

To commence the 30 day statutory time
period for appeals as of right
(CPLR 5513[a]), you are advised to
serve a copy of this order, with notice
of entry, upon all parties

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
In the Matter of the Application of the

VILLAGE OF DOBBS FERRY for the acquisition of
fee title interest in land situated in
the Village of Dobbs Ferry, for the
construction of a permanent, municipal
garage and storage facility for the
Village of Dobbs Ferry Department
of Public Works,

**DECISION/
ORDER**

Petitioner,

Index No:
3660/00

-against -

STANLEY AVENUE PROPERTIES, INC.;
CHAIN LOCATIONS OF AMERICA, INC.;
THE CHILDREN'S VILLAGE; PEOPLE
OF THE STATE OF NEW YORK;
JEFFREY COHEN (as referee),

Motion date:
05/07/2010

Respondents.

-----X
LaCAVA, J.

In this Eminent Domain Procedure Law (EDPL) Article 5
proceeding, challenging the valuation by the Village of Dobbs Ferry
(Village or Condemnor) of the real property taken by the Village in
Eminent Domain from Stanley Avenue Properties (Stanley or
Claimant), the following papers numbered 1 to 9 were considered in
connection with petitioner's (condemnor's) motion to deem the
compensation award abandoned, and the cross-motion by claimant
(respondent) for an Order directing the Clerk to Enter Judgment
pursuant to the Court's November 8, 2007 Decision, Order, and
Judgment:

<u>PAPERS</u>	<u>NUMBERED</u>
NOTICE OF MOTION/AFFIRMATION/AFFIDAVIT/EXHIBITS	1
MEMORANDUM OF LAW	2
CROSS MOTION	3
AFFIRMATION IN OPPOSITION/EXHIBITS	4
MEMORANDUM OF LAW	5
AFFIDAVIT IN OPPOSITION/EXHIBITS	6
AFFIRMATION IN OPPOSITION/EXHIBITS	7
REPLY AFFIRMATION/AFFIRMATION	8
MEMORANDUM OF LAW	9

The instant property, known and designated on the Official Tax Map of the Village of Dobbs Ferry as Section 9, Sheet 27, Lot P40-D, and on the Official Tax Map of the Village of Hastings-on-Hudson as Section 11, Sheet 22, Lot P-7G, is owned in fee by Stanley, which acquired title on June 2, 1994 by deed recorded in the Westchester County Clerk's Office (Division of Land Records) from Chain Locations of America, formerly known as Carvel Stores Realty Corp. By Order and Judgment of this Court, entered July 6, 2000 (Palella, J.), the taking of the subject property was effected. Subsequently, the trial of this matter took place before the Hon. Thomas A. Dickerson on March 3, March 9, March 13, April 10, May 11, and May 31, 2006¹.

In a post-trial Decision, Order, and Judgment dated November 8, 2007, this Court found:

6. Respondent Stanley Avenue Properties, Inc. is therefore awarded the calculated cost of the loss from the taking, namely the amount of \$1,392,750.00, with interest thereon from the date of the taking, July 6, 2000, less any amounts previously paid, together with costs and allowances as provided by law.

Conclusion

Upon the foregoing papers, and considering the record of the trial held before the Hon. Thomas A. Dickerson on March 3, March 9, March 13, April 10, May 11, and May 31, 2006, it is hereby

ORDERED, that the claim by claimant for compensation for

¹By stipulation entered into between the parties and so-ordered by the Court on April 18, 2007, the parties agreed to have this Court rule on the instant matter, notwithstanding that the matter was tried before Justice Dickerson.

a taking conducted by the Village herein, pursuant to EDPL Article 5, is hereby granted; and it is further

ORDERED, that petitioner Village shall pay as compensation to claimant Stanley Avenue the amount of \$1,392,750.00, with interest thereon from the date of the taking, July 6, 2000, less any amounts previously paid, together with costs and allowances as provided by law.

Subsequently, both claimant and condemnor filed Notices of Appeal, although neither appeal was perfected. Further, as the time to perfect the appeal was closing, issues arose with respect to the Village Department of Public Works (DPW) facility under construction on the subject parcel, particularly as relates to the effect of the construction on the remainder parcel. From that time, January 2008, until January 2010, claimant made earnest efforts to settle all outstanding issues relating to the damages to the remainder parcel, while condemnor apparently delayed finalizing the settlement discussions. The substance of the negotiations was an agreement by, not only the Village, but by Westchester County as well, that, in exchange for a commitment from claimant to build an affordable housing project on the remainder parcel, the Village would permit increased density therein, and the County would provide financing for the project; in this scenario, the Village then would not be obligated to pay on the November 2007 judgment. In February 2010, trial counsel for claimant was relieved, and, after additional unsuccessful negotiations in furtherance of the above plan, claimant decided to present the Judgment to the Clerk, who refused to accept it absent a Court Order. Condemnor, however, then moved for the instant relief. Claimant opposes the motion, and has cross-moved for an Order directing the Clerk to Enter Judgment pursuant to the Court's November 8, 2007 Decision, Order, and Judgment.

The Court Rule on Submission of Proposed Judgments

Rule of Court §202.48 (22 NYCRR §202.48) provides

§202.48. Submission of orders, judgments and decrees for signature

(a) Proposed orders or judgments, with proof of service on all parties where the order is directed to be settled or submitted on notice, must be submitted for signature, unless otherwise directed by the court, within 60 days after the signing and filing of the decision directing that the order be settled or submitted.

As claimant properly argues, the Court herein did not direct that a proposed Order or Judgment "be settled or submitted on notice"; since the Court did not direct submission of an Order or Judgment on Notice, Rule of Court §202.48 is simply inapplicable. See *Funk v. Barry*, 89 N.Y.2d 364 (1996); see also *Farkas v. Farkas*, 11 N.Y.3d 300 (2008); *Resnick v. Resnick*, 52 A.D.3d 678 (2nd Dept. 2008). Rather, the submission of the Order or Judgment, either to the Court or directly to the Clerk, was left to the parties. 89 N.Y.2d, 367. To be sure, such submission was delayed for over two years due to the construction of the DPW facility on the subject, the effect of that construction on the remainder parcel, and the negotiations attendant thereto. Nevertheless, since the Court's November 7, 2007 Decision, Order and Judgment did not direct that a proposed Order or Judgment be settled or submitted on notice, this delay did not violate Rule of Court §202.48, and the Judgment now submitted with the cross-motion is, therefore, timely submitted.

Should any Late Submission of the Judgment be Excused for Good Cause Shown

In any event, due to the grounds for the failure of claimant to submit a Judgment until April 29, 2010² (or some two years and five months after the entry of the Decision, Judgment, and Order), the Court elects to excuse such late submission for good cause shown. As set forth in greater detail above, due to the damage caused to the remainder parcel from the construction of the DPW facility on the subject, condemnor delayed final submission of a Judgment while conducting the settlement discussions to ameliorate the aforementioned damages. An agreement was proposed, detailed above, whereby claimant would build an affordable housing project on the remainder parcel; the Village, in turn, would agree to permit increased density in the construction; and the County would provide financing for the project. The Village, then, would be relieved of its obligation to pay on the November 2007 judgment. So significant were the advantages to all of the parties, negotiating in good faith, from an agreement on those terms, that the claimant, to insure continue those good-faith negotiation, deferred submission of the Judgment while the negotiations continued. Upon such time as they irretrievably broke down, claimant then sought to submit the Judgment. Under such

² The Court notes, as set forth above, that claimant attempted to enter Judgment with the Clerk prior to the bringing of the instant motion by condemnor, i.e. in early April 2010, but the Clerk declined to accept the Judgment absent an Order of the Court.

circumstances, submission immediately upon the failure of negotiations was not improper, and any such delay will be excused for such demonstrated good cause. See *Barnett v. Star Mechanical Corp.*, 171 A.D.2d 142 (3rd Dept. 1991); see also *Dicini, Inc. v. William Hengerer Co.*, 171 A.D.2d 515 (1st Dept. 1991).

Upon the foregoing papers, it is hereby

ORDERED, that the motion by condemnor to deem the compensation award abandoned, is denied; and it is further

ORDERED, that the cross-motion by claimant for an Order directing the Clerk to Enter Judgment pursuant to the Court's November 8, 2007 Decision, Order, and Judgment, is granted.

Submit Judgment, pursuant to the Court's November 8, 2007 Decision, Order, and Judgment.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Dated: White Plains, New York
September 14, 2010

HON. JOHN R. LA CAVA, J.S.C.

Nicholas M. Ward-Willis, Esq.
Keane & Beane, PC
Attorneys for Petitioner
445 Hamilton Avenue, 15th Floor
White Plains, New York 10601

Darius Chafizadeh, Esq.
Harris Beach, PLLC
445 Hamilton Avenue, 11th Floor
White Plains, New York 10601

Steven Gaines, Esq.
Gaines, Gruner Ponzini & Novick, LLP
Attorneys for Respondent Stanley Avenue
11 Martine Avenue
White Plains, New York 10606

