

SMALL CLAIMS ASSESSMENT REVIEW PROGRAM

SCAR Hearing Officers' Handbook

**Samuel T. Catalano
Senior Management Analyst
Small Claims Assessment Review Program
25 Beaver Street, 8th Floor
New York, NY 10004
212-428-2649
scatalan@courts.state.ny.us**

March 2007

Contents

| | |
|---|----------|
| To Qualify as SCAR Hearing Officers..... | 2 |
| Flow of Procedures..... | 2 |
| Jurisdictional Requirements..... | 3 |
| The Petition..... | 4 |
| Scheduling The Hearing. | 5 |
| Conduct of the Hearing..... | 6 |
| The Decision Form..... | 7 |
| Skills To Be Possessed By SCAR Hearing Officers..... | 7 |

Small Claims Assessment Review Hearing Officer's Handbook

1. To Qualify as SCAR Hearing Officers.

- You must meet one of the following requirements:
 - **Attorney**, admitted to Bar, practicing in NYS, and registered with OCA.
 - A trained, certified **former** assessor.
 - A licensed **real estate broker**, or,
 - have a residential **appraisal license** from the NYS Dept. Of State.
 - Must also attend this training session. (And be re-certified every 4 years).
 - Current assessors and members of the Board of Assessment Review are **ineligible**.
 - Legislation establishing this program was enacted in 1982 as RPTL (Real Property Tax Law) 730.
 - It was intended to provide owners of 1,2 or 3 family, owner occupied dwellings an opportunity to challenge the assessment on their property as determined by the Board of Assessment Review.
 - It was designed to be an alternative to formal Tax Certiorari proceeding which can be time consuming and expensive.
 - The program provides review before a SCAR Hearing Officer, for a filing fee of \$30.00, in a timely manner and in an informal setting.

2. Flow of Procedures.

- Publication of the tentative assessment roll
- Grievance Day before the Board of Assessment Review
- Publication of the final assessment roll, which triggers the 30 day deadline
- Home owner files 3 copies of SCAR petition with County Clerk within 30 days, and pays \$30.00 filing fee
- Home owner files copies of petition with the Assessing Jurisdiction, the Assessor, the County Treasurer, and the School District (if necessary), within 10 days of filing with the County Clerk
- County Clerk retains 1 copy of the petition and forwards 2 copies to the Supreme Court SCAR Clerk
- The Supreme Court SCAR Clerk retains 1 copy and forwards 1 copy of the petition, 3 decision forms and a notice of appointment to serve, for however many cases have been assigned, to the SCAR Hearing Officer
- The SCAR Hearing Officer reviews the cases for conflicts of interest, such as family or business relationships. If a conflict exists contact the Supreme Court SCAR Clerk and the case will be reassigned
- The SCAR Hearing Officer schedules (unless the Supreme Court does it for you) & hears

Small Claims Assessment Review Hearing Officer's Handbook

cases within 45 days after the final day for the filing of petitions (RPTL 732(1)). If you are scheduling the hearing you must contact both parties & give at least 10 days notice (Uniform Rules of the NYS trial Courts, 22NYCRR 202.58(e)(4)). If an evening hearing is requested it must be granted unless there is an extraordinary circumstance (Uniform Rules of the NYS trial Courts, 22NYCRR 202.58(e)(4)). If space is needed contact the Supreme Court SCAR Clerk.

- The SCAR Hearing Officer makes decisions within 30 days of the hearing. The signed decision form constitutes a judicial order and copies must be mailed to:
- Petitioner or Designated Representative
- Assessing Unit - this is the only notification they get that there is a change in the assessment.
- Supreme Court Clerk
- Pay is \$75 per case with a cap of \$300 per day

3. **Jurisdictional requirements** which must be met by home owners:

- Property must be improved by a 1, 2, or 3 family, owner occupied residence used **exclusively** for residential purposes. As per **Kaufman v. New Castle**, exclusive means primarily. This includes newly purchased homes as well as those under contract. Since 1993 certain **unbuild able** vacant lots also apply. Property does **NOT** have to be the petitioner's primary residence.
- **Condominiums** qualify if they are designated as homestead class. The exceptions are NYC and Nassau, where Condominiums defined as Class One properties qualify. In addition, each SCAR petition is limited to only one parcel of land, as per **Klein v. City of Rye**.
- The petitioner must have previously asked Board of Assessment Review for a reduction in assessment and exhausted all of his or her administrative remedies.
- Petitioner must file with, or mail to the County Clerk's Office in the county in which the property is located, 3 copies of the SCAR petition. This must take place within 30 days of the filing of the final assessment roll.
- The date of the filing of the final assessment roll is defined as the date that the statute sets as the deadline, **or**, the date that the roll is actually filed. Whichever date is later becomes the active date.
- The 30 days starts **the day after** the date of the filing of the final assessment role and runs for 30 consecutive days, including weekends and holidays. If the 30 Th day falls on a weekend or holiday, then the petition must be filed or postmarked by the next business day.
- The home owner must also file ,or mail, a copy of the SCAR petition, within 10 days of filing with the County Clerk, with the following entities:

Small Claims Assessment Review Hearing Officer's Handbook

- Assessing Jurisdiction, whether city, town or village. (Or mail **BY CERTIFIED MAIL**)
- The Assessor, or, chairman of the board of assessors.
- School District, if it uses the assessment for tax purposes.
- County Treasurer.

Failure to file with the assessing Jurisdiction is fatal to the petition (Dolan v. City of New Rochelle) but only if the issue is raised at the hearing by one of the parties.

Failure to file with the School District or the County Treasurer may be fatal to the petition. This is within the discretion of the Hearing Officer but again, the issue must be raised at the hearing.

- The requested reduction in assessment is limited by 2 factors:

The reduction requested at the SCAR Hearing **cannot** be more than the reduction that was asked for before the Board of Assessment Review on Grievance Day. If some but not all of the reduction was granted before the Board then the petitioner may ask for the balance at the SCAR Hearing.

For example, if the petitioner asked for a reduction of \$3,000 at Grievance Day and did not receive it then he or she can ask for the same \$3,000 at the SCAR Hearing. If a reduction of \$1,500 was granted at Grievance Day then the most the petitioner can ask for at the SCAR Hearing is a reduction of the remaining \$1,500.

- The requested reduction is also limited by the **Equalized Value Determination**, as follows:
- Divide the final assessment by the equalization rate. The result is the equalized value. In NYC and Nassau, which are Special Assessing Units, substitute the Class One Ratio for the Equalization Rate. This is an artificial value set up by the legislature solely for the purposes of SCAR. It is not intended to reflect true market value.

ex: Final Assessed Value/Equalization Rate = Equalized Value

ex:

$$\begin{array}{r} \$10,000 \\ \hline 10\% \end{array} \quad \text{Or} \quad \begin{array}{r} 10,000 \\ \hline .10 \end{array} = \$100,000$$

- If the Equalized Value is \$450,000 or less then the only restriction on the petitioner is the reduction requested before the Board.

Small Claims Assessment Review Hearing Officer's Handbook

- 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 Board, whichever is less.

4. The Petition.

- **THE PETITION IS BOTH A LEGAL FILING AND A WORKSHEET.** It must be signed and filed in a timely manner. Incomplete or inconsistent forms are not grounds for dismissal. The petition may be amended at the hearing.
- Never assume that a petition is valid simply because it was accepted for filing by the County Clerk.
- General review of the items on the petition

5. Scheduling The Hearing:

- **The assessment is always presumed to be correct unless proven otherwise.** The burden of proof is on the petitioner and Substantial evidence is required, that is, enough to convince a reasonable person.
- Scheduling the hearing (Unless the Court does it for you)
- Contact each party and give at least 10 days notice. (RPTL 732(1))
- Be flexible but firm. Assessors are often part time and petitioners usually work. If one party requests an evening hearing you must grant the request unless there is some extraordinary circumstance.
- If a problem arises contact the Supreme Court Clerk.
- Adjournments are allowed but not encouraged (22NYCCR 205.58(e)(5)). Use your discretion.
- Hearing Location
- Hearings must be held in the county in which the property is located.
- Find a place that is quiet where there will be few interruptions. You may use your office if it meets these standards.
- Do not take phone calls during the hearing.
- Do not hold the hearing in the Assessor's office.
- If you cannot find space, contact the Supreme Court SCAR Clerk and space will be found for you in a public building.
- Appearance at the Hearing
- Appearance is required by both parties. If either party fails to appear you may hold the hearing anyway. If neither party appears you may proceed basing your decision on the evidence you have such as the petition. Remembering that the burden of proof is with the petitioner.
- Settlements

Small Claims Assessment Review Hearing Officer's Handbook

- 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.
- Do not at any time do try to impose a settlement or involve yourself in the settlement process.
- The signed decision form constitutes a judicial order and must be prepared even if there is a settlement. Attach the signed settlement to your decision form. If you don't fill out the decision the settlement carries no weight.

6. Conduct of the Hearing

- At all times you must do justice and appear to do justice.
- Open by introducing yourself and ask the parties to do the Same.
- The hearing is an informal proceeding and the rules of evidence do not apply. Therefore there is no Discovery in these proceedings.
- If there are witnesses you may swear them in but you don't need to.
- Allow the petitioner to go first and finish his/her remarks.
- If one party wants to cross examine a witness this is permissible but don't let it get out of hand.
- A Designated Representative does not have to be an attorney.(Judge Cromarty- Board of assessors. Hammer-10/18/90, Index # 90-7402)
- You may carefully ask questions if you believe it is necessary to ascertain facts.
- You may grant an adjournment if you feel it is necessary but this is not encouraged.
- You may take notes but no recording devices of any kind are allowed by anyone. No court reporters are allowed.
- If you are given exhibits, you may keep them until you render a decision. At this time return them to the party that submitted them.
- At no time should the SCAR Hearing Officer have any Ex-Parte communications with either party other than to schedule a hearing.
- Once a hearing is over do not accept any further evidence from either party. Each party had ample opportunity to prepare prior to the hearing.
- At the conclusion of the hearing ask everyone to leave the room. Do not allow the Assessor to remain behind since it may give the wrong impression. Try not to fraternize with the assessors in any way.

7 The Decision Form

- Under no circumstances should you render a decision from the bench. The only exception would be to verify a settlement.
- Listen to all evidence.
- Keep circumstances from different cases separate in you mind even if they involve

Small Claims Assessment Review Hearing Officer's Handbook

- properties of a similar type.
- Do not interject your own knowledge into the decision making process. Only consider the evidence presented to you. However if you have knowledge of an issue that is raised by someone else at the hearing then you may bring it up so that is on the record.
- The Decision may do one of 4 things: (RPTL 731(1))
- Grant the petition in full
- Grant the petition in part
- Deny the petition
- Dismiss the petition on jurisdictional grounds

8. Skills To Be Possessed By SCAR Hearing Officers

1. Judicial temperament and poise
2. Patience and tact
3. Ability to exercise sound judgment and discretion
4. Ability to be objective and free from influence
5. Ability to approach the hearing with an open mind, without bias or prejudgment of the issues.
6. Knowledge of the appropriate laws, rule and regulations and the ability to interpret them fairly.
7. Ability to preside over and control hearings with dignity
8. Articulateness in making yourself understood in simple language by all persons at hearings, through pertinent, fair and comprehensive interrogation and comment.
9. Ability to analyze and evaluate testimony and other evidence.
10. Ability to determine the credibility of witnesses.

As a Hearing Officer, you will act as both judge and jury. You must guide parties who may be unrepresented by counsel. It is your responsibility to get all the facts and to apply the appropriate rules of law with sound reasoning, faith and impartiality. You will be required to keep your hearings simple and flexible; you will have to adapt to such problems as parties who don't understand the applicable substantive law, parties who are inadequately prepared, and parties who don't understand what is and is not relevant to the case.

11. **As a SCAR Hearing Officer you will be bound by a code of ethics as set forth in section 74 of the Public Officer's Law. You should become familiar with this code.**
12. In summary, if you conduct yourselves in such a way as to give the impression of impartiality, as well as consider the evidence in an impartial manner then you will have met the objectives of this program.