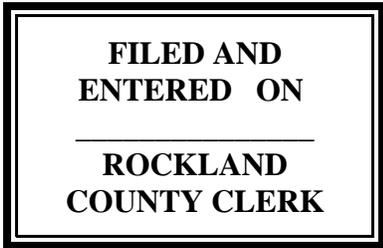


SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X

In the Matter of the Application of

BLUEBERRY HILL CONDOMINIUM,



Petitioner,

Index Nos: 5452/97

4202/98

4099/99

4324/00

4235/01

4583/02

4303/03

4269/04

4117/05

-against-

TOWN OF RAMAPO, It's Assessor and
Board of Assessment Review,

Respondents.

**DECISION, ORDER
& JUDGMENT**

For a Review under Article 7 of the
Real Property Tax Law of the State
of New York for the assessment of
certain property situated in the
County of Rockland and State of
New York.

-----X

DICKERSON, J.

ACCRUED INTEREST ON JUDGMENT AWARDED

The Petitioner, Blueberry Hill Condominium [" Blueberry Hill "] seeks a money judgment for accrued interest pursuant to R.P.T.L. § 726(2) against the Respondents, the Town of Ramapo, it's Assessor and Board of Assessment Review [" the Town "] and the County of Rockland [" the County "] arising from the County's failure to make refunds, pursuant to a stipulation of settlement,

within sixty (60) days of service of the notice of entry of an Order and Judgment Reducing Assessment.

Factual Background

The underlying RPTL Article 7 proceedings were commenced in 1997 and annually thereafter through 2004. A settlement was reached in 2005 between Blueberry Hill and Respondents which would cover 1997 through 2004 and the 2005 assessment roll as well. Counsel for Blueberry Hill drafted a proposed stipulation containing many pages of schedules reflecting the specific tax lots which were affected by the settlement. Ultimately, after the stipulation schedules were reviewed by Counsel for the Town and by the Town's Assessor, and thereafter upon approval by the Town's Board, the stipulation was duly executed by Blueberry Hill and the Town.

The Order & Judgment Reducing Assessment

Thereafter, the signed stipulation and a proposed Order and Judgment Reducing Assessment [" Order & Judgment "] were submitted with notice of settlement and served on the Town. The Town did not submit opposition, nor did it submit a proposed Counter-Order¹. Blueberry Hill's proposed Order & Judgment with

schedules was signed by this Court on August 10, 2005 and entered with the Rockland County Clerk on August 22, 2005². It was served on the Rockland County Finance Department with notice of entry on or about August 22, 2005³. It was also served on the Respondent Town on August 22, 2005⁴.

Some Lot Owners May Have Failed To Pay Taxes

In early October 2005, Deputy County Attorney Stephen Powers contacted counsel for Blueberry Hill, indicating that some tax lot owners included in the schedules annexed to the Order & Judgment had not paid all of their taxes for all of the years in question and accordingly the Finance Department would not pay refunds for those tax lot owners. " He did not at that time identify the specific tax lot owners nor the dollar amounts at issue regarding the refunds allocable to those unit owners. "⁵ The Petitioner requested that Mr. Powers " immediately forward a list of those tax lots on which there was a claim of unpaid taxes and dollar amounts so that affirmant could evaluate the issue and then respond further. No list was forthcoming. "⁶

The November 28, 2005 Conference

Thereafter, the County of Rockland submitted a letter to the Court dated October 21, 2005 requesting a conference " with all the parties to discuss this matter "7. This conference took place on November 28, 2005, wherein the parties agreed that " the County would receive Original and Reduced Assessment for each year, calculated by the Town of Ramapo, hereinafter referred to as ` Town of Ramapo Calculations ` to compute the figures in the Order and Judgement."

Refunds Paid On January 23, 2006

The County received the Town of Ramapo Calculations on November 23, 2006 and paid the refunds of \$207,953.87 to Blueberry Hill on January 23, 2006.⁸

The Petitioner's Contentions

The Petitioner contends that the " court order expressly provides that refunds shall include interest at the statutory rate pursuant to Real Property Tax Law Section 726(2) with a waiver of interest if refunds are paid within sixty (60) days after a copy of the order with notice of entry is served...", and states that " the

order of August 10, 2005 is final and binding upon all parties under the express terms thereof "9. The Petitioner contends that " the order and schedules were approved by the Town when the Ramapo Town Attorney signed the stipulation of settlement incorporating those same schedules, were further tacitly approved by the Town when it was served with the proposed order and schedules with notice of settlement and no opposition or counter-order was submitted, and was further approved and found adequate when reviewed and signed by the Court on August 10, 2005. "10

No Extension Of Time To Pay Sought

The Petitioner claims that " [a]dding five (5) days for mail and the thirty (30) days provided by statute, any notice of appeal or motion for re-argument would have to be served on or before September 27, 2005. Neither the County, nor Town, has timely filed a notice of appeal, nor timely filed a motion for re-argument...In fact, even as of the date of filing of this motion by petitioner, the County of Rockland and Town of Ramapo have both failed to file any motion for an extension of time in which to pay refunds to avoid accrual of interest. The only affirmative action taken by the taxing authorities was the County of Rockland's submission of a letter to the Court dated October 21, 2005 requesting a conference with the Court to discuss the issues raised in that letter. "11

Hence, it is Blueberry Hill's position that it is " entitled to interest pursuant to the terms of the order and judgement and as set forth in Real Property Tax Law Section 726(2) and the Court should enter a supplementary judgement with respect thereto."¹²

The County's Contentions

The County claims that it could not comply with the Order & Judgement because certain language at the bottom of Schedules A, B, and C that the assessment is reduced " approximately " 20%, 25% and 30% was " vague " and that therefore it was not able to issue a check based on the assessment reductions for the various years at issue.¹³ The County also contends that it could not comply with the Order and Judgement " because some of the parcels may not have paid taxes, the County cannot issue refunds on parcels having unpaid taxes."¹⁴ The County also claims that at the November 18, 2005 conference " the parties agreed that the County would receive Original and Reduced Assessment for each year, calculated by the Town of Ramapo..."¹⁵ The County received the calculations from the Town of Ramapo on November 23, 2005 and paid refunds to the Petitioner on January 23, 2006. It is the County's contention that they paid these refunds timely since they were paid within sixty (60) days after receipt by the County of the calculations from the

Town of Ramapo, which the County refers to as the " proper documents ".¹⁶

The Town's Contentions

The Town contends that " prior to settlement of an Article 7 proceeding, no consultation is made with the County as to the form of an order...If, in the subject proceeding, the County of Rockland could not comply with the terms of the Order at issue, it could have moved to extend its time to pay refunds or moved to set aside the Order. Since the Town is not the party who makes the refunds, it had no basis to move with respect to the subject Order in regard to the ability of the County to comply with the Order. If the Court determines that accrued interest must be paid, it should not be charged back to the Town since it was not the party that failed to comply with the subject Order "¹⁷.

DISCUSSION

The Order & Judgement

This Court's Order & Judgement, dated August 10, 2005, expressly provided, " Refunds shall include interest thereon at the statutory rate in accordance with Real Property Tax Law Section

726(2); however interest is waived if refunds are paid within sixty (60) days after a copy of the order with notice of entry is served upon the respective municipalities..."¹⁸

RPTL § 726(2)

RPTL § 726(2) states in pertinent part, " Interest shall be paid on the amount of any refund made pursuant to this section, computed from the date of payment of the tax or other levy or portion thereof refunded; provided, however, that interest on the amount of any such refund for the period after any final order determining the assessment reviewed to be excessive, unequal or unlawful, or determining that real property was misclassified, notwithstanding that an appeal in the proceeding or from such order may be pending, shall be paid only from the date that application for audit and payment of such refund shall have been duly made to the appropriate fiscal officer or body."

No Procedure For Review

Once a settlement is reached in Rockland County in an RPTL Article 7 tax certiorari matter between the Town and the Petitioner, an Order and Judgement is served by the Petitioner upon the County of Rockland. Prior to the signing of an Order and

Judgement by the Court, there is currently no procedure whereby the County of Rockland reviews an Order & Judgment prior to its submission to the Court. Once served with the Order and Judgment, the refunds are then made to the Petitioner by the County of Rockland pursuant to the terms of the Order. The amount of the refund is then charged back to the Town and the appropriate special districts.¹⁹

Procedures In Other Counties

Although there is currently no procedure in place for the County of Rockland to review an Order and Judgment prior to its review by the Court, such a procedure does exist in the Counties of Westchester, Orange and Dutchess, whereby an Order and Judgment, once it is agreed to by the Petitioner and the Town, is then reviewed by the respective County Attorneys before it is given to the Court for review and signature. Any objections that the County has to an Order and Judgment can be resolved at that time, whereupon an Amended Order and Judgment, which the County has approved, will then be forwarded to the Court for review and signature.

County Bound By Order & Judgment

Since the County of Rockland had no procedure in place for the review of Orders before they are submitted to the Court, the County is clearly bound by the instant Order & Judgment which expressly provides that tax refunds shall include interest at the statutory rate pursuant to RPTL § 726(2) with a waiver of interest if refunds are paid within sixty (60) days after a copy of the Order with Notice of Entry is served upon the respective municipalities.

County Failed To Act

The only action taken by the County of Rockland with regard to the Order & Judgment was to send a letter dated October 21, 2005 to the Court " advising that the County cannot comply with the Order and Judgment Reducing Assessment ", setting forth several reasons for its position, and requesting a conference²⁰. Certainly, it would have been a simple matter for the County to have taken the same action in August 2005 when it was served with the Order & Judgment. The Court notes that if the County was of the opinion that it could not comply with the Order & Judgment, it could have moved to either extend its time to pay refunds to avoid the accrual of interest, or to set aside the Order & Judgment altogether. Clearly, the County of Rockland took neither course of action and,

consequently, it is bound by the express terms of the Order & Judgement.

Accordingly, since the aforesaid refunds were not paid within the requisite sixty (60) day period, the Petitioner is entitled to interest pursuant to the terms of the Order & Judgement as set forth in RPTL § 726(2).

This constitutes the Decision, Order and Judgement of this Court.

Dated: White Plains, N.Y.
May 25, 2006

HON. THOMAS A. DICKERSON
JUSTICE SUPREME COURT

TO: Mark F. Goodfriend, Esq.
Attorney For Petitioner
Suite 100
4 Executive Boulevard
Suffern, N.Y. 10901

Patricia Zugibe, Esq.
Rockland County Attorney
Stephen J. Powers, Esq.
Senior Assistant County Attorney
Allison-Parris County Office Building
11 New Hempstead Road
New City, N.Y. 10956

Alan Berman, Esq.
Attorney for Town of Ramapo
237 Route 59
Suffern, N.Y. 10901

ENDNOTES

1. Affirmation of Mark F. Goodfriend dated February 28, 2006 [" Goodfriend Aff. I ") at para. 3.
2. Goodfriend Aff. I at para. 4 & Ex. B.
3. Goodfriend Aff. I at para. 5 & Ex. C.
4. **Goodfriend Aff. I at para. 5.**
5. Goodfriend Aff. I at para. 13.
6. Goodfriend Aff. I at para. 14.
7. Goodfriend Aff. I at para. 11 & Ex. D.
8. Reply Affirmation of Stephen J. Powers dated March 13, 2006 [" Powers Reply Aff. "] at paras. 18-19 & Ex. B.
9. Goodfriend Aff. at paras. 9 & 12.
10. Reply Affirmation of Mark F. Goodfriend dated March 17, 2006 [" Goodfriend Aff. II "] at para. 16.
11. Goodfriend Aff. I at paras 9-11.
12. Goodfriend Aff. at para. 17.
13. Powers Reply Aff. at paras. 8-10.
14. Powers Reply Aff. at para. 11.
15. Powers Reply Aff. at para. 18.
16. Powers Reply Aff. at paras. 19-20.
17. Affirmation of Alan Berman dated March 13, 2006 [" Berman Aff. "] at paras. 6,8,9 and 10.
18. Goodfriend Aff. I at Ex. B, p. 3.
19. Berman Aff. at para. 5.
20. Goodfriend Aff. I at para. 11.