

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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ORANGE AND ROCKLAND UTILITIES, INC.,

Petitioner,

SOUTHERN ENERGY BOWLINE, LLC.,
MIRANT NEW YORK, INC.,
MIRANT BOWLINE, LLC,

Intervenor-Petitioners,

-Against-

THE ASSESSOR OF THE TOWN OF HAVERSTRAW
THE BOARD OF REVIEW OF THE TOWN OF
HAVERSTRAW and THE TOWN OF HAVERSTRAW

Respondents,

COUNTY OF ROCKLAND and NORTH ROCKLAND
CENTRAL SCHOOL DISTRICT,

Intervenors-Respondents.

For a Review of Tax Assessments Under Article 7
of the Real Property Tax Law.

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DICKERSON, J.

**FILED AND
ENTERED ON
DATE**

**ROCKLAND
COUNTY CLERK**

DECISION & ORDER

Index Nos: 4133-95
0346-96
4424-97
4639-98
4238-99
3258-00
4694-01
5120-02
5278-03

DISCOVERY OF NON-PARTY APPRAISALS REVISITED

By letter dated December 9, 2004, Petitioner requested that this Court " revisit " its decision in Orange and Rockland Utilities, Inc. v. The Assessor of the Town of Haverstraw, 5 Misc. 3d 1010(A), 2004 WL 2472472 (West. Sup. 2004) denying access to appraisal reports prepared by Respondents' experts, Mr. Sansoucy and/or Mr. Walker, relative to power generation facilities located in the State of New York. In response to Petitioner's request, Respondents submitted a letter dated January 2, 2005, together with an Affirmation from Respondents' attorney Margaret Gillis.

More Non-Party Objections

The Court also received non-party objections in response to Petitioner's request. These objections included a letter dated January 11, 2005, from H. Dean Heberlig, Jr. of the law firm of Bond, Schoeneck & King, on behalf of the Town of Bethlehem, The Towns of Schuyler Falls and Plattsburg, and The Town of Lyonsdale; an Affirmation, dated January 18, 2005, from Karen Cook Serotte, of the law firm of Brown & Kelly on behalf of the Town of Tonawanda; and a letter from Alan J. Pope, dated January 13, 2005, of the law firm of Pope, Schrader & Murphy on behalf the Town of Union. The Court also received an additional letter from H. Dean Heberlig, Jr. dated February 3, 2005 followed by a letter from Petitioner dated February 11, 2005 responding to Mr. Heberlig's letter.

The In Camera Review

Upon a review of all of the papers submitted, this Court granted Petitioner's initial request that the Court conduct an in camera review [See e.g., Spectrum Systems International Corporation v. Chemical Bank, 78 N.Y. 2d 371, 381, 575 N.Y.S.2d 809 (1991)("Determining document immunity claims, and reviewing them, are largely fact-specific process...Indeed, we join in the observation of the Appellate Division that it would have been better practice for the trial court in this case, when first considering Chemical's motion, to have conducted an in camera review 'to have allowed for a more informed determination as to whether the information was indeed protected from disclosure' on any of the grounds alleged ")] of the following documents which were provided to the Court by Mr. George E. Sansoucy: (1) retainer agreements (or correspondence constituting those agreements) between the Towns of Colton, Union, Schuyler Falls and Plattsburg and George E. Sansoucy, PE, LLC, and (2) appraisals prepared in accordance with those agreements, in the matters of Niagara Mohawk Power Corp. v the Town of Colton, AES v. the Town of Union, NYSEG v. The Town of Union, and NYSEG v. the Town of Schuyler Falls and the Town of Plattsburg.

THE DECISION

Upon review of the appraisal reports and retainer agreements this Court finds nothing in the documents that would lead it to change its decision in Orange and Rockland Utilities, Inc. v. The Assessor of the Town of Haverstraw, 5 Misc. 3d 1010(A), 2004 WL 2472472 (West. Sup. 2004). The unfiled, unexchanged appraisal reports prepared by Mr. Sansoucy and Mr. Walker fall squarely within material covered by the CPLR §3101(c) attorney work-product privilege and the CPLR §3101(d)(2) privilege afforded materials prepared in anticipation of litigation (a conditional immunity which the Petitioner did not overcome) and therefore they are strictly shielded from disclosure.

Respondents Have Not "Opened the Door"

Petitioners contend that " By the testimony of their witnesses, these same reports of New York Power Generation Facilities are now relied upon by both Respondents' 'experts' as 'proof' of their expertise to value the subject oil/gas steam station "¹ and therefore the unfiled, unexchanged appraisal reports should be produced. Petitioners also claim that Respondents " opened the door " to the production of the appraisal reports by admitting the resume² of George E. Sansoucy into evidence and noting some of Mr. Sansoucy's experience on that resume as part of his qualifications.

The testimony³ to which Petitioners refer states only that Respondent's experts have worked with central steam stations many times. Nothing about the valuation of those stations or the content of any appraisal reports was offered into evidence. The implication that the mere mention of an appraisal report in a witness' resume opens the report to full and complete discovery could conceivably lead to the production of all the work on which the expert's experience was based. This would clearly undermine the attorney work product privilege as well as any other privilege that applied to that work.

Accordingly, having conducted an in camera review of the documents provided, as well as a review of the papers submitted, including the various non-party objections, the court adheres to its original decision as set forth in Orange and Rockland Utilities, Inc. v. The Assessor of the Town of Haverstraw, 5 Misc. 3d 1010(A), 2004 WL 2472472 (West. Sup. 2004)].

The foregoing constitutes the decision and order of the Court.

Dated: March 11, 2005
White Plains, N.Y.

HON. THOMAS A. DICKERSON
Supreme Court Justice

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ENDNOTES

1. Petitioner's Letter dated December 9, 2004, at p. 4.
- 2.R. Tr. Ex. X.
3. Direct testimony of George E. Sansoucy - Exhibits B, C and D of Petitioner's papers.