5

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

**HON. STEPHEN A. BUCARIA**
Justice

TRIAL/IAS, PART 6
NASSAU COUNTY

ROBERT G. EHMANN,

Petitioner,

INDEX No. 402193/05

MOTION DATE: Aug. 14, 2007
Motion Sequence # 001

-against-

NASSAU COUNTY DEPARTMENT OF ASSESSMENT and THE ASSESSMENT REVIEW COMMISSION OF NASSAU COUNTY,

Respondents.

The following papers read on this motion:

Notice of Motion..... X
Affidavit in Opposition..... X
Reply to Affidavit ..... X

This motion, by respondent County, for an order striking petitioner taxpayer's trial report (22 NYCRR§202.59 (g)(2)) and dismissing the proceeding, is disposed of as indicated.

At the outset it should be noted that the County's reference to CPLR §§ 3211(a)(2) and3211(a)(7) as providing a basis for dismissal is misplaced. The Court possesses "subject matter" jurisdiction of the issues raised in the petition; nor is there anything on the record which would indicate the petition fails to state a cause of action.

The petition in this proceeding pursuant to Article 7 of the Real Property Tax Law seeks tax refunds for the 2004/5 through 2007/8 tax years. The subject is a 5,482 plus sq. ft. mixed-use "taxpayer" consisting of seven residential units situated in two buildings, in a commercial area situated on Church Street in Baldwin in the Town of Hempstead.

The relevant issue on this motion is whether the appraisal of R.D. Geronimo Ltd. dated March 6, 2007 (Pet Ex A), and filed by the taxpayer when the matter was placed on the calendar, conforms with the provisions of §202.59 (g)(2) of the Uniform Rules for New York State Trial Courts. That section provides:

> "The appraisal reports shall contain a statement of the method of appraisal relied on and the conclusions as to value reached by the expert, together with the facts, figures and calculations by which the conclusions were reached. If sales, leases or other transactions involving comparable properties are to be relied on, they shall be set forth with sufficient particularity as to permit the transaction to be readily identified, and the report shall contain a clear and concise statement of every fact that a party will seek to prove in relation to those comparable properties. The appraisal reports also may contain photographs of the property under review and of any comparable property that specifically is relied upon by the appraiser, unless the court otherwise directs".

The County contends that the subject appraisal does not conform with the requirements of §202.59 (g) (2), in that the appraisal fails to set forth, with sufficient detail, the "facts, figures and calculations" upon which the conclusions as to value are determined. Taxpayer contends the appraisal is more than sufficient to comply with the language and purpose of the section.

A reading of §202.59 (g)(2) clearly indicates, like the Bill of Particulars requirements of CPLR §3041, et seq, that its mandates are general and not specific, and the intent is to provide the opposing party with the expert evidence to be relied upon at trial so that the party can properly prepare to rebut the claims made. The Third Department's holding, in **Bialystock & Bloom v Gleason**, (290 AD2d 607, 608-9, 2002) with respect to the intent of §202.59 (g)(2), was as follows:

> "Here, Supreme Court properly found that petitioner's appraisal report contained sufficient facts, figures and calculations regarding the comparable sales method to permit cross-examination. . .
>
> * * *
>
> "Contrary to respondent's interpretation of 22 NYCRR 202.59 (g)(2), petitioner was not required to provide a detailed narrative in its appraisal explaining each of the adjustments made in the report. Clearly, petitioner's appraisal report contained sufficient details necessary to examine the comparable sales used in its conclusions _ _ _".

The issue becomes whether the appraisal filed by the taxpayer is sufficiently detailed to permit the County to adequately prepare for trial. After a review, it is clear that the appraisal of R.D. Geronimo Ltd. complies with the provisions and intent of §202.59 (g)(2). The objections raised by the County to the details set forth in the appraisal are more properly addressed to the probative weight to be afforded to the appraisal by the trier of fact. Such objections are not sufficient to justify a pre-trial striking and dismissal of the petition. In that regard it is significant that an analysis of the case law relied upon by the County were post-trial determinations.

In his opposition, counsel for petitioner raises an issue which transcends the specifics

of the appraisal before this Court and involves the nature of the appraisal itself. Practitioners in the commercial field of tax certiorari in Nassau County utilize two types of appraisal. One is referred to as a "concise" appraisal, the other a "full trial"appraisal. As the name implies, a "concise" appraisal is less detailed than a "full trial" appraisal. As might be expected, a "concise" appraisal is less costly than a "full trial" appraisal. Petitioner's counsel avers, without dispute, that the appraisal submitted in this proceeding is "concise" and obtained at a cost of $2,500 whereas a "full trial" appraisal would have involved an expenditure of $5,000.

The nature of the County's objections to the subject appraisal indicates that its primary objection is the fact that it is a "concise" and not a "full trial" appraisal.

Viewing respondent's objection to the present appraisal on the basis of its being a "concise" as opposed to a "full trial" does not alter this Court's determination. The provisions of §202.59 (g) (2) concern themselves with substance not semantics. An appraisal which satisfies the general non specific requirements of the section must be considered as fulfilling the requirements of the section. It matters not what it is denominated within the industry, be it "concise", "full trial" or some intermediate category. Subject only to the requirements of §202.59, the appraisal furnished by a party is a litigation strategy to be made by counsel whose proof on trial will be limited to the contents of his or her expert's report. It is not the function of the Court to pass upon the ultimate probative value of an expert's report at the pre-trial stage. The Court's sole function at such stage is compliance with intent and purpose of §202.59 (g)(2). It follows, then, that the fact that petitioner has not provided a "full trial" appraisal is not sufficient grounds to warrant the striking of petitioner's appraisal.

The Court notes the respondent's argument that the use of a concise appraisal would be contrary to the provisions of "NYCRR §1106.1". That argument is flawed, in that such citation does not exist, at least such as it is set forth in counsel's affirmation, and that compelled this Court, in the interests of fair and complete determination herein, to devote an inordinate amount of time to properly consider counsel's arguments. Presumably, the respondent meant to cite: 19 NYCRR §1106.1. Upon completion of that research, the presumably-intended section did not set forth any determination requirements, but only set standards in accordance with yet another publication which was neither fully addressed nor set forth in counsel's affirmation.

**EHMANN** **Index no. 402193/05**

It being established that the appraisal of R.D. Geronimo Ltd. dated March 6, 2007 complied with the requirements of 22 NYCRR§202.59 (g)(2), the motion by respondent is, in all respects, **denied**.

Dated SEP 17 2007

J.S.C.