

Matter of Levitt Estates v Board of Assessors

2007 NY Slip Op 34092(U)

December 4, 2007

Supreme Court, Nassau County

Docket Number: 1061-05/

Judge: Stephen A. Bucaria

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MEMORANDUM DECISION

Supreme Court, Nassau County, IAS Part 6

In the Matter of LEVITT ESTATES,

HON. STEPHEN A. BUCARIA, J.S.C.

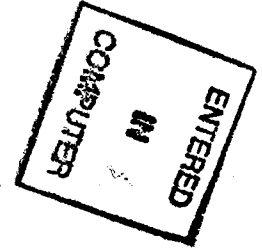
INDEX NO. 401061/05

Petitioner,

-against-

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

Respondents.



DECISION AFTER TRIAL

This is a tax certiorari proceeding which involves two buildings on a single lot, at the intersection of Lawrence Avenue and Burnside Avenue, in Lawrence, New York. The trial took place before this Court on June 25, 2007, June 26, 2007 and September 11, 2007, and the record was closed by submission of post trial memoranda of law on October 17, 2007. The precise addresses are 298 Lawrence Avenue and 259 Burnside Avenue, in the Town of Hempstead, Nassau County. The tax years under review run from January 2, 2002 through January 2, 2006.

	<u>Assessed Valuation</u>	<u>Petitioner's Market Value</u>	<u>Respondent's Market Value</u>	<u>Pet's Ass. Value</u>	<u>Pet's Reduction</u>
02/03	\$40,340	\$493,740	\$743,000	\$29,620	\$10,720
03/04	\$ 6,212	\$508,720	\$785,000	\$ 4,760	\$ 1,452
04/05	\$ 6,212	\$526,820	\$785,000	\$ 4,930	\$ 1,282
05/06	\$ 7,044	\$545,420	\$853,000	\$ 5,100	\$ 1,944
06/07	\$ 7,819	\$571,400	\$891,000	\$ 5,340	\$ 2,479
07/08	\$ 8,542	\$595,050	\$911,000	\$ 8,542	\$ 2,802

The witnesses who testified were: Theodore J. Powers, Certified General Real Estate Appraiser; Daniel Aarons, Certified General Real Estate Appraiser.

The subject property measures approximately .267 acres, or 11,660 square feet, and the property is improved by two buildings. The buildings are described as "warehouse buildings" (Aarons Appraisal Report, p.1) and as combined industrial/office/commercial space (see, generally, Powers, tr., pp.15-17).

The appraisers for both parties utilized the income approach for valuation of the subject property. Such approach is the preferred method for income-producing property (see, 41 Kew Gardens Rd.

Associates v Tyburski, 70 NY2d 325, 331, 1987). This Court finds such analysis appropriate herein.

It has been concretely established that the respondents' assessment is afforded the presumption of validity. That validity prevails unless and until the petitioner, which is challenging the assessment, comes forward with substantial evidence (300 Gramatan Avenue Associates v State Division of Human Rights, 45 NY2d 176, 180, 1978) sufficient to rebut that validity (FMC Corp. v Unmack, 92 NY2d 179, 1998). Such burden may be met by the submission of an appraisal by a qualified expert based on sound theory and objective data. That burden has been met herein.

Once such burden has been met, the presumption of validity is out of the case, and the Court must determine, on the entire record, whether the petitioner has established, by a preponderance of the evidence, that the property is overvalued.

In developing his rental value for the subject property, the petitioner's expert relied upon the valuation of the property according to the current use relative to the tax status dates for each year under review. He considered the extant rentals for the subject premises and compared them to other, similar properties, explaining that, while similar, no other property can be identical to the subject rentals. Adjustments were made to reflect for the time at issue, the market evidence, inflation, location, size of the respective properties and rental units, building type and age and condition. Also considered and utilized in the analysis was the leases. Quantitatively, those adjustments and analyses yielded a determination that only two tenancies were viable ones: the Karate school and a furniture store. An insurance office is also a tenant. The petitioner's expert has calculated, by his own personal measurement (Trial tr. June 25, 2007, p.57-8) that the total area of 259 Burnside Avenue is 4,490 square feet.

In contrast, the respondent's expert avers that the measurement of 259 Burnside Avenue is 5,444 square feet — a difference of 954 square feet. Additionally, the respondent's expert based his evaluation of market rents of the comparables without consideration of any specific adjustments for those comparables. There is no evidence on this record that the respondent's expert personally visited the respective premises, as demonstrated by his lack of knowledge, in one instance, whether there was office space combined with the warehouse space, while at the same time he acknowledged that such information would be important in a determination of the utility of the space, which, in turn, has a bearing on the marketability and, ultimately, on the assessed valuation of the subject property.

In developing his unit rental value for the property, the petitioner's appraiser relied on the leases for the subject property and five other office lease comparisons and seven other industrial lease comparisons. Additionally, each comparable was adjusted and the criteria used for adjustment was fully set forth in the report. All of the appraiser's facts, figures and conclusions were set forth in the report pursuant to 22 NYCRR 202.59(g) of the Uniform Rules. In contrast, the County's appraiser relied on five warehouse property comparables, but made no breakdown of office space and warehouse space. The respondent's appraiser's comparables, other than comparable no. 2, were generally widely different in size than that of the subject property taken as a whole and with no identifiable, definitive mathematical adjustments that reconcile and support his conclusions, and these comparables are of questionable utility in a proper analysis. Moreover, as to the vacancy rate used in the income approach, the petitioner's analysis resulted

in a reasonably conservative calculation of 5%.

In assessing the credibility and completeness of the testimony adduced at trial, the County's expert utilized uniform rental values irrespective of the actual usage of the space — whether as office or warehouse — which have different values. The County's appraiser did not utilize an adjustment grid which allows for obvious variations in structure, i.e., number of loading bays, interior heights of warehouse space, or a breakdown of office space area vs warehouse area within a specific structure. The petitioner's expert's testimony and report demonstrates a more exacting and credible approach and analysis, which yields, in turn, a comprehensive and coherent result that requires a concomitant reduction of assessment and taxes for the years at issue.

Accordingly, the Court finds that the petitioner has demonstrated, by a preponderance of the evidence, that the subject property is overvalued, and that the value of the subject property is as follows:

<u>Date</u>	<u>Total Value</u>	<u>Stipulated Ratio</u>	<u>Indicated Assessed Value</u>	<u>Actual Assessed Value</u>	<u>Indicated Reduction</u>
1/1/02	\$493,740	6.000%	\$29,620	\$40,340	\$10,720
1/1/03	\$508,720	0.935%	\$ 4,760	\$ 6,212	\$ 1,452
1/1/03	\$526,820	0.935%	\$ 4,930	\$ 6,212	\$ 1,282
1/1/04	\$545,420	0.935%	\$ 5,100	\$ 7,044	\$ 1,944
1/1/05	\$571,400	0.935%	\$ 5,340	\$ 7,819	\$ 2,479
1/1/06	\$595,000	0.965%	\$ 5,740	\$ 8,542	\$ 2,802

This determination constitutes the decision of the Court in compliance with Real Property Tax Law §720(2).

Settle judgment on 10 days notice.

Dated DEC 4 2007


J.S.C.