IN THE
SUPREME COURT OF FLORIDA

JAMES A. ZINGALE, as
Executive Director of the
Department of Revenue of
the State of Florida,

Petitioner,

Case No. SC03-1207
LT No. 4D02-3754

vs.

ROBERT O. POWELL and
ANN S. POWELL,

Respondents.
__________________________________/

RESPONDENTS' JURISDICTIONAL BRIEF

On Petition For Review Of A Decision of The
District Court of Appeal, Fourth District,
State of Florida

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STATEMENT OF CASE AND FACTS

On June 22, 1990, MR. & MRS. POWELL purchased their current residence located at 1750 S.E. 11th Street, Fort Lauderdale, Broward County, Florida (the Property). On June 22, 1990, The POWELLS occupied the Property as their primary residence and have resided thereon, continuously, through and including the present.

Until the year 2001, through inadvertence and oversight, MR. & MRS. POWELL failed to apply for or obtain a homestead exemption from taxation for the Property.

In 2001, MR. & MRS. POWELL received a notice of proposed property taxes for the Property which indicated a significant increase in the assessed value of the Property between the years 2000, and 2001. As a consequence of the gravity of the increase in the assessed value of their homestead, MR. & MRS. POWELL realized for the first time that they had failed to apply for a homestead exemption.

On August 31, 2001, MR. & MRS. POWELL filed with the Value Adjustment Board a petition contesting the proposed increase in the assessed value of the Property for the year 2001; and on September 17, 2001, they filed an application to obtain a homestead exemption for the Property for the year 2001.

The Property Appraiser approved the POWELLS' application for homestead exemption for the year 2001.

On February 21, 2002, the POWELLS appeared before the Special Master assigned by the Broward County Value Adjustment Board to present their position seeking a reduction in the 2001assessed value for the Property in compliance with Article VII, Section 4, of the Florida Constitution (the "Save Our Homes" provision). Rather than consider the POWELLS' application for an adjustment to the assessed value of the Property, the Special Master determined that he had no jurisdiction to consider the application and denied same without prejudice for the POWELLS to reapply to the full Value Adjustment Board.

The Special Master's Recommendations were set for review by the Value Adjustment Board on April 18, 2002. On April 18, 2002, the Value Adjustment Board refused to allow the POWELLS to make any presentation, offer evidence, or otherwise be heard on their petition for an adjustment to the assessed value of the Property[1] but announced their decision to deny the POWELLS' application. To date, the Value Adjustment Board has failed to issue any written order, opinion or other ruling with respect to the POWELLS' application[2].

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[1] The refusal of the Value Adjustment Board to hear the Plaintiffs' petition or to allow the Plaintiffs to present evidence was in direct violation of Fla. Stat. §194.032(1)(a)(1) and §194.034(1)(a).

[2] The failure of the Value Adjustment Board to render a written decision containing findings of fact and conclusions of law was in direct violation of Fla. Stat. § 194.034(2).

On July 3, 2002, the POWELLS, filed the underlying action challenging the Property Appraiser's failure to apply the cap set forth in the "Save Our Homes" provisions of the Constitution when calculating the year 2001, tax assessment of the POWELLS' property. The cause came to issue on the answers and affirmative defenses of all Defendants; and in due course the Property Appraiser and Broward County Revenue Collection Division filed a Motion for Judgement on the Pleadings. In response the POWELLS filed their reply and Cross-Motion for Judgement on the Pleadings.

On August 23, 2002, the trial court granted The Property Appraiser's Motion for Judgement on the Pleadings and entered a Final Judgement On the Pleadings for Defendants and the POWELLS timely perfected their appeal of that order to the Fourth District Court of Appeal. The Fourth District reversed the trial court and remanded the cause "with instructions to reinstate the Powells' complaint." A copy of the Fourth District opinion here under review appears in the Appendix to Petitioner's Brief on Jurisdiction.

SUMMARY OF ARGUMENT

The POWELLS agree that pursuant to Article V, Section 3(3) of the Florida Constitution the Court has discretion to exercise jurisdiction because the opinion of the Fourth District construes a provision of the Florida Constitution and affects a class

of constitutional officers. The opinion of the Fourth District does not, however, conflict with *Horne v. Markham,* 288 So. 2d 196 (Fla. 1973), and does not, as asserted by Petitioner, impose an impossible burden on property appraisers. Accordingly, there is no compelling reason for the Court to exercise its discretion to accept this appeal.

Horne v. Markham was a homestead exemption case. This is an assessment case dealing with the 3% cap on increases to assessed value mandated by the "Save Our Homes" provisions of Article VII, Section 4, of the Florida Constitution which became effective nearly 20 years after *Horne v. Markham* was decided.

Moreover, the "impossible responsibility" Petitioner argues the Fourth District opinion imposes on property appraisers is simply false and ignores the clear mandate of F.S. § 194.171(2) which requires all who wish to challenge the assessment of their property to do so within 60 days from the date that the assessment is certified for collection. The opinion of the Fourth District and, consequently, the issue presented by this appeal deals with an extremely narrow class of persons who are entitled to a homestead exemption, fail to apply for the exemption but timely challenge the assessment of their property for the following year within 60 days from the time the assessment is certified for collection.

ARGUMENT

The POWELLS agree that pursuant to Article V, Section 3(3) of the Florida Constitution the Court has discretion to exercise jurisdiction because the opinion of the Fourth District construes a provision of the Florida Constitution and affects a class of constitutional officers. The POWELLS deny that the decision under review conflicts with the decision in *Horne v. Markham,* 288 So. 2d 196 (Fla. 1973).

The opinion of the Fourth District affects only a very narrow class of taxpayers who are entitled to a homestead exemption, do not apply for and receive a homestead exemption, but timely challenge the following year's assessment of their property which exceeds the cap provided in Article VII, Section 4, of the Florida Constitution.

Horne v. Markham

Petitioner erroneously asserts that the opinion of the Fourth District conflicts with the 1973 opinion of this Court in *Horne v. Markham,* 288 So. 2d 196 (Fla. 1973). In *Horne v. Markham,* a taxpayer neglected to timely file his application for a homestead exemption until after the filing deadline. When the Tax Assessor rejected the taxpayer's late filed application, the taxpayer filed suit asserting that he had an absolute right to a homestead exemption, and, to the extent that Florida Statutes required him to file an application by April 1 of each year, they were violative of the Due Process Clauses of the United States and Florida Constitutions. In the opinion

under review the POWELLS seek application of "Save Our Homes" treatment they do not seek a homestead exemption. *Horne v. Markham* dealt with a recalcitrant taxpayer's right to a homestead exemption and not his right to the cap on assessments mandated by the "Save Our Homes" provisions of Article VII, Section 4, of the Florida Constitution. Indeed, *Horne v. Markham* was decided in 1973, nearly 20 years before the January 5, 1993, effective date of "Save Our Homes".

The Fourth District decision under review construes, not the homestead exemption provisions of Article VII, Section 6, but the "Save Our Homes" provisions of Article VII, Section 4, of the Florida Constitution.

Petitioner asserts at page 5 of his brief, "this Court should grant review and decide whether a property owner can be entitled to a homestead exemption and the benefits of article VII, section 4, without even having established a right to the exemption as mandated by section 6." (emphasis added.) This assertion misconstrues this case and the opinion of the Fourth District. The POWELLS have never asserted they should be granted a homestead exemption without applying for one and the Fourth District didn't say they should. What the POWELLS do assert is they are entitled to "Save Our Homes" treatment for their property in the absence of an application for a homestead exemption. This is not a homestead case under Article VII, Section 6. It is an assessment case under Article VII, Section 4. At page 8 of his

Brief Petitioner asserts, "The decision below conflicts with Horne because it holds the POWELLS are "entitled" to a homestead exemption for a year in which they did not apply for it, 2000 . . . ." Even a cursory reading of the opinion under review reveals this assertion to be false. The POWELLS are not seeking a homestead exemption and nowhere does the Fourth District opinion say they are entitled to one. The Fourth District opinion holds that the POWELLS are entitled to "Save Our Homes" treatment for their property irrespective of whether they applied for and received a homestead exemption for the prior year.

In analyzing this issue it is important to keep in mind that Article VII, Sections 4 and 6, of the Florida Constitution provide separate and distinct benefits to Florida taxpayers. Section 6, provides an exemption from taxation. Section 4, is not an exemption provision but a limitation on the authority of Property Appraisers to increase the assessed value of property from one year to the next. The only requirement imposed by Section 4, is that the person who owns the property be entitled to a homestead exemption. Section 4, contains no application or filing requirement. Nor does Section 4, contain any requirement that a homestead exemption be granted.

Article VII, Section 4, of the Florida Constitution extends "Save Our Homes" treatment to "All persons entitled to a homestead exemption under Section 6" of

Article VII.

Article VII, Section 6, of the Florida Constitution provides: "Every person who has the legal title . . . to real estate and maintains thereon the permanent residence of the owner . . . shall be exempt from taxation . . . upon establishment of right thereto in the manner prescribed by law."

The Court Should Decline to Exercise Jurisdiction

Petitioner asserts that the Court should exercise its jurisdiction to review the Fourth District opinion because dire consequences will befall Florida's Property Appraisers in that the Fourth District opinion imposes an impossible task on them: "to identify those property owners who have not applied for homestead exemption but nevertheless qualify for it and are thus "entitled" to the Save Our Homes limitation." (Petitioner's Brief, p. 7.) This argument ignores the clear provisions of F.S. § 194.171(2), which require all who wish to challenge the assessment of their property to do so within 60 days from the date that the assessment is certified for collection. Accordingly, the Fourth District's opinion does not leave property appraisers with the "impossible task" of divining which taxpayers are entitled to "Save Our Homes" treatment and which are not. The burden remains on taxpayers to come forward and challenge the assessment of their property within 60 days from the date the assessment they challenge is certified for collection by demonstrating they were entitled to the

homestead exemption in the prior year.

It is submitted that the opinion of the Fourth District deals with such a narrow class of taxpayer that this Court should not exercise its discretion to accept jurisdiction. The Fourth District opinion deals only with taxpayers who are otherwise entitled to a homestead exemption, have not applied for and received it, but who challenge the assessment of their property within 60 days from the date the assessment is certified for collection. Accordingly, Property Appraisers, need not be precient. It the taxpayer does not challenge his assessment within 60 days he waives "Save Our Homes" treatment. If the taxpayer timely challenges the assessment the Property Appraiser has been notified.

CONCLUSION

The opinion of the Fourth District concerning which the Petitioner seeks review does not conflict with *Horne v. Markham,* 288 So. 2d 196 (Fla. 1973). The Fourth District opinion construes a provision of the Florida Constitution which did not become effective until almost 20 years after the opinion in *Horne v. Markham.*

While the Court has discretion under Article V, Section 3(3) of the Florida Constitution to accept jurisdiction of this cause, it should decline to do so, because the opinion sought to be reviewed places no untoward burden on Property Appraisers and affects only the limited class of taxpayers who timely challenge the assessment to

their property during a narrow, 60 day window.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Charles J. Crist, Jr., Attorney General, Christopher M. Kise, Solicitor General, Louis F. Hubener, Chief Deputy Solicitor General, Office of the Attorney General, The Capitol -PL-01, Tallahassee, Florida 32399, Gaylord A. Wood, Jr., Wood & Stuart, P.A., 304 S.W. 12th Street, Fort Lauderdale, Florida, 33315-1549 and Edward A. Dion, Governmental Center, Suite 423, 115 South Andrews Avenue, Fort Lauderdale, FL 33301 via United States first class, postage pre-paid mail, on this _______of July, 2003.

Respectfully Submitted,
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CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that this Brief was prepared using WordPerfect 8, Legal Times New Roman 14 point font.

Niles, Dobbins, Meeks, Raleigh & Dover

By:_____________________________
Harry S. Raleigh Jr.