

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

D31132
W/prt

_____AD3d_____

Argued - April 7, 2011

PETER B. SKELOS, J.P.
JOHN M. LEVENTHAL
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2009-05904

DECISION & ORDER

In the Matter of Irace Realty Associates, respondent,
v Board of Assessors, et al., appellants.

(Index No. 403266/05)

John Ciampoli, County Attorney, Mineola, N.Y. (Gerald R. Podlesak of counsel), for appellants.

Santemma & Deutsch, LLC, Syosset, N.Y. (Jonathan D. Gottlieb of counsel), for respondent.

In a consolidated proceeding pursuant to Real Property Tax Law article 7 to review real property tax assessments for the tax years 2003 through 2007, the Board of Assessors, the Assessment Review Commission of Nassau County, and the County of Nassau appeal from a judgment of the Supreme Court, Nassau County (Bucaria, J.), entered April 20, 2009, which, after a nonjury trial, inter alia, is in favor of the petitioner and against them reducing the assessments.

ORDERED that the judgment is affirmed, with costs.

At trial, the petitioner met its initial burden of coming forward with substantial credible evidence of the invalidity of the challenged real property assessments, by presenting a credible, competent appraisal (*see* 22 NYCRR 202.59[g][2]; *Matter of Niagara Mohawk Power Corp. v Assessor of Town of Geddes*, 92 NY2d 192, 196; *Matter of FMC Corp. [Peroxygen Chems. Div.] v Unmack*, 92 NY2d 179, 191).

Contrary to the appellants' contentions, there is no evidence that the comparable rents

May 3, 2010

Page 1.

MATTER OF IRACE REALTY ASSOCIATES v BOARD OF ASSESSORS

relied upon by the petitioner in its calculations were not the fruit of arm's-length negotiations (*see Matter of County Dollar Corp. v City of Yonkers*, 97 AD2d 469, 473). Thus, we perceive no basis to disturb the Supreme Court's determination that the petitioner established by a preponderance of the evidence that its real property was overvalued in each of the tax years in question (*see Matter of FMC Corp. [Peroxygen Chems. Div.] v Unmack*, 92 NY2d at 188; *Matter of Jo-Be Props., LLC v Board of Assessors*, 69 AD3d 942).

SKELOS, J.P., LEVENTHAL, SGROI and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court