

**Tashkissi v County of Nassau**

2007 NY Slip Op 33964(U)

October 31, 2007

Supreme Court, Nassau County

Docket Number: 1604-07/

Judge: F. Dana Winslow

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**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

**Present:**

**HON. F. DANA WINSLOW,**

**Justice**

**FARAMARZ TASHKISSI**

**TRIAL/IAS, PART 9  
NASSAU COUNTY**

**Plaintiff,**

**-against-**

**INDEX NO.: 001604/07**

**COUNTY OF NASSAU, BOARD OF ASSESSORS  
OF NASSAU COUNTY and NASSAU COUNTY  
ASSESSMENT REVIEW COMMISSION**

**Motion date: 06/18/07  
Motion Seq. Nos.: 001,002**

**Defendants.**

**The following papers having been read on the motion (numbered 1-4):**

- Notice of Petition.....1**
- Notice of Motion.....2**
- Affirmation in Opposition.....3**
- Reply Affirmation.....4**

Motion (seq. No. 1) by the attorney for the petitioner for an order pursuant to Article 78 of the Civil Practice Law and Rules to compel the County Respondents to reduce petitioners' total assessments on the April 2006 final roll by applying RPTL § 1805 assessment limitations and caps, and defining "assessment" as full property value—or—if a lower total assessment reduction results, to apply RPTL § 1805 assessment limitations to the parcel's land assessment, and defining "assessment" as the full property value and "land assessment" as the full land value; to compel respondents, when applying RPTL § 1805 assessment limitations, to use an assessment as reduced by judicial review as the "previous year's" assessment; and to compel Nassau County to pay refunds for any overpaid tax bills is determined as hereinafter set forth and adjourned *sua*

*sponte* to November 15, 2007. Cross-motion (seq. No. 2) by the attorney for the respondents for an order pursuant to CPLR § 3211(a)(5) and CPLR 3211(a)(7) dismissing petitioners' Article 78 proceeding is denied.

Petitioners bring the within Article 78 proceeding for a judgment declaring that the alleged disparate treatment of petitioners' class one property compared to class two and four properties with respect to lowering the level of assessment to avoid the application of RPTL § 1805 constitutes a violation of the equal protection clauses of the State and Federal Constitutions and petitioners are entitled to a refund from Nassau County for any overpaid tax bills.

A proceeding pursuant to CPLR Article 78 must be commenced within four months after the determination to be reviewed becomes final and binding on the petitioner (see CPLR 217). In seeking to challenge their real property tax assessment, the four-month statute of limitations begins to run upon the receipt of a tax bill, the point at which the petitioner has actual notice of the tax determination. *Matter of East Temple of Melchizedek of House of Seltzer v Town Assessor of Town of Huntington*, 28 AD3d 662. The petition is timely having been served within four (4) months of the school tax bill issued on or after October 1, 2006.

The attorney for the petitioner acknowledges that in the *Matter of O'Shea v Board of Assessors of Nassau County*; in the *Matter of Minkoff v County of Nassau*; in the *Matter of Briffel v County of Nassau*, 8 NY3d 249 (*O'Shea*), the court rejected petitioners' interpretation of the term "assessment," stating that "it makes little sense to read this provision as referring to market value rather than fractional assessment." *Id.* at 260. The court held that the term "assessment" means assessed value not full market value and that the § 1805(1) 6% cap is applicable to

the fractional assessed value not full market value. *Id.* at 258.

Petitioner contends *O'Shea* did not address the equal protection claims (Petition ¶ 30-31) that "Respondents' disparate treatment of petitioners (class one properties) compared to class two and four properties with respect to lowering the level of assessment to avoid application for RPTL § 1805 constitutes violation of the equal protection clauses of both the State and Federal Constitutions, resulting in the damages alleged." (Petition ¶ 32).

In *O'Shea*, 8 NY3d at p. 3, the Court stated:

"Article 18 allowed special assessing units to apply different fractional assessment percentages to each of four classes of property: one-, two- and three-family residential property (class one); all other residential property except hotels and motels and other similar commercial property (class two); utility property (class three); and all other (class four) (see Real Property Tax Law § 1802). Article 18 was 'designed to maintain the stability of relative property class tax burdens.' In general, Article 18 authorized a special assessing unit to fix class shares using the tax roll for the 1981-1982 levy with leeway to increase or decrease shares in subsequent years up to five percent to accommodate changes in the roll or new construction (former Real Property Tax Law § 1803; and to increase individual assessments for class one property as limited by Section 1805(1)."

*O'Shea* did not reach the issue of unequal protection of the law. CPLR § 3211(a)(5).

On a motion to dismiss pursuant to CPLR 3211(a)(7), the Court must accept as true, the facts "alleged in the complaint and submissions in opposition to the motion, and accord plaintiffs the benefit of every possible favorable inference" determining only "whether the facts as alleged fit within any cognizable legal theory." *Sokoloff v Harriman Estates Development Corp.*, 96 NY2d 409, 414 (2001); see *Polonetsky v Better Homes Depot*, 97 NY2d 46, 54 (2001); *Leon v Martinez*, 84 NY2d 83, 87-88 (1994). Moreover, the petitioner has no obligation to demonstrate evidentiary facts to support the allegations contained in the petition. See *Stuart Realty Co. v Rye Country Store, Inc.*, 296 AD2d 455; *Paulsen v Paulsen*, 148 AD2d 685.

Petitioners argue that they are being treated unequally *vis a vis* Class 2 taxpayers. Petitioners allege "unlike residential parties, the respondents maintained the same level of assessment, 1% for class two and four properties on the 2005 and 2006 rolls as compared to the first reassessment role." (Petition ¶ 31). "Currently, only Class 2 (co-ops, apartment buildings and condominiums greater than three stories) and Class 4 (commercial) properties are subject to a five-year phase-in." (Petitioner's Exhibit H).

The intent of *O'Shea* (at 261) was to "bring assessed values in line with market values over three years in order to reduce accumulated and significant tax disparities between poor and more affluent residential areas, without changing the tax burden of the residential class as a whole." Implicit in petitioner's allegation is that class one residential taxpayers are given unequal treatment *vis a vis* class two

residential taxpayers of similar pecuniary status (in high-rise condominiums greater than three stories) who are not subject to a fractional assessment. At this stage of the proceedings, giving the petitioners "every favorable inference" the motion to dismiss the petition is denied. *Sokoloff v Harriman Estates Development Corp., supra.*

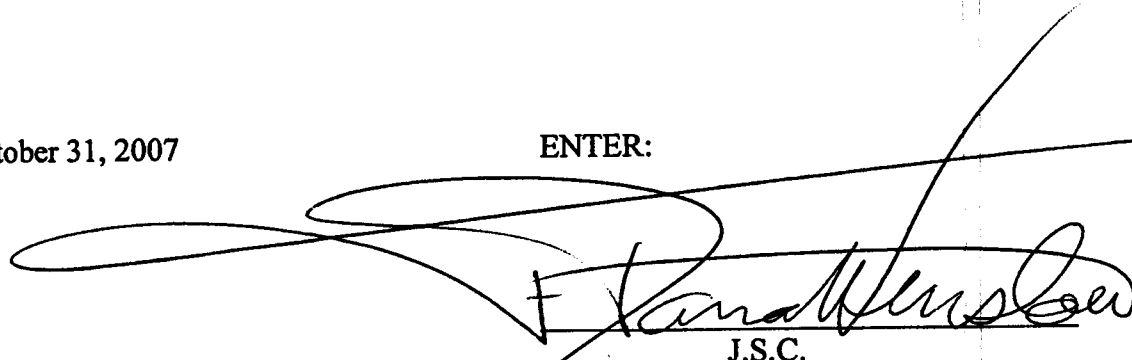
Respondent's application to interpose an answer pursuant to CPLR 7804 is granted. Respondent shall have until November 30, 2007 to serve an answer.

Petitioner shall submit a memorandum of law addressing the issue of "equal protection of the law" no later than December 15, 2007. A Memorandum of Law in opposition shall be served no later than January 2, 2008. No Reply Memorandum may be served without prior approval of the court. Application for such approval shall be made no later than January 4, 2008. The return date for the motion for a declaratory judgment is **adjourned sua sponte** to November 15, 2007.

This constitutes the Order of the Court.

Dated: October 31, 2007

ENTER:

  
J.S.C.

**ENTERED**

DEC 05 2007

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**