NO. CV 09 4010182S	:	SUPERIOR COURT
RIVER PROPERTIES INC.	:	JUDICIAL DISTRICT OF
	:	MIDDLESEX
	:	AT MIDDLETOWN
v.		
TOWN OF ESSEX, ET AL.	:	APRIL 19, 2010

MEMORANDUM OF DECISION ON
PLAINTIFF'S MOTION FOR AWARD OF INTEREST AND COSTS

The plaintiff, River Properties, Inc., filed this post-judgment motion for an award of $399.30 in interest, pursuant to General Statutes §§ 12-117a[1] and 37-3a[2], for an overpayment of taxes resulting from the court's February 22, 2010 judgment reducing the fair market value of the subject property, as of October 1, 2008, from $4,143,400 to

---

1

General Statutes § 12-117a provides, in relevant part, as follows: "If the assessment made by the . . . board of assessment appeals . . . is reduced by said court, the applicant shall be reimbursed by the town . . . for any overpayment of taxes, together with interest and any costs awarded by the court, or, at the applicant's option, shall be granted a tax credit for such overpayment, interest and any costs awarded by the court. Upon motion, said court shall, in event of such overpayment, enter judgment in favor of such applicant and against such . . . town for the whole amount of such overpayment, together with interest and any costs awarded by the court."

2

General Statutes § 37-3a provides, in relevant part, as follows: "(a) Except as provided in sections 37-3b, 37-3c and 52-192a, interest at the rate of ten per cent a year, and no more, may be recovered and allowed in civil actions . . . ."

$3,776,273. The motion further seeks costs in the amount of $3,562.65 in accordance with General Statutes §§ 52-257[3] and 52-260 (f)[4].

As to the issue of awarding post-judgment interest in a tax appeal, the court is guided by the discussion in Loomis Institute v. Windsor, 234 Conn. 169, 181, 661 A.2d 1001 (1995), in which the court stated that "[t]he decision to award interest is one to be made in view of the demands of justice rather than through the application of any arbitrary rule." (Internal quotation marks omitted.) The court in Loomis Institute further noted that while "[t]he trial court did not explain why it had refused to award the taxpayer

---

[3] General Statutes § 52-257 provides, in relevant part, as follows:
"(a) The fees of parties in civil actions in which the matter in demand is not less than fifteen thousand dollars shall be: For each complaint, exclusive of signing and bond, five dollars for the first page and, for each succeeding page, two dollars; for each judgment file, two dollars for the first page and, for each additional page, one dollar and fifty cents. The prevailing party in any such civil action shall receive, by way of indemnity, the following sums: . . . . (2) for the trial of an issue of law or fact, seventy-five dollars . . . .
"(b) Parties shall also receive: (1) For each witness attending court, the witness' legal fee and mileage; . . . (7) for the signing and service of process, the legal fees payable therefor . . . ; and (12) for the recording, videotaping, transcribing and presentation of the deposition of a . . . real estate appraiser that is used in lieu of live testimony in the civil action, the reasonable expenses incurred."

[4] General Statutes 52-260 (f) provides, in relevant part, as follows: "When any . . . real estate appraiser gives expert testimony in any action or proceeding, including by means of a deposition, the court shall determine a reasonable fee to be paid to such . . . real estate appraiser and taxed as part of the costs in lieu of all other witness fees payable to such . . . real estate appraiser."

interest pursuant to § 37-3a . . . . [There was] no evidence that the town acted maliciously or in bad faith toward the taxpayer." Id.

In the present case, the town's assessor, as part of his statutory duty to periodically revalue property in Essex, determined that the fair market value of the subject property was $4,143,400 on the Grand List of October 1, 2008. There was no evidence that the assessor acted maliciously or in bad faith in arriving at his conclusion of value. See, e.g., Carrano v. Yale-New Haven Hospital, 112 Conn. App. 767, 773, 963 A.2d 1117 (2009). The action here was not for money wrongfully withheld; it is a statutory appeal, pursuant to § 12-117a, challenging the assessor's valuation of the taxpayer's property. The court's function in such an appeal is to determine the fair market value of the property in a de novo proceeding. See Abington, LLC v. Avon, 101 Conn. App. 709, 713-14, 922 A.2d 1148 (2007).

Accordingly, the court is not persuaded to award post-judgment interest to the plaintiff.

Turning to the issue of awarding costs, the plaintiff seeks reimbursement of $3,562.65 covering various fees; $2,100 for preparation of the appraisal; the appraiser's travel costs; and the appraiser's trial preparation fees.

Practice Book § 18-19 provides that "[i]n proceedings before a judge no costs shall be taxed in favor of either party unless otherwise provided by statute." This is

consistent with the general concept expressed by the court in M. DeMatteo Construction Co. v. New London, 236 Conn. 710, 715-717, 674 A.2d 845 (1996), that "[i]t is a settled principle of our common law that parties are required to bear their own litigation expenses, except as otherwise provided by statute. Furthermore, because [c]osts are the creature of statute . . . unless the statute clearly provides for them courts cannot tax them. Accordingly, the plaintiff can prevail only if the statutory provisions upon which it relies clearly empower the trial court to tax the cost of a real estate appraisal report." (Citations omitted; internal quotation marks omitted.) See also Boczer v. Sella, 113 Conn. App. 339, 343, 966 A.2d 326 (2009).

The plaintiff points to two statutory sections, §§ 52-257 and 52-260 (f), that it claims provides legislative authority for the court to award costs.

As noted in Boczer, "[§] 52-257 provides an enumerated list of fees recoverable by a party in a civil action. Of relevance [here] . . . is subsection (b), which allows a prevailing party to recover the costs of a witness' legal fee and mileage . . . ." (Internal quotation marks omitted.) Id.

The Boczer court also construed § 52-260 (f) as a refinement of § 52-257, reciting that "§ 52-260 (f) provides further instruction for the recovery of a witness fee in cases . . . in which a practitioner of the healing arts testifies as an expert. When any practitioner of the healing arts . . . gives expert testimony in any action or proceeding, including by

means of a deposition, *the court shall determine a reasonable fee to be paid to such practitioner of the healing arts* . . . and taxed as part of the costs in lieu of all other witness fees payable to such practitioner . . . ." (Emphasis in original; internal quotation marks omitted.) Id. Although the Boczer case dealt with the witness fees of a practitioner of the healing arts, § 52-260 (f) places a real estate appraiser in the same category.

The Supreme Court is clear that pursuant to § 52-260 (f), a witness fee can only be awarded for the reasonable cost of a witness testifying, not for preparation time or for mileage and transportation costs.

In Smith v. Andrews, 289 Conn. 61, 87, 959 A.2d 597 (2008), the court found that "[i]t is clear that the language of § 52-260 (f) neither authorizes a reasonable fee for an expert's trial preparation time as distinguished from his or her in-court trial testimony, nor expressly authorizes costs for an expert's travel, transportation and hotel costs. Thus, as [the court] noted in M. DeMatteo Construction Co. v. New London, supra, 236 Conn. 717, '[b]y its express terms, § 52-260 (f) treats as taxable only those costs that arise from an expert's testimony at trial.' Accordingly, absent such an express legislative provision, [there is] no reason to abrogate this state's long-standing adherence . . . that litigants are responsible for the payment of their own litigation expenses."

In its February 22, 2010 memorandum of decision, the court did not adopt the findings of plaintiff's appraiser Tom Merola or defendant's appraiser James B. Blair.

Both appraisers did a commendable job presenting their opinions of how they arrived at the subject's value at trial. The court took those parts of each appraiser's findings that appeared to be the most credible to determine the subject property's value. Therefore, it would not be equitable to award the costs to one party when both appraisals were considered by the court in determining the final valuation of the subject property.

Accordingly, for the foregoing reasons, the plaintiff's motion for interest and costs is denied.

Arnold W. Aronson
Judge Trial Referee