

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D23868  
Y/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - April 23, 2009

A. GAIL PRUDENTI, P.J.  
HOWARD MILLER  
RANDALL T. ENG  
ARIEL E. BELEN, JJ.

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2008-00189

DECISION & ORDER

In the Matter of VJC Rentals, Inc., appellant, v  
Board of Assessors, et al., respondents.

(Index No. 8035/05)

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Schroder & Strom, LLP, Mineola, N.Y. (Jacquelyn Todaro and Michael T. Schroder of counsel), for appellant.

Lorna B. Goodman, County Attorney, Mineola, N.Y. (Gil Nahmias of counsel), for respondents.

In a proceeding pursuant to Real Property Tax Law article 7 to reclassify certain real property for the 2004-2005 and 2005-2006 tax years, the petitioner appeals from an order of the Supreme Court, Nassau County (De Maro, J.), entered December 4, 2007, which, upon an order of the same court dated January 11, 2007, in effect, granting its motion for leave to reargue its prior motion for partial summary judgment, which was denied in an order of the same court dated November 28, 2007, and upon a stipulation of certain facts, denied its motion for partial summary judgment and, upon searching the record, awarded summary judgment to the respondents dismissing the petition.

ORDERED that the order is affirmed, with costs.

We do not address the petitioner's arguments that are based on a so-called advisory letter from the State of New York Division of Equalization and Assessment to the Nassau County Attorney in November 1990. The petitioner initiated three rounds of motion practice in the Supreme Court, including two for leave to reargue, and never brought this letter to that court's attention. Accordingly, we decline to consider it for the first time on appeal (*see Bentvena v*

July 7, 2009

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*Edelman*, 47 AD3d 651, 652; *Matter of Mercury Ins. Group v Ocana*, 46 AD3d 561, 562).

The Supreme Court correctly determined that the subject real property was not primarily used for residential purposes during the tax years in question (*see* Real Property Tax Law § 1802[1]).

The petitioner's remaining contentions are without merit.

PRUDENTI, P.J., MILLER, ENG and BELEN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court