

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT IN  
AND FOR MIAMI-DADE COUNTY,  
FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. **17-18112CA05**

DEREK CINTRON, individual,

Plaintiff,

vs.

PEDRO J. GARCIA, as Property Appraiser  
for Miami-Dade County, Florida, VALUE  
ADJUSTMENT BOARD, Miami-Dade  
County, Florida and LEON M.  
BIEGALSKI, as Executive Director of the  
State of Florida Department of Revenue,

Defendants.

FILED  
2017 JUL 31 PM 2:49  
CLERK OF COURT  
MIAMI-DADE COUNTY  
FLORIDA

401  
ISS

COMPLAINT

Plaintiff, DEREK CINTRON, ("CINTRON" or "PLAINTIFF" or "TAXPAYER") sues PEDRO J. GARCIA, as Property Appraiser for Miami-Dade County, Florida, (the "PROPERTY APPRAISER"), VALUE ADJUSTMENT BOARD, Miami-Dade County, Florida and LEON M. BIEGALSKI, as Executive Director of the State of Florida Department of Revenue (the "DEPARTMENT"), and alleges:

1. In this action, the Taxpayer appeals a decision of the Miami-Dade County Value Adjustment Board ("VAB") that affirmed the Property Appraiser's assessment of market value under Florida Statute § 193.011 and § 193.023 in connection with the annual ad valorem tax assessment of certain real property owned by the Taxpayer.

**JURISDICTION, VENUE, PARTIES**

2. This Court has exclusive jurisdiction of this equitable action pursuant to sections 194.036(1) and 194.171 of the Florida Statutes.

3. The real property that is subject to the challenged tax assessment is a residential home located at 14821 Lewis Rd., Miami Lakes, Florida (the "Subject Property"), which is assessed under the tax folio number 32-2024-008-0890 and has the corresponding legal description:

24 52 40  
MIAMI LAKES SEC 3 PB 78-47  
LOT 81 & INT IN & TO LAKE BLK 13  
LOT SIZE SITE VALUE  
F/A/U 30-2024-008-0890  
OR 20454-2360 0502 1  
COC 23741-2587 08 2005 1

4. Venue is proper because the Subject Property is located in Miami-Dade County.

5. The Taxpayer is the titleholder of record as of the assessment dates of January 1, 2014, January 1, 2015, January 1, 2016 and January 1, 2017. Thus, he is the proper plaintiff herein under Florida Statute § 194.181(1).

6. The Property Appraiser is the duly-elected appraiser for Miami-Dade County, Florida, and is a proper Defendant in this action under Florida Statute § 194.181(1)(b).

7. The Value Adjustment Board (hereinafter VAB) is designated as an independent quasi-judicial body which, according to Florida Statute § 194.015 through §

194.035, and is authorized, obligated and empowered to review certain decisions of the Property Appraiser.

8. The Department of Revenue is named as a defendant in accordance with Florida Statute § 194.181(5) because the tax assessments are contested on the grounds that it is contrary to the laws and Constitution of the state of Florida.

9. This action is timely filed and all conditions precedent have been met.

#### FACTUAL ALLEGATIONS

9. The Subject Property is a 1580 square foot single family residential home located at 14821 Lewis Rd., Miami Lakes, Florida.

10. The Taxpayer first obtained title to the Subject Property by deed on June 11, 2013, along with Esther R. Cintron, as evidenced by that certain Warranty Deed recorded on June 25, 2013 in the Official Records of Miami-Dade County at Bk. 28694 Pg. 1075. A copy of the Warranty Deed is attached hereto as Exhibit A.

11. This transaction was a short sale exposed on the market and sold through the Multiple Listing Service and, therefore, considered an arm's length transaction.

12. The Taxpayer obtained sole title to the Subject Property by deed on April 15, 2014, as evidenced by that certain Special Warranty Deed recorded on June 24, 2014 in the Official Records of Miami-Dade County at Bk. 29294 Pgs. 0338 - 3391. A copy of the Special Warranty Deed is attached hereto as Exhibit B.

13. Upon purchasing the home in June 2013, the home was under Homestead Exemption.

14. On November 26, 2013, Taxpayer paid \$3,926.55 for the tax year 2013 based on the assessment value of \$231,340.00 which included the Homestead Exemption. See Exhibit C.

15. Taxpayer was not aware that the Homestead Exemption needed to be re-applied for after his purchase of the home and believed it would be automatically applied, as (incorrectly) explained by Taxpayer's real estate agent at the time of purchase.

16. In November of 2014, Taxpayer received the tax invoice for the folio of the Subject Property and noted that the Property Appraiser's assessment of the Subject Property for tax year 2014 in the amount of \$6,000.74. See Exhibit D.

17. Upon receipt of this invoice, Taxpayer immediately contacted the VAB and inquired why the taxes had increased by 52.8%.

18. It was at this point, that Taxpayer first learned that the home was not protected under the Homestead Exemption for the year 2014.

19. Taxpayer immediately applied for and was granted Homestead Exemption for the subject property, effective January 1, 2015.

20. Taxpayer filed a petition with the VAB appealing the Property Appraiser's assessment of the Subject Property's market value for tax year 2014.

21. While awaiting the hearing for the 2014 petition, Taxpayer received the 2015 invoice for the folio that makes up the Subject Property, a copy of which is attached hereto as Exhibit E. The Property Appraiser's assessment of the Subject Property's value for tax year 2015 was \$306,714.

22. While recognizing that the assessment was once again incorrect, Taxpayer did not believe that a second petition was necessary for the year 2015 as, at the time the 2015 tax invoice was received, Taxpayer *was still awaiting* the scheduling of the hearing date for the year 2014. Taxpayer believed that the 2015 tax year would be simultaneously resolved at the upcoming hearing.

23. Therefore, in order not to be delinquent and believing that the issue would be addressed at the upcoming hearing, Taxpayer paid \$5,207.99 for the 2015 tax year. See Exhibit E.

24. After waiting over one (1) year due to a backlog and delay on the part of Miami-Dade County, finally, on December 11, 2015 a hearing was held on Taxpayer's VAB petition for the year 2014.

25. At the December 11, 2015 hearing, Taxpayer explained the above situation and, Special Magistrate Philip G. Spool agreed with Taxpayer. Mr. Spool reduced the Subject Property's assessed value to \$233,750.00 thereby returning the property to the original baseline of assessed value that existed in tax year 2013 when Taxpayer purchased the property. See Exhibit F, Findings of Fact/Conclusions of Law dated December 11, 2015.

26. At the hearing, Taxpayer specifically inquired whether the Findings of Fact/Conclusions of Law would carry over to tax year 2015, as well as all subsequent years. Special Magistrate Spool and the VAB Property Appraiser present at the hearing, stated that yes, the reduction would carry over to 2015 and all subsequent years. (Taxpayer is in receipt of the audiovisual recording of the December 11, 2015 hearing and can provide the Court with a copy of same if requested.)

27. Specifically, Magistrate Spool stated that Taxpayer's assessed value for 2014 would be reduced to what the assessment would have been, had Taxpayer's Homestead Exemption status been uninterrupted. Magistrate Spool stated that the issue was resolved and that Taxpayer's 2015 assessed value would only increase by the amount allowed under Florida Statute for Homestead Exemption.

28. In May 2016, Taxpayer received the Record of Decision and Notice from the VAB approving and adopting Special Magistrate Spool's Findings of Fact/Conclusions of Law were confirmed. See Exhibit G.

29. This, combined with the recorded statements and the Findings of Fact/Conclusions of Law dated December 11, 2015, clearly and unequivocally show the VAB's intention to correct the tax value for the property from 2014 going forward.

30. In May of 2016, Taxpayer received a refund in the amount of \$1,298.30 for the year 2014. See Exhibit H.

31. Given the length of time between the hearing and the refund for 2014 (six (6) months), Taxpayer assumed that the 2015 refund would be forthcoming. However, Taxpayer never received a refund for the year 2015.

32. In September of 2016, Taxpayer received the 2016 invoice for the folio of the Subject Property for the tax year 2016, a copy of which is attached hereto as Exhibit I. And, much to Taxpayer's disbelief, the Property Appraiser's assessment of the Subject Property's value for tax year 2016 was \$308,860.00.

33. Taxpayer once again filed a petition with the VAB appealing the Property Appraiser's assessment of the Subject Property's market value for tax year 2016.

34. On March 10, 2017, after a hearing on the Taxpayer's VAB petition, Special Magistrate Harvey W. Gray remarkably stated that he would not consider the Findings of Fact/Conclusions of Law by Special Magistrate Spool in December of 2015 and recommended that the Subject Property's market value remain as the Property Appraiser assessed in 2016. See Exhibit J. It should be noted that Special Magistrate Harvey W. Gray displayed a dismissive demeanor towards Taxpayer and refused to consider virtually all evidence presented by Taxpayer. (Taxpayer is in receipt of the audiovisual recording of the March 10, 2017 hearing and can provide the Court with a copy of same if requested.)

35. On May 4, 2017, Taxpayer submitted a Letter of Reconsideration to the VAB. See Exhibit K.

36. On May 25, 2017, the VAB responded to the Letter of Reconsideration and stated that there was no change to the Special Magistrate's Recommendation. See Exhibit L.

37. The market value assessed by the VAB for tax years 2015, 2016 (and presumably 2017) was erroneous and unlawful given that it is above the Subject Property's true "just value."

14. The VAB's erroneous and unlawful increase has negatively impacted the Subject Property's assessed value not only in tax years 2015 and 2016, but will also negatively impact all subsequent years.

15. Therefore, the VAB's assessments of the Subject Property for tax years 2015 and 2016 violate Florida statutory and constitutional law including, without limitation, sections 193.11 and 193.155 of the Florida Statutes, and Article VII, Section 4 of the Florida Constitution.

16. Plaintiff demands a trial by jury.

WHEREFORE, Plaintiff/Taxpayer prays for judgment against Defendants and respectfully requests that this Court enter an order:

- a. declaring Special Magistrate Spool's December 11, 2015 Findings of Fact/Conclusions of Law to be true and accurate;
- b. declaring the VAB/Property Appraiser's assessments for 2015 and 2016 were incorrect, do not represent the just value of the Subject Property and were a violation of the Taxpayer's constitutional rights;
- c. declaring the baseline established by Special Magistrate Spool's December 11, 2015 Findings of Fact/Conclusions of Law applies to tax years 2015 and 2016, as well as all subsequent years;
- d. declaring a corrected tax bill be issued and a refund authorized to Taxpayer for Taxpayer's overpayment of taxes for tax year 2015, with interest, in accordance with §194.192, Fla. Stat.;
- e. declaring a corrected tax bill be issued and a refund authorized to Taxpayer for Taxpayer's overpayment of taxes for tax year 2016, with interest, in accordance with §194.192, Fla. Stat.;
- f. declaring a corrected tax bill and refund authorized to the Taxpayer for any subsequent tax years, included but not limited to 2017 (if necessary);
- g. awarding Taxpayer's attorneys fees and costs pursuant to § 194.192, Fla. Stat.; and;
- g. granting any such other and further relief as this Court deems just and proper.

Dated: July 28, 2017.

Respectfully submitted,



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**DESIGNATION OF E-MAIL ADDRESSES**

Pursuant to Florida Rule of Judicial Administration 2.516, the following primary and secondary e-mail addresses are designated for purposes of e-mail service:

Primary e-mail address: dc327@hotmail.com

Secondary e-mail address: bh@fowler-white.com