail receipt indicating that the letter was mailed to the state appraiser on September 29, 2009. The letter, however, is not included in the materials provided to this Court by the state appraiser.

decision; instead, he made findings and conclusions only as to the value of taxpayer's property. The appraiser set the listed value at $307,200. Taxpayer appealed.

Taxpayer argues that he did not waive his right to the tax rollback remedy, and that he is entitled to this remedy given the BCA's procedural error. Though it appears that taxpayer did try to assert his right to the rollback remedy, his request was untimely. At the hearing, taxpayer sought a decision on the merits of the value of his property; he did not request the rollback remedy. By the time he sent his letter, the hearing had concluded and the evidence was closed. Moreover, taxpayer's letter was mailed to the appraiser, giving the town no opportunity to respond. See 3 V.S.A. § 809(c) (in contested case proceeding, "[o]pportunity shall be given all parties to respond and present evidence and argument on all issues involved"); id. § 813 (decision-maker in contested case proceeding "shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party of his representative, except upon notice and opportunity for all parties to participate"); see also 32 V.S.A. § 4466 (unless expressly waived by parties to the appeal, the provisions of Title 3, chapter 25 of the Vermont Statutes shall govern all proceedings before state appraiser except where inconsistent with subchapter governing appeals to appraiser). Under these circumstances, the appraiser did not err in failing to consider taxpayer's letter in reaching his decision on the merits. Taxpayer asserts that the appraiser should have informed him of the provisions of 32 V.S.A. § 4404(c) so that he could make an informed choice about the remedies available to him. While pro se litigants are afforded some leeway, Vahlteich v. Knott, 139 Vt. 588, 590-91 (1981), it remained taxpayer's burden to present his own case and to specifically identify the relief that he sought. The role of the appraiser is not to advocate for individual taxpayers. The fact that taxpayer failed to timely discover a procedural flaw in the BCA procedure does not warrant reversal of the appraiser's decision. See Villeneuve, 148 Vt. at 16-17 (rejecting pro se taxpayers' belated attempt to argue that appraiser must determine the fair market value of their properties where taxpayers had plainly sought the rollback remedy during the proceedings below).

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice