SMALL CLAIMS ASSESSMENT REVIEW PROGRAM

SCAR

HEARING OFFICERS' MANUAL

Nassau County Supplement

(SCAR PROCEEDINGS WITH NASSAU COUNTY AS THE ASSESSING UNIT)

2007

Small Claims Assessment Review Program
25 Beaver Street, 8th Floor
New York, NY 10004

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JURISDICTIONAL REQUIREMENTS

1. As a general rule, to qualify for an appeal pursuant to SCAR, the property must be owner-occupied on the tax status date. The property must either (1) be improved by a one, two, or three family, owner-occupied residence used **exclusively**[1] for residential purposes, or (2) be unimproved, if according to the assessing unit or special assessing unit the property is not of sufficient size to contain a one, two or three family residential structure (*i.e.*, an unbuildable lot).[2] Class One condominiums in NYC and Nassau County qualify as property subject to a SCAR proceeding. Outside NYC and Nassau County, condominiums classified as homestead properties qualify for SCAR (9 Op. Counsel SBRPS No. 3). Class One condominiums are buildings with less than three stories that were not converted from rental or cooperative use.

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[1]Nonresidential use of the property does not necessarily disqualify the property from SCAR treatment. In *Matter of Town of New Castle v Kaufmann* (72 NY2d 684 [1988]), the property owner, a psychiatrist, had dedicated a small portion (17.5% of total gross floor area of first floor) of his residence to use as a professional office to treat patients. The office had been used for a period of ten hours during the seven months prior to the filing of the SCAR proceeding. Reviewing the legislative history of the statute, the New York Court of Appeals held that despite the occasional and incidental nonresidential use, the property was being used exclusively for residential purposes within the meaning of RPTL § 730(1)(b)(i). It is important to note that the Court's decision did not turn on the amount of floor area or the number of hours the office had been in use. Instead, it was the occasional and incidental use for nonresidential purposes that was the determining factor.

[2]Because Nassau County's Department of Assessment does not have authority over the zoning requirements for properties located within Nassau County, it cannot determine whether or not a property is buildable. Indeed, at least one court has annulled as arbitrary, capricious and unsupported by substantial evidence a Hearing Officer's determination that he was without jurisdiction because petitioner had failed to meet his burden of proof that a 1.08 acre lot in the Village of Oyster Bay was unbuildable. In that case, to support his claim that the lot was unbuildable, petitioner supplied a copy of the Village of Oyster Bay's zoning code, which showed that the zone in which the subject property was located required minimum 2 acre lots. In opposition, the County provided a letter from Assessment Review Commission's counsel stating that Nassau County's Department of Assessment had taken the position that every lot is buildable and therefore, vacant lots do not qualify for SCAR. In annulling the Hearing Officer's decision and remanding the matter for a de novo hearing before a different Hearing Officer, the Court found that since it was the Village of Oyster Bay – not the County's Assessor – that had sole zoning authority – it was irrational for the Hearing Officer to ignore the Village of Oyster Bay's zoning code as evidence that the lot was unbuildable (*Application of Cole v Board of Assessors*, Index No. 404029/05 [Sup Ct Nassau County 2005]).

Petitioners are limited to one parcel, which is defined as a separately assessed lot, parcel, piece or portion of real property ("assessed unit"), per SCAR petition (RPTL § 730[5]; RPTL 102[11]). Thus, an owner may not seek to combine two or more separately assessed units and treat them as one assessed unit for purposes of a single SCAR proceeding (*Matter of Kline v City of Rye*, 150 AD2d 576 [1989], *lv denied* 74 NY2d 614 [1989]).

Property owned by a corporation or partnership **does not** qualify for SCAR treatment since a corporation or partnership cannot occupy a residence (8 Op. Counsel SBEA No. 93).

A mixed use structure (*e.g*., a residence above a storefront) does not qualify for SCAR treatment (*Matter of Town of New Castle v Kaufmann*,72 NY2d 684, 687 [1988]). However, a mixed use parcel – a parcel used for commercial purposes that is also improved by a residential structure (*e.g.*, a farm) – qualifies for SCAR treatment, but the review is limited to the portion of the parcel used for residential purposes (9 Op. Counsel SBRPS No. 43).

Owner-occupied does not mean that the residence must be the owner's primary residence (*i.e.*, year-round occupancy is not a requirement) or even that the residence was occupied on the tax status date.

- Vacation homes and other seasonal residences qualify as long as the residence is owner-occupied during its period of use (7 Op. Counsel SBEA No. 80).

- Residential property that was owner-occupied on the tax status date, but later becomes vacant, qualifies for SCAR treatment (9 Op. Counsel SBRPS No. 94).

- A petitioner may not bring a SCAR proceeding with regard to a house under construction (9 Op. Counsel SBRPS No. 122; *Matter of Tyrrell v Town of Greenville*, 108 AD2d 1092 [1985]).

- A person other than the property owner may be residing in the property and the property may qualify for SCAR treatment provided that the person occupying the premises is not paying rent. In *Matter of Masters v Board of Assessors* (188 AD2d 471 [1992]), petitioner moved into the new home he had purchased in 1987, but because he had been unable to sell his prior home, he allowed his father-in-law to live in the house free of charge until its sale in 1989. In that case, the Appellate Division, Second Department held that the occupancy of the house by petitioner's father-in-law did not cause the property to lose its owner-occupied status.

- Because an assessment is levied against the land and not the owner, a new owner may continue a SCAR appeal even if the SCAR petition and/or original application for correction of assessment for taxation ("the grievance") before the Assessment Review Commission ("ARC") had been filed by the previous homeowner (*see* RPTL § 523-b[6]; *People ex rel. Ambroad Equities, Inc. v Miller*, 289 NY 339 [1942]; *People ex rel. Bingham Operating Corp. v Eyrich*, 265 AD 562 [1943], *lv denied* 266 AD 803 [1943]). However, a new authorization may be required pursuant to RPTL § 730(6).

- With regard to the owner occupied status of property held pursuant to a trust instrument, the statute provides "[w]here real property is held in trust solely for the benefit of a person or persons, such person or persons may be deemed to be the owner or owners of such property for the purposes of this title" (RPTL § 730[9]).

2. **Filing and Service Requirements**

Filing Requirements: The property owner, or his or her predecessor-in-interest, must have first filed a complaint for administrative review of the assessment pursuant to the provisions of RPTL § 730(1)(a) and local law. In Nassau County, this means that the petitioner must have previously filed the grievance with ARC pursuant to RPTL § 523-b(6). **A petitioner's failure to have first sought administrative review before ARC is fatal to the petition and requires that the petition be dismissed**.

The property owner, or his or her authorized representative,[3] must file with, or mail to, the County Clerk's Office in the county in which the property is located, three copies of the SCAR petition. This must take place within 30 days of the completion and filing of the final assessment roll (RPTL § 730[3]), or within thirty days after notice of the ARC's final determination has been made and sent to the applicant, whichever date is later (RPLT § 523-b[11]). The "**[f]ailure to file the petition within such time shall constitute a complete defense to the petition and the petition must be dismissed**" (RPTL § 730[3]; *Matter of Dolan v City of New Rochelle*, Index No. 2679/84 [Sup Ct Westchester County 1984]).

[3]The petition may be completed by any person with knowledge of the facts stated in the petition provided (1) the person has obtained the property owner's written authorization, (2) the date of the authorization is within the same calendar year in which the grievance is filed, and (3) the authorization is made a part of the petition (RPTL § 730[6]).

The date of the completion and filing of the final assessment roll is defined as the date that is provided by law as the last day for the filing of the assessment roll or until notice of the filing has been given as required by law, whichever date is later (RPTL § 730[3]).

The 30 days starts the **day after** the date of the filing of the final assessment roll and runs for 30 consecutive days, including weekends and holidays. If the 30th day falls on a weekend or holiday, then the petition must be filed by the next business day (General Construction Law § 25-a).

Service Requirements: Pursuant to RPTL § 730(8), within ten (10) days of the filing of the SCAR petition, petitioner must mail (and with regard to service on the Clerk of the Assessing Unit, petitioner must either **mail by certified mail, return receipt requested**, or **personally deliver**) a copy of the SCAR petition to the following entities:

(1) The Clerk of the assessing unit named in the petition, or if there is no such clerk, to the officer who performs the customary duties of that official. In Nassau County, the assessing unit is the Nassau County Department of Assessment (**NOTE: ONLY CERTIFIED MAIL, RETURN RECEIPT REQUESTED SATISFIES THE SERVICE BY MAIL REQUIREMENT FOR SERVICE ON THIS ENTITY**);

(2) The Assessor or Chairman of the Board of Assessors of the assessing unit named in the petition;

(3) The clerk of the school district (and if there is no clerk or if the name and address of the clerk are unavailable, then service may be made on a trustee), if the school district uses the assessment for tax purposes;

(4) The County Treasurer;[4] and

(5) The Clerk of a Village that has enacted a local law pursuant to RPTL § 1402(3) if the assessment to be reviewed is on a parcel located within such Village.

Petitioner's failure to comply with the 10-day service requirement should ordinarily result in the petition's dismissal (*see Matter of Dolan v City of New Rochelle*, Index No. 2679/84 [Sup Ct Westchester County 1984]). However, a limited exception to the 10-day service requirement appears to have been

[4]At present, the County Treasurer does not accept service of SCAR petitions, so there is a waiver of the requirement to serve the County Treasurer until such time as this practice ceases.

recognized so long as petitioner personally serves the Department of Assessment within the period of time that it would have received the petition had it been served by mail. In this regard, at least two Supreme Court decisions have held that the SCAR proceedings should not be dismissed based upon untimely service (*i.e.*, personal service on the 11th day) since the Department of Assessment actually received the petition earlier than it would have if it had been mailed and, therefore, was not prejudiced (*see Matter of Bailey v Board of Assessors*, Index No. 3846/07 [Sup Ct Nassau County 2007]; *Matter of Bichoupan v Board of Assessors*, Index No. 002961/07 [Sup Ct Nassau County 2007]).

LIMITATIONS ON THE REQUESTED REDUCTION IN ASSESSMENT

Pursuant to RPTL § 730(1)(c)&(d), the requested reduction in assessment is limited by two factors:

(1) **Factor One**: The reduction requested at the SCAR Hearing **cannot** be more than the reduction that the property owner requested in the grievance filed with ARC. If ARC granted some but not all of the reduction, the petitioner may seek the balance in the SCAR proceeding.

> For example, if the petitioner sought a reduction of $3,000 before ARC and did not receive it, then he or she can ask for the same $3,000 in the SCAR proceeding. If ARC granted a reduction of $1,500, then the most the petitioner can ask for in the SCAR proceeding is a reduction of the remaining $1,500.

(2) **Factor Two**: The requested reduction is also limited by the **Equalized Value**: In SCAR proceedings involving Nassau County (and NYC) as the assessing unit, the Equalized Value is computed by dividing the final assessment by the **Class One Ratio**. The result is the equalized value.

ex. Final Assessed Value ÷ Class One Ratio = Equalized Value

ex.

$$\frac{\$10{,}000}{10\%} \quad \text{or} \quad \frac{10{,}000}{.10} = \$100{,}000$$

(a) If the **Equalized Value** is $450,000 or less, the amount of reduction sought in the SCAR proceeding is only limited by the amount of the reduction that was sought before ARC.

(b) If the **Equalized Value** is $450,001 or more, then the requested reduction is limited to not more than 25% of the final assessment or the reduction requested before the ARC, whichever is less

THE PETITION AND PRE-HEARING PROCEDURE

1. **THE PETITION IS BOTH A LEGAL FILING AND A WORKSHEET**. It must be signed and filed in a timely manner. As noted above, the petition may be completed by the property owner, or a person with knowledge of the facts who has been authorized in writing to represent the property owner. Incomplete or inconsistent forms are not grounds for dismissal. The petition may be amended at the hearing since the statute provides that there are no pleading requirements in SCAR proceedings (RPTL § 732[2]). It is important to note it is the County's position that the petition may not be amended in a substantive manner at the time of the hearing. Thus, according to the County, based upon RPTL § 733(1), a Hearing Officer may not grant petitioner relief that was not requested in the petition (*i.e.*, if the petitioner requests a reduction in assessment based on a .25% level of assessment, the Hearing Officer is precluded from granting a reduction based on a different level of assessment). RPTL § 733(1) provides that a Hearing Officer "[m]ay not reduce the assessment lower than that requested by the petitioner" (RPTL§ 733[1]). The RPTL defines assessment as "a determination made by assessors of (1) the valuation of real property, including the valuation of exempt real property and (2) whether or not real property is subject to taxation or special ad valorem levies" (RTPL § 102[2]). By contrast, the level of assessment is defined as the percentage of full value at which properties are assessed within a community. Accordingly, giving effect to the plain meaning of the word assessment, RPTL § 733 (1) merely means that the maximum reduction in assessment a Hearing Officer may grant may be no more than the reduction in assessment requested in the petition.[5] Thus, so long as the Hearing Officer's final decision with regard to the proper assessment is not lower than the assessment requested by petitioner in the ARC grievance and SCAR petition (and to the extent the property is one with an equalized value in excess of $450,000, no more than 25% of the final assessment), the statute is not violated and the Hearing Officer is free to apply whatever level of assessment he or she deems appropriate. Finally, even if the petition is not formally amended at the hearing, in rendering a decision in a small claims action, a Hearing Officer may, *sua sponte*, conform the pleadings to the proof received in the hearing (*Wai-Sun Chen v Unique Food & Vending Servs., Inc.*, 2002 NY Slip Op 40408(U), 2002 WL 31055592 [App

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[5]However, because the statute prohibits a petitioner from seeking a reduction in assessment lower than the reduction requested in the grievance before ARC (RPTL § 730[1][d]), the Hearing Officer cannot grant a reduction in assessment greater than that amount. Furthermore, for those properties involving equalized values greater than $450,000, the Hearing Officer is further precluded from granting a reduction greater than 25% of the final assessment (RPTL § 730[1][c]). Thus, the maximum reduction in assessment that may be granted is the lesser of (1) that requested in the ARC grievance/SCAR petition, or (2) 25% of the final assessment for properties with equalized values greater than $450,000.

Term, 2d and 11th Jud Dists 2002]; *Walker v Mergler*, 2001 NY Slip Op 40613(U), 2001 WL 1744161 [App Term, 1st Dept 2001]; *Greco v The Journal News*, 4 Misc 3d 1005(A), 2004 NY Slip Op 50704(U) [NY City Ct 2004]).

2. A Hearing Officer should never assume that a petition is valid simply because it was accepted for filing by the County Clerk.

3. A Hearing Officer must advise the parties by mail of the time and location of a SCAR hearing at least 10 working days prior to the date of the hearing (Uniform Rules for Trial Cts [22 NYCRR] § 202.58[e][4]), but failure to receive such notice within the time period does not bar the holding of the hearing (RPTL § 732[1]).[6] If an evening hearing is requested, it must be granted unless special circumstances exist that require otherwise (Uniform Rules for Trial Cts [22 NYCRR] § 202.58[e][4]).

4. There is no right to obtain pre-hearing discovery or disclosure in a SCAR proceeding (9 Op. Counsel SBRPS No. 47).

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[6]Although a party's failure to receive the notice does not bar a Hearing Officer from proceeding with the hearing, if the Hearing Officer learns that the reason for the party's default was that the notice was mailed to an address different from the address set forth in the petition, it would be an abuse of discretion to deny an adjournment request since it is always preferable to have a decision based on the merits with each party having had a full and fair opportunity to be heard (*see Matter of Town of Plattekill v Larsen*, Index No. 83-306 [Sup Ct Ulster County 1982], *affd as mod* 99 AD2d 897 [1984]; *see also Notrica v North Hills Holding Co., LLC*, 2007 WL 2782863, 2007 NY Slip Op 06962 [2007]; *Kim v A&J Produce Corp.*, 15 AD3d 251 [2005]).

THE HEARING

1. **The assessment is always presumed to be correct unless proven otherwise**. The burden of proof is on the petitioner to prove that the assessment is either excessive and/or unequal by substantial evidence (*Matter of Lake Sagamore Community Assn., Inc. v Town of Kent*, 160 AD2d 701, 701 [1990]). Substantial evidence means enough to convince a reasonable person (*Matter of FMC Corp. v Unmack*, 92 NY2d 179, 187-188 [1998]). "The substantial evidence standard is a minimal standard. It requires less than 'clear and convincing evidence'... and less than proof by 'a preponderance of the evidence, overwhelming evidence or evidence beyond a reasonable doubt'" (*id*. at 188). "[O]nce petitioner has met its initial burden and rebutted the presumption of validity that attaches to the assessment, a court must weigh the entire record, including evidence of claimed deficiencies in the assessment, to determine whether petitioner has established by a preponderance of the evidence that its property has been overvalued" (*id.*).

   In meeting this burden, petitioner is not required to present expert witnesses or submit expert reports (*i.e.*, there is no need to provide professional appraisal reports [8 Op. Counsel SBEA No. 83]) (RPTL § 732[2]). A Hearing Officer is permitted "to consider a wide variety of sources and information in evaluating tax assessments" (*Matter of McNamara v Board of Assessors of Town of Smithtown*, 272 AD2d 617, 617 [2000]). In determining the proper rate, RPTL § 732(2) provides that the "evidence may include, but shall not be limited to, the most recent equalization rate established for such assessing unit, the residential assessment ratio promulgated by the state board ..., the uniform percentage of value stated on the latest tax bill, and the assessment of comparable residential properties within the same assessing unit." The Hearing Officer may even inspect the property subject to review (RPTL § 732[2]).

2. **Appearances at the hearing** - RPTL § 732(3) provides that "[a]ll parties are required to appear at the hearing." However, the statute further provides that the "failure to appear shall result in the petition being determined upon an inquest by the hearing officer based upon the available evidence submitted" (RPTL § 732 [3]). Accordingly, simply because a party fails to appear at the hearing does not mean that a decision contrary to that party's interest should be granted.[7] Instead, the Hearing Officer should proceed to an inquest with the party who has appeared (or take the petition on submission if neither party appears) and render a decision based upon available evidence submitted.

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[7]However, because there is the presumption of validity that attaches to an assessment, petitioner must overcome this presumption by showing that the assessment was excessive and/or unequal by substantial evidence.

3. Settlements - Parties may stipulate to a settlement before or during the hearing. Do not take a settlement over the telephone. It must be in writing and signed by both parties.

4. The signed decision form constitutes a judicial order and must be prepared even if there is a settlement (9 Op. Counsel SBRPS No. 56). The signed settlement should be attached to the decision form. A settlement without a signed decision from the Hearing Officer is without force and effect.

5. **The Conduct of the Hearing**

- At all times the Hearing Officer must remain impartial and ensure that the proceedings are conducted in "such manner as to do substantial justice between the parties according to the rules of substantive law" (RPTL § 732[2]). It is the Hearing Officer's obligation to assure that decorum is maintained at the hearing (RPTL § 732[2]).

- The Hearing Officer should open by introducing himself/herself and ask the parties to do the same.

- The hearing is an informal proceeding (*e.g.*, no need to swear in the witnesses unless it is the Hearing Officer's practice to do so) and the rules of evidence do not apply (RPTL § 732[2]).

- Both sides should be provided the opportunity to present their case, with petitioner being given the opportunity to present first.

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- The cross-examination of witnesses is permitted. To maintain decorum and ensure that substantial justice is achieved, a Hearing Officer may limit the cross-examination of any witness to prevent abuse and ensure that only relevant evidence is being obtained (*see* RPTL § 732[2]).

- If the property owner is being represented by a designated representative, that representative does not have to be an attorney (*Matter of Cipollone v City of White Plains*, 181 AD2d 887 [1992]; 9 Op. Counsel SBRPS No. 63). Non-attorney representatives may argue both legal and factual issues (*Matter of Board of Assessors v Hammer*, 181 AD2d 885 [1992]).

- A Hearing Officer may ask questions to ascertain relevant facts and/or to clear up any inconsistencies.

- Adjournments and continuances are discouraged (Uniform Rules for Trial Cts [22 NYCRR] § 202.58[e][5]). Nevertheless, a Hearing Officer has the discretion to grant an adjournment or continuance of the hearing for good cause shown (*e.g.*, a jurisdictional objection is raised for the first time at

the hearing and petitioner needs an opportunity to obtain evidence to rebut respondent's objection) (*id.*).

- A Hearing Officer may take notes, but no recording devices of any kind are allowed by anyone, nor are court reporters allowed to transcribe the proceeding (RPTL § 735).

- Hearing Officers may not engage in ex parte communications with either party other than to schedule a hearing.

- Once a hearing is over, a Hearing Officer should not accept any further evidence, argument or other submission from either party unless the Hearing Officer has determined there is a need for such post-hearing submissions and established a schedule for them. The post-hearing schedule should set dates for each party's post-hearing submission, as well as an opportunity for each party to rebut their adversary's post-hearing submission.

- At the conclusion of the hearing, the participants should be requested to leave the room. Hearing Officers should avoid fraternizing with the participants and should not accept any ex parte communications from the parties after the hearing's conclusion.

THE DECISION

1. Hearing Officers should not render decisions from the bench since all decisions must be in writing (RPTL § 733[1]). The only exception would be to verify a settlement.

2. The decision must be rendered within 30 days after the conclusion of the SCAR hearing (RPTL § 733[1]).

3. Hearing Officers should listen to all the evidence and should keep circumstances from different cases separate even if they involve similar properties. Prior SCAR decisions involving the same or similar properties have no precedential value (RPTL § 735).

4. The Decision may do one of 4 things: (RPTL § 733[1])
   (1) Grant the petition in full;
   (2) Grant the petition in part;
   (3) Deny the petition; or
   (4) Dismiss the petition on jurisdictional grounds.

5. If the Hearing Officer decides to grant the petition in whole or in part, the maximum amount of a reduction that may be granted is the lesser of (1) the amount requested in the ARC grievance/SCAR petition, or (2) 25% of the final assessment for properties with equalized values greater than $450,000 (RPTL § 730[1][c] and [d]).

6. RPTL § 733(4) requires the decision to state the findings of fact and the evidence upon which it is based.[8] The factual findings are necessary so that in the event of an Article 78 appeal, the reviewing court may determine whether the decision had a rational basis (*Matter of McNamara v Board of Assessors of Town of Smithtown*, 272 AD2d 617 [2000]). Without such factual findings, it is likely that the decision will be annulled and remanded for a de novo determination before a new hearing officer. The factual findings should be made based upon the proof submitted in the SCAR proceeding and should not be the product of the Hearing Officer's subjective judgment (*Matter of Carvalho v Board of Assessors*, NYLJ, Dec. 15, 2005, at 21, col. 1]). The back of the decision form should be used for this purpose. Examples of decisions that satisfy this requirement are included in the handbook accompanying this manual.

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[8]This is true even for decisions where the property is disqualified on jurisdictional grounds.

Completing the Decision

- A Hearing Officer must order a correction of the assessment if he/she decides that the assessment is unequal (*i.e.*, that there is an inequality of assessment) and/or excessive.

  The formula to determine the proper assessed valuation of property where fractional assessments are allowed (*i.e.*, Nassau County) is not complex:

  Assessed Valuation = Market Value × Proper Rate

  conversely

  Market Value = Assessed Value ÷ Proper Rate

  A SCAR applicant may assert that an assessment is "excessive" and/or "unequal."

  By definition, in a jurisdiction where properties are assessed at full value, an excessive assessment is one where the assessment exceeds full value or one not including a lawful exemption. This is applicable directly to all jurisdictions, except where fractional assessments are allowed (*e.g.*, Nassau County).

  For Nassau County assessment purposes, an "excessive" assessment is one based on an inflated Market Value.

  An "unequal" assessment is an assessment based on a higher proportion of full value than the assessed valuation of other residential property or of all real property on the same roll. In this regard, petitioner must prove that his or her "property is overassessed as compared to 'all other property on the assessment roll or ... the average of residential property on the assessment roll'" (*Matter of Sofia v Assessor of Town of Eastchester*, 294 AD2d 509, 510 [2002]). Petitioner may prove inequality by evidence of "the assessment of comparable residential properties within the same assessing unit" (RPTL § 732[2]).

  In order to comply with the requirements of statute, the petitioner must prove:

  1. The Market Value[9] - this is usually based on review of comparable sales or a

[9] The Appellate Division, Second Department has stated that "[f]ull market value may be established by such methods as proof of a recent purchase price for the property, a professional appraisal, or proof of the sales prices or appraised values of comparable properties" (*Matter of Pace*, 252 AD2d at 90). Nevertheless, "[i]t is well settled that 'the purchase price set in the

formal appraisal.

2. The Proper Rate - in making the determination regarding proper rate, the Hearing Officer may consider the best evidence presented, which evidence may include, but is not limited to, the equalization rate, the residential assessment ratio (if one is set by the Office Real Property Services), the uniform percentage of value stated on the last tax bill (*i.e.*, the Level of Assessment on the tax bill) and the assessment of comparable residential properties within the same assessing unit (RPTL § 732[2]; *see also Matter of Pace v Assessor of Town of Islip*, 252 AD2d 88 [1998], *lv denied* 93 NY2d 805 [1999]). "Through this proof the homeowner must show that the assessed valuation of his or her property is at a higher percentage of its full market value than the percentage that the proof establishes to be the appropriate one for the assessing unit" (*Matter of Pace*, 252 AD2d at 90-91).

The assessed valuation is found by applying those values to the formula.

An actual assessment may be sustained after the hearing, or the assessment may be found excessive or unequal or both.

It is important to note that for those jurisdictions that utilize fractional assessments (*e.g.*, Nassau County), the concepts of excessive and unequal are intertwined.

- If the property is disqualified for SCAR treatment for any of the reasons set forth in the Decision Form's provisions 1(a) through 1(f) [*e.g.*, jurisdictional eligibility requirements], then the petitioner has the right to pursue a tax certiorari proceeding within 30 days of the receipt of the signed decision (RPTL § 733[3]). Petitioner may also appeal the decision by filing an Article 78 proceeding (RPTL § 736[2]).

- If a Hearing Officer grants a reduction equaling 50% or more of the requested reduction, an award of costs in the amount of $30 **must** be granted unless the parties waive them in a settlement (9 Op. Counsel SBRPS No. 56). If a Hearing Officer grants a reduction that is less that 50% of the requested reduction, an

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course of an arm's length transaction of recent vintage, if not explained away as abnormal in any fashion, is evidence of the "highest rank" to determine the true value of the property at that time" (*Matter of Lovett v Assessor of Town of Islip*, 298 AD2d 521, 521 [2002]; *see also Matter of FMC Corp. (Peroxygen Chem. Div.) v Unmack*, 92 NY2d 179, 189 [1998] [best evidence of value is a recent sale between a seller under no compulsion to sell and a buyer under no compulsion to buy]; *Matter of Montgomery v Board of Assessment Review of Town of Union*, 30 AD3d 747 [2006]).

award of costs up to, but not to exceed, $30, is within the Hearing Officer's discretion. The award of costs is not a refund of the filing fee. It is paid by the Assessing Unit not by the County Clerk.

- The decision must be filed with the clerk of the court. The decision will then be filed and entered. Once the decision is filed, it is final and may not be modified by the Hearing Officer except to correct a clerical error.

- The Hearing Officer must transmit copies of the completed and signed decision to:

  (1) Petitioner or Designated Representative

  (2) The Clerk of the Assessing Unit (*e.g.*, the Clerk of the Nassau County Department of Assessment)

  (3) Clerk of each Tax District named in the petition, and

  (4) Supreme Court SCAR Clerk

A Hearing Officer acts as both the trier of fact and law and must ensure that the SCAR proceedings do "substantial justice between the parties according to the rules of substantive law" (RPTL § 732[2]).

Ethical Considerations

A Hearing Officer is bound by a code of ethics set forth in section 74 of the Public Officer's Law, a copy of which is provided in the handbook accompanying this manual. In addition, Hearing Officers must comply with the Rules of the Chief Administrator, Part 100, in the performance of their judicial function. They should also, as far as practical and appropriate, use such rules to guide their conduct outside of their judicial function (Rules of the Chief Administrator [22 NYCRR] 100.6[A]). A copy of the Rules of the Chief Administrator, Part 100, is provided in the handbook accompanying this manual.