

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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In the Matter of the Application of

MONROE GELFAND,

Petitioner,

-against -

THE ASSESSOR FOR THE CITY OF PEEKSKILL
THE BOARD OF REVIEW OF THE CITY OF
PEEKSKILL, AND THE CITY OF PEEKSKILL,

Respondents.

For a Review under Article 7 of the
Real Property Tax Law and the State
of New York.

DECISION/ORDER

Index No:
16294/96
15417/97
15066/98
15778/99
14913/00
13706/01
14925/02
13619/03
12981/04
15234/05
15904/06

Motion Date:
1/21/09

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LaCAVA, J.

The following papers numbered 1 to 1 were considered in connection with this motion by petitioner Monroe Gelfand (Gelfand) for an Order enforcing the Consent Order entered herein with respect to the late penalties collected by the respondent City of Peekskill (City) for failure to timely pay taxes due and owing, and, pursuant to the Order, directing a refund of said penalties exceeding the amounts due and owing based on the stipulated over-assessments herein:

PAPERS
NOTICE OF MOTION/AFFIDAVIT/EXHIBITS
ANSWERING PAPERS

NUMBERED
1
NONE

This is an action, pursuant to RPTL Article 7, seeking to challenge the assessment by the City for a parcel owned by Gelfand. The matter was concluded on or about July 11, 2007 with entry of a

Consent Judgment stipulating, *inter alia*, to excessive assessments in all tax years at issue, and, based on said excessive assessments, mandating refunds to petitioner.

Gelfand complains now that the City declines to refund the penalties for late payments (exceeding the lawful assessments) which the City collected, which un-refunded penalties amount to \$ 8,142.41.

The City refused to refund the amounts in correspondence with counsel for petitioner, but has not opposed the instant motion.

RPTL § 726 provides

§ 726. Refund of taxes

1. If in a final order in any proceeding under this article it is determined that the assessment reviewed was excessive, unequal or unlawful, or that real property was misclassified, and ordered or directed that the same be corrected or stricken from the roll, and such order is not made in time to enable the assessors or other appropriate officer, board or body to make a new or corrected assessment or to strike such assessment from the roll prior to the imposing of any tax or special ad valorem levy upon the real property the assessment of which has been determined to be excessive, unequal or unlawful, or which has been determined to be misclassified, then any amount at any time collected upon such excessive, unequal or unlawful assessment, or as a result of such misclassification shall be refunded as follows:

(b) When such tax or other levy shall have been imposed by the appropriate board or body of any city, town or village, there shall be audited and paid to the petitioner or other person paying such tax or other levy in the same manner as city, town or village charges, as the case may be, the amount paid by him in excess of the amount which would have been paid had the assessment been made as determined by such order, together with interest thereon as provided in subdivision two of this section. So much of any tax or other levy, including interest thereon, as shall be refunded which was imposed for city,

town, village or special district purposes, shall be charged to such city, town, village or special district. So much of the amount of any tax or other levy, including interest thereon, as shall be refunded which was imposed for other than city, town, village or special district purposes, shall be a general county charge; provided, however, that if the assessment is reduced by such order by an amount not in excess of ten thousand dollars, such portion of the amount refunded shall be charged to the city or town in which the real property is situated. However, with regard to condominium owners, the amount paid by the petitioner or other person paying such tax, in excess of the amount which would have been paid had such assessment been made, as determined by such order, for assessments other than city, town, village or special district purposes, shall not be a city or town charge regardless of the amount of the reduction in the assessment.

Thus, RPTL §726 (1) clearly provides that "...any amount at any time collected upon such excessive...assessment...shall be refunded...." (Cf. *Linden Hill No. 2 Cooperative Corp. v. Tishelman*, 107 Misc. 2d 799 [Sup. Ct., Queens Co., 1981], *affd.*, 87 A.D.2d 577 [2d Dep't 1982]; see also *Moon v. Bloomer*, 183 Misc 62 [Sup Ct., Broome Co., 1944].)

Further, RPTL 726 (1) (b) provides that "there shall be audited and paid to the petitioner...the amount paid by him in excess of the amount which would have been paid had the assessment been made as determined by such order." Pursuant to this section, then, the amount paid in excess of the portion of the penalty ordered to be due and owing as a result of the corrected assessments--\$8,142.41--must be refunded by the City.

In addition, the Court notes that the instant stipulation included a waiver of interest only insofar as the refund for said overpayments was made by the City within 60 days of the Order. The City has obviously failed to do so with respect to the above-mentioned penalties.

Finally, RPTL §722 (1) **requires** an award of costs to the prevailing party where the reductions ordered in the assessments exceeds 50%. The reductions in the years for which the City has refused to refund the overpayments of penalties indeed exceeded 50%. While the stipulation waives costs generally, that waiver was obviously in expectation of prompt payment of all valid sums due

and owing, not refusal to pay prompting motion practice on a cases settled by stipulation over 18 months ago.

Based upon the foregoing unopposed motion, it is hereby

ORDERED, that the motion by petitioner for an Order directing a refund of the penalties exceeding the amounts due and owing based on the stipulated over-assessments herein, namely \$8,142.41, with interest, and costs on the motion as provided-for in RPTL §722 (1), is granted.

Settle order.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Dated: White Plains, New York
February 27, 2009

HON. JOHN R. LA CAVA, J.S.C.

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