

Appeal No. VA06/2/089

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

National Breast Screening Board

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office(s) at Lot No. 89-94 (fl 3), Capel Street, Rotunda B, Rotunda, County Borough of Dublin

B E F O R E

Michael P.M. Connellan - Solicitor

Deputy Chairperson

Joseph Murray - B.L.

Member

Maurice Ahern - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6TH DAY OF DECEMBER, 2006

By Notice of Appeal dated the 21st day of June, 2006 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €274.00 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are:

"On the basis that the RV as assessed is excessive inequitable and bad in law. The property should be excluded from the list due to the provisions of the Valuation Act, 2001 particularly schedule 4 paragraph 8 and 10 also it should be excluded as it is occupied by an Office of State, S15 of the Act. The Quantum applied is excessive in view of the secondary location

and the established tone of the list for comparable properties already established in the Valuation List."

This appeal proceeded by way of an oral hearing held on the 26th September, 2006 in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7. The appellant was represented by Mr. Proinsias Ó Maolchalain, B.L., instructed by Messrs. Arthur Cox & Co., Solicitors. The respondent was represented by Mr. James Devlin, B.L., instructed by the Chief State Solicitor's Office.

The Legal Issue

Evidence for the appellant was given by Ms. Majella Byrne, Chief Operations Officer of the appellant Board. No evidence was given by the appellant in relation to the application under Schedule 4 of the Valuation Act, 2001.

Legal submissions from both sides were heard by the Tribunal. Submissions in writing were lodged in the Tribunal by the respondent. The appellant made no submissions in writing.

Two questions were for consideration by the Tribunal. The first was "Is the Board an "office of State" within the meaning of Section 15(3) of the Valuation Act, 2001?" The second question was "Is the Board exempted under Schedule 4 Paragraph 8 and 10 of the Valuation Act, 2001?"

The Appellant's Case

Ms. Byrne, Chief Operations Officer of the Board, gave evidence under oath and said that she had worked for the Board for 6½ years and that the Board was established in 1998 and re-established in 2004 by the Minister for Health and Children under the provisions of the National Breast Screening Board (Establishment) Order 2004 (SI No. 891 of 2004).

The Board provided national screening for breast cancer for women in the 50 – 65 age bracket. It had two screening units, one in Eccles Street and the other in St. Vincent's Hospital. They also had mobile screening units. They had prepared a database of women in the 50 – 65 age bracket. They wrote and asked women on this database if they wished to take part in the programme. The results of the screening were read by one of the Board's

Consultant Radiologists. If cancer was found as a result of the test, the women concerned were informed in writing and invited to see one of the Board's consultants.

She further said that the Board's staff were Public Servants and were all directly employed by the Board and were financed from the Cancer Fund provided by the Department of Health and Children. They had responsibility up to the end of primary treatment and they paid their medical personnel.

She also said that the Board provided a two year screening program. The decision for this was made by the Minister for Health and Children. The Board worked with the Cancer Policy Unit in the Department of Health and Children. If the Board wished to make any changes in policy it had to make submissions to the said Department. If they needed extra help the Department in consultation with the Department of Finance had to make all decisions in this regard. She handed in a copy of the Annual Report 2004/2005. She repeated that Breast Screening is offered to women in the 50 – 65 age bracket. In 2004, 68,000 women were invited for screening, 50,000 were screened and 309 cancers were detected. Early detection was the best. In 2005 they had set up clinics in Galway and Cork and intended to set up others.

The subject premises at Capel Street was the administration headquarters for the Board and the database was kept there. All notifications were made from there and all research was carried out there.

Cross examined by Mr. Devlin, Ms. Byrne said that no screening was carried out in Capel Street. The end of primary care was the end of surgery. Such surgery takes place in hospital, the Mater or St. Vincent's. The patient remains the responsibility of the Board while in hospital.

The Board had about 100 employees and 10 surgeons.

Mr. Ó Maolchalain opened his submissions to the Tribunal. He said that the Board was established under the National Breast Screening Board (Establishment) Order, 2004 and that the Board was under the direction of the Minister for Health and Children and his Department. He then went through the various sections of the Order including Functions of

the Board, Proceedings of the Board, Remuneration, Committees, Financial, Accounts, Reports, Director, Members of Staff, Transfer Provisions, and Disclosure of Interests etc.. He said that he was relying on the Tribunal decision in **VA04/2/038 – Legal Aid Board**.

He pointed out that the Board was under the control of the Minister for Health and Children and also the Minister for Finance. It was therefore close to the epicentre of government policy. It was an office of state with a small “o” and not to be confused with the great organs of State – Office of the Attorney General etc.. There was also a certain level of integration with and control by the State.

In relation to Section 4, Paragraph 8 he said that a distinction had to be made in the present appeal from the facts in **VA06/1/006 – The Construction Workers Health Trust**. The Board employed its own medical professionals.

The Respondent’s Case

Mr. Devlin dealt firstly with the submission made under Schedule 4, Paragraph 8 of the 2001 Act. He pointed out that no valid explanation had been offered to the Tribunal as to what exactly the appellants do in the subject premises to bring their case within Paragraph 8.

He maintained that the objects of the Board, according to its website, was to “*provide an effective screening service to the highest possible quality, so that the maximum number of breast cancers can be detected, at the earliest possible stage*”. He said that the question of whether health screening comes within Paragraph 8 was decisively answered in the Tribunal decision **VA06/1/006 - The Construction Workers Health Trust**. In that case the appellants screened workers, members and non members for diabetes, colon cancer, prostate cancer etc.. The Tribunal found that these screening activities did not come within the provisions of Paragraph 8 in that there was no direct provision of medical care for such persons in the manner in which such care would be provided in hospitals or nursing homes for persons who are clinically ill.

No screening took place in the subject premises – the property is used entirely for administration purposes – and this was evident from a letter from Mr. Eamonn Halpin to the Commissioner of Valuation dated 26th May, 2006. Paragraph 8 was, he said, quite clear in confining the exemption to these activities which are specified in it and does not expressly

extend to administrative support. Health services as referred to by Mr. Ó Maolchalain were not mentioned in Paragraph 8 of Schedule 4.

In relation to Paragraph 10 of Schedule 4, it was agreed by the parties that the appellant would abandon his claim under this section.

In relation to the claim for exemption under Section 15 (3) of the Valuation Act, 2001 Mr. Devlin referred to a case stated in the High Court in **VA05/3/061 - Personal Injuries Assessment Board v Commissioner of Valuation** and said that he was preserving his position pending the decision of the High Court.

He then referred to the Tribunal decisions in **VA04/2/038 - Legal Aid Board, VA05/3/003 - FETAC** and **VA05/3/061 - Personal Injuries Assessment Board** and stated that in these cases the Tribunal had accorded to the concept of an “office of State” a meaning much wider than that contended for by the Commissioner.

He also submitted that the Defence Forces and Garda Síochána would be regarded as an “office of State” if the principles of the **Legal Aid Board, FETAC** and **Personal Injuries Assessment Board** cases were correct. He said that it was equally apparent that the draftsman did not regard the Defence Forces and the Garda Síochána as an “office of State” which is why he felt the need to expressly refer to them. The express reference to the Defence Forces and Garda Síochána confirmed the narrower interpretation for which the Commissioner had consistently contended.

He maintained that all the bodies identified at Paragraph 12 of Schedule 4 would come within the definition of “office of State” if the Tribunal principle referred to above was accepted as correct.

He also pointed out that the Order of 2004 does not confer the status of civil servants on the staff of the Board, pointing out that the Tribunal in the **Legal Aid Board** case held that the staff were civil servants and that this weighed strongly with the Tribunal in reaching its decision.

Findings

The Tribunal has carefully considered all the evidence and arguments adduced by the parties and makes the following findings:-

1. The appellant has failed to mount a sustainable case under Schedule 4, Paragraph 8 in that the premises are used exclusively for administration purposes. They are not used for the purposes of caring for sick persons, for the treatment of illnesses or as a maternity hospital.
2. The application under Schedule 4, Paragraph 10 was, by agreement, withdrawn.
3. With regard to the application under Section 15(3) of the 2001 Act it is very important to spell out the degree of State control with regard to the Board. The answer is found in the statutory instrument which establishes the Board – SI No 891 of 2004.

There are three organs of State involved with the Board and thereby exercising control over the Board and these are the Executive or Ministerial organ, the Oireachtas and the Comptroller and Auditor General. Accordingly, in order to assess the degree of control involved we look at the Board from the point of view of

- Set up
- Functions
- Membership
- Remuneration.
- Director and Staff
- Finance
- Accountability
- Reports

Executive or Ministerial control

Set up.

- The National Breast Screening Board was established by ministerial Order SI No. 891 of the 23rd day of December, 2004 and came into effect on the 1st day of January 2005.

Functions

- The Board shall perform the functions conferred on it by the Order. The board shall carry out a national breast screening programme for breast cancer in women “*subject to such directions as the Minister may give from time to time.*” The Board shall cooperate with the Heath Service Executive.

Membership

- The Chairperson and members are appointed by the Minister [the Minister for Heath and Children]. The Minister shall ensure a gender balance in the composition of the Board in so far as this is practicable. In the event of a casual vacancy, the vacancy may be filled by appointment by the Minister.

Remuneration

- Apart from the Chairperson, no member of the Board shall receive remuneration, but may be paid travelling and subsistence allowances *approved* by the Minister with the consent of the Minister for Finance. The Chairperson’s remuneration is also determined by the Minister with the consent of the Minister for Finance.

Director and Staff

- The Director or Chief Officer shall be appointed by the Board and shall hold office for such period and on such terms and conditions as the Board may determine with the approval of the Minister. Terms and conditions, relating to the remuneration, superannuation and allowances for expenses of the Director shall be determined by the Minister with the consent of the Minister for Finance.

As regards other staff members of the Board, the Tribunal is not so much concerned with whether or not they are referred to as civil servants or public servants, but is concerned with ministerial involvement in their appointment and remuneration. The appointment of staff must have the approval of the Minister with the consent of the Minister for Finance and as far as remuneration, conditions of services and grades are concerned these matters must also have the approval of the Minister with the consent of the Minister for Finance.

Finance

- The Board shall submit estimates of income and expenditure in such form, in respect of such periods and at such times as may be required by the Minister.

Funding and finance - here is an example of two organs of state, executive and legislative, involved in the financial control of the Board. The Minister may pay the board a grant in each year out of moneys provided by the Oireachtas.

Accountability

- Proper accounts of income and expenditure shall be kept by the board.
- The Board shall submit an annual financial statement to the Comptroller and Auditor General and an audit of these statements shall be carried out by this organ of state.

Reports

- The Board shall make an annual report on its activities to the Minister who shall cause copies of the report to be laid before each house of the Oireachtas.

Legal personality

- The Board is a corporate body with perpetual succession and has the power to sue and be sued in its corporate name. It does have the right to hold land. However, as regards the purchase or sale of land the Board must have ministerial approval.

In view of the aforesaid, it appears to the Tribunal that there is a very high degree of State control of the Board through the organs of State. We have seen that in some matters, such as remuneration, two Ministers are involved; funding is provided by the Oireachtas and annual accounts must be submitted to the Comptroller and Auditor General. With such levels of control the Tribunal concludes that the National Breast Screening Board is an “office of State” within the meaning Section 15(3) of the Valuation Act 2001.

To conclude, we would like to add the following addendum. An organ of State may be an “office of State”, but an “office of State” is not necessarily an organ of State and especially one which is spelt with a small “o” would not appear to have the status of an organ of State. Organs of State have a specified constitutional basis.

Determination

In view of the aforesaid the Tribunal concludes that the National Breast Screening Board is an “office of State” within the meaning of Section 15(3) of the Valuation Act, 2001 and is accordingly exempt from the payment of rates.

In view of the above findings it is not proposed to deal with the appellant’s case on quantum although full evidence was heard in relation to same.

And the Tribunal so determines.