

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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In The Matter Of The Application Of
PATRICIA C. VILLAMENA

Petitioner,

FILED AND
ENTERED ON
MAY 9, 2005
WESTCHESTER
COUNTY CLERK

DECISION & ORDER

Index No: 17615-03

-against-

THE CITY OF MOUNT VERNON, ITS ASSESSOR
AND THE BOARD OF ASSESSMENT REVIEW

Respondents.

For Review Under Article 7 Of The RPTL.

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DICKERSON, J.

COMPREHENSIVE ASSESSMENT PLANS

The Petitioner, Patricia C. Villamena [" Villamena "], by this Motion seeks an Order and Judgment (1) reducing the 2003 assessment on her property located at 34 Burkewood Road, City of Mount Vernon, New York, designated as Map 159-80, Block 2033, Lot 19 [" the subject property "] to reflect the final valuation conclusion determined by the Board of Assessment Review of the City of Mount Vernon [" B.A.R. "], (2) declaring the 2003 real property

assessment upon the subject property to be invalid, void and unconstitutional, (3) directing and compelling the Respondents, The City of Mount Vernon and its Assessor, to roll back the subject property's 2003 assessment and restore it to its previous level so that it will not subject Villamena to discrimination and unequal treatment under the law, (4) directing the Respondents to refund to Villamena any and all taxes paid pursuant to said assessments in excess of the Court's determination of the correct assessments together with interest as provided by statute and (5) awarding attorneys' fees, costs and disbursements.

Factual Background

Villamena purchased the subject property on February 14, 2002 for \$715,000¹. On June 1, 2002 the Respondent Assessor sent Villamena " a notice advising her that the assessment for the subject property was being increased for the 2002 assessment year from \$17,900 to \$26,000², an increase of \$8,100 or 45.3% over the prior year's assessment ³". A grievance was filed for the 2002 assessment year, denied by the B.A.R. with no further action being taken by Villamena. Regarding the 2003 assessment year Villamena retained the services of counsel who filed a similar grievance⁴ on June 16, 2003.

The Assessor's Inspection And Reduction

Thereafter the Respondent Assessor made an inspection of the subject property in the presence of Villamena and discovered the following improvements, (1) " New Master Bedroom bathroom and new walk in closet "⁵, (2) " Fully finished Basement "⁶, (3) " Updated electrical work in Kitchen "⁷, (4) " New Eat-in-Kitchen "⁸, (5) " New Vinyl Siding "⁹ , (6) " ' fully finished ' basement contained a home office "¹⁰ and (7) " kitchen had new granite counters installed "¹¹. The Assessor reduced the assessment " in good faith from \$26,000 to \$23,000 in order to accurately reflect the cost of the improvements made...the total increase in the assessment was \$5,100 or only \$124,000 in market value (applying the 2003 equalization rate of 4.12%)" ¹². The B.A.R. later reduced the assessment on the subject property to \$23,000¹³. Villamena's then filed her R.P.T.L. Article 7 Petition For Review of Tax Assessments for 2003¹⁴.

The Nature & Value Of The Improvements

Although the Assessor has described the nature of the improvements he observed as justifying an " increase in the assessment (of) \$5,100 "¹⁵, he has not explained " how he determined the additional market value "¹⁶ attributable to each observed improvement. More importantly, Villemena and her licensed professional engineer, John J. Annunziata [" Annunziata "], who made two inspections of the subject property in 2003 and 2005¹⁷, dispute

the nature of the improvements and their value. **First**, the vinyl siding was installed in 1999, at an approximate cost of \$15,000, was " not a first-time installation " and " thus was a maintenance/repair item rather than an improvement "¹⁸. **Second**, the master bedroom bathroom " is not new but rather an enlargement " and the " master bedroom closet was not new; it was expanded ", all at an approximate cost of \$20,000¹⁹. **Third**, the kitchen is not an " eat-in kitchen " but was renovated with the " installation of new cabinetry, Corian counter top [not granite], flooring, recessed lighting " and " new major appliances ", all at an approximate cost pf \$18,000²⁰. **Fourth**, the basement " is only partially finished " at an approximate cost of \$12,000 to \$15,000 and does not contain a " home office "²¹.

Based upon Annunziata's two inspections of the subject property Villemena concludes that the " total value of the improvements...is no greater than \$53,000, the assessment should not have been increased by more than \$1,765 ($\$53,000 \times 3.33\%$ ²²)...Even if one were to utilize the 2003 state equalization rate, the assessment increase should not have been greater than \$2,198 ($\$53,000 \times 4.12\%$)" ²³.

The Absence Of A Comprehensive Assessment Plan

The Respondents have failed to identify a " comprehensive assessment plan " upon which they relied in raising the assessment of the subject property by \$5,100 [see e.g., Matter of DeLeonardis v. City of Mount Vernon, 226 A.D. 2d 530, 532, 641 N.Y.S. 2d 83 (2d Dept. 1996)](" Furthermore,

while assessment upon improvement may be permissible, the respondents have not...alleged that there is in place a comprehensive assessment plan under which all properties will be reassessed, including those on which improvements have been made "); Matter of Stern v. City of Rye, 268 A.D. 2d 482, 483, 702 N.Y.S. 2d 100 (2d Dept. 2000)(" Since no comprehensive assessment plan was in place "); Carter v. The City of Mount Vernon, Index No: 19301/02, J. Rosato, November 26, 2003²⁴ (" Moreover even if, arguendo, some or all of the upgrades...constitute ' renovations ' or ' improvements ', the fact remains that respondent has not even suggested, much less made any sort of showing, that the increase in assessment was arrived at by means of applying a comprehensive plan or policy ")]. Evidently, the Respondents did not have a comprehensive assessment plan in 1993 [see Matter of DeLeonardis supra, at 226 A.D. 2d 531], 2002 [Carter, supra] or 2003.

State Equalization Rate Or Residential Assessment Ratio?

Villemena asserts that the Residential Assessment Ratio [" R.A.R. "] for 2003 of 3.33% should be used to determine the proper assessment²⁵. The Respondent Assessor, however, asserts that the State Equalization Rate for 2003 of 4.12% should be used to determine the proper assessment [" As this proceeding was commenced pursuant to an Article 7 petition of the Real Property Tax Law rather than a Small Claims Assessment Review Proceeding

(SCAR) proceeding in accordance with Section 730 of the RPTL, Petitioner must utilize the state equalization rate to determine market value, and not the residential, assessment ratio "26].

The State Equalization Rate of 4.12% and not the R.A.R. of 3.33% is the proper ratio to be used herein. Residential Assessment Ratios are to be used in Special Proceedings For Small Claims Assessment Reviews [" S.C.A.R. "] [R.P.T.L. §§ 729-739], are created for use by " small claims hearing officers " [R.P.T.L. § 738(1)© and are " admissible in a SCAR proceeding as part of the proof of inequality " [Pace v. Assessor of the Town of Islip, 252 A.D. 2d 88, 682 N.Y.S. 2d 447, 450 (2d Dept. 1998); Matter of Nyack Plaza Housing Assoc. v. Town of Orangetown, 2005 WL 887269 (West. Sup. 2005)](" The Respondents analogize their view to...R.P.T.L. § 738 where the residential assessment ratio is to be used as a guideline in determining value in small claims assessment review "); see also Lee & LeForestier, Review and Reduction of Real Property Assessments in New York, § 9.01 [3d Edition][" The statute allows use of a ' residential assessment ratio ' ")].

The B.A.R. Determination & Market Value

Villemena asserts that the B.A.R. determination²⁷ of October 1, 2003 reducing the tentative assessed value of \$26,000 to an assessed value of \$23,000 contains an admission that the market value of the subject property was \$426,716 and, hence, the assessment should be reduced to \$14,210

($\$426,716 \times .0333$ [R.A.R.]) or $\$17,581$ ($\$426,716 \times .0412$)²⁸. The Respondent Assessor disputes this analysis as erroneous [" Rather, the [B.A.R.] indicated the final assessment of \$23,000 in which a market ' value ' of \$426,700 was derived, utilizing the most recent ' final ' state equalization rate...In this case, the 2001 equalization rate of 5.39% was [erroneously] utilized as the level of assessment...Quite simply, the application of the 2001 equalization rate of 5.39% on the 2003 reduced, final assessment of \$23,000 year would yield a derived ' value ' of \$427,000²⁹ ". This Court rejects Petitioner's interpretation of the B.A.R. determination and accepts the Respondent's Assessor's explanation of the error reflected therein.

DECISION

While the Respondents have (1) failed to present a " comprehensive assessment plan " upon which they relied, (2) failed to compile an accurate inventory of improvements after conducting an inspection, (3) failed to estimate the cost of each observed improvement and (4) failed to explain how they arrived at \$5,100 as " an incremental increase in assessment " of the subject property, the Petitioner has failed to present sufficient evidence of " selective re-assessment "³⁰ [see e.g., Matter of Stern, supra, at 268 A.D. 2d 483 (" reassessment upon improvement is not illegal in and of itself. Here, the petitioners' properties were reassessed after recent improvement. However, rather than adding the value of the improvement to the prior

assessment...the properties were reassessed to a comparable market value that included the value of the improvement [emphasis added]..."); Matter of DeLeonardis, supra, at 226 A.D. 2d 532 (" Despite the respondents' claim that the Assessor did not rely on the purchase price in determining the assessed value, the Assessor did not submit an affidavit in response to the petitioner's allegation [emphasis added] that the Assessor had in fact testified that he did so "); Carter, supra (" the respondents do not so much as even identify, or enumerate just what specific renovations or improvements they are referring to [emphasis added]"); Matter of Markin v. The Town of Orangetown, 6 Misc. 3d 1042(A) (West. Sup. 2005) at fn 5 (" The factual basis for this assertion consists of...statements in the Kaiser Aff (' When I asked the Assessor why he had increased my 1999 assessment, he told me the reason was that the assessment of the new homes in Peirmont Landing...were being increased due to higher market values [emphasis added]')...")].

Insufficient Evidence Of Selective Re-Assessment

In the instant matter the Respondent Assessor has explained that the reassessment of the subject property from \$17,900 to \$26,000 was based upon an a multiple listing and, further, that the \$26,000 was reduced to \$23,000 after an inspection of the subject property. While the inaccuracy and incompleteness of the Assessor's inventory of improvements and their actual value warrants, at the very least, a new inspection and assessment, such

conduct does not support a finding of " selective re-assessment " [see e.g., Matter of Charles Krugman v. Board of Assessors of the Village of Atlantic Beach, 141 A.D. 2d 175, 184, 533 N.Y.S. 2d 495 (2d Dept. 1988); Feigert v. Assessor of the Town of Bedford, 204 A.D. 2d 543, 544, 614 N.Y.S. 2d 2000 (2d Dept. 1994); Teja v. The Assessor of the Town of Greenburgh, Index No: 14628/03, J. Rosato, May 27, 2004; Matter of Markin, supra)].

The Scope Of The Relief

Accordingly, the Petitioner shall have the following relief; **First**, the Petitioner's application to declare invalid and void the 2003 real property assessment upon the subject property is granted; **Second**, insofar as Petitioner seeks an Order compelling Respondents to roll back the subject 2003 assessment and to restore it to its prior (2001) level, such request is granted to the extent that the instant matter is remitted back to Respondents for a new assessment for calendar year 2003, which assessment is to be determined by taking the prior (2001) assessment and adding to same only the value of the improvements to the subject property; **Third**, insofar as Petitioner seeks a refund of any and all taxes overpaid by Petitioner based on Respondents' 2003 assessment, along with applicable interest, Petitioner's application is granted, subject to an offset based on the new assessment to be calculated by Respondents by way of adding the value of the improvements to the prior (2001) assessment; **Fourth**, Petitioner's application for costs and disbursements is granted, with the amount of any costs limited by statute

to \$200.00 [see C.P.L.R. § 8201]; **Fifth**, Petitioner's application for an award of attorney's fees is denied.

Petitioner may submit a proposed Judgment on notice, representing the amount of the subject refund following calculation of a new assessment by Respondents, subject to offset as described above, which Judgment may be accompanied by a bill of costs limited as per C.P.L.R. § 8201.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, N.Y.
May 9, 2005

HON. THOMAS A. DICKERSON
SUPREME COURT JUSTICE

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ENDNOTES

1. See Affirmation of Robert W. Wolper dated September 23, 2004 [" Wolper Aff. "] at Ex. B [contract of sale].
2. The Assessor's explanation for the increase in assessment from \$17,900 to \$26,000 appears in the Affidavit in Opposition of Anthony V. DeBellis sworn to February 11, 2005 [" DeBellis Aff. "] at paras. 4-10. Evidently, the " multiple listing [" MLS "] [DeBellis Aff. at Ex. A] of the property in 2002 listed undocumented improvements [apparently done by the prior owners between 1999 and 2002 without obtaining building permits [DeBellis Aff. at paras. 6 & 12]] and major inconsistencies in the inventory of the property record [DeBellis Aff. at Ex. B] for the subject property which significantly enhanced the value of the premises...Although the sale itself did not trigger the assessment change, the sale and the MLS inventory [see DeBellis Aff. at para. 7 and Ex. A (" Level 2: new Bath & Walk-in closet...Basemt: Full finished...Amenities:...Eat in Kitch...Includes: A/C units, Dishwasher, Dryer...Microwave, Range, Refrig...Washer...Exter... Vinyl "] listing did provide me with information related to extensive renovations that were not reflected on the property record card ".
3. Wolper Aff. at para. 7; Ex. C [notice].
4. Wolper Aff. at para. 9; Ex. D [complaint on real property assessment for 2003].
5. DeBellis Aff. at para. 7.
6. DeBellis Aff. at para. 7.
7. DeBellis Aff. at para. 7.
8. DeBellis Aff. at para. 7.
9. DeBellis Aff. at para. 7.
10. DeBellis Aff. at para. 11.
11. DeBellis Aff. at para. 11.
12. DeBellis Aff. at para. 11.
13. Wolper Aff. at Ex. E.

14. Wolper Aff. at Ex. F.
15. DeBellis Aff. at para. 11.
16. Reply Affidavit of Robert W. Wolper sworn to April 12, 2005
[" Wolper Reply Aff. "] at para. 4.
17. Affidavit of John J. Annunziata sworn to April 12, 2005
[" Annunziata Aff. "] at para. 2.
18. Annunziata Aff. at para. 3; Villemena Aff. at para. 9 and Ex.
B [photos].
19. Annunziata Aff. at para. 4; Villemena Aff. at para. 4 and Ex.
B [photos].
20. Annunziata Aff. at paras. 6-7; Villemena Aff. at paras. 7-8
and Ex. B [photos].
21. Annunziata Aff. at paras. 8-9; Villemena Aff. at paras. 5-6
and Ex. B [photos].
22. Residential Assessment Ratio for 2003.
23. Wolper Reply Aff. at para. 6.
24. Wolper Aff. at Ex. A.
25. Wolper Aff. at paras. 11 & 25; Wolper Reply Aff. at para. 6.
26. DeBellis Aff. at para. 16.
27. Wolper Aff. at Ex. E.
28. Wolper Aff. at paras. 23-26.
29. DeBellis Aff. at paras. 14-15.
30. Wolper Aff. at paras. 11-22.