

**Matter of Bianco v Nassau County Department of  
Assessment**

2007 NY Slip Op 34336(U)

December 31, 2007

Supreme Court, Nassau County

Docket Number: 1429-07/

Judge: James P. McCormack

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. JAMES P. McCORMACK  
Justice

TRIAL/IAS PART 51

In the Matter of the Application of

PHYLLIS BIANCO

INDEX NO. 11429/07

Petitioner,

For a Judgment of Mandamus to Compel Under  
Article 78 of the Civil Practice Law and Rules

MOTION SEQUENCE  
NO. 1

- against -

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

MOTION SUBMISSION  
DATE: 10/25/07

Respondent(s).

The following papers read on this motion:

Notice of Petition.....	1
Answer to Petition.....	2
Answering Affirmation.....	3

Motion by the attorneys for the Petitioner for an order to compel the Nassau County Department of Assessment to decide on the merits the Correction of Errors letters submitted by petitioner pursuant to the Real Property Tax Law § 554 regarding the alleged Error of the Assessor in computing the square footage of the subject property; and to issue real estate property tax refunds for the years 2004/2005, 2005/2006 and 2006/2007 regarding the alleged error pursuant to § 6-24.0

of the Nassau County Administrative Code is denied.

This action relates to the real estate property tax assessment and records of the Nassau County Assessor for petitioner's property, known as Duck Pond Road, Matinecock, Town of Oyster Bay, known as Section: 23, Block: B, Lot: 487 on the Nassau County land and tax map for the following tax periods: 2004/05; 2005/06; and 2006/07.

Petitioner withdrew its claim for the tax year 2007/08.

The petitioner filed grievances and petitions to protest the assessment of each tax year alleging unequal, illegal and excessive assessments. Petitioner alleges that the respondent erred in its calculation of the gross living area of the subject premises which adversely affected the calculation of petitioner's assessment and, by extension, the amount of taxes owed by the petitioner. Petitioner further asserts this error was compounded since respondents defended the said assessments at Small Claims Assessment Review Hearings (SCAR) with sales analyses based on the incorrect gross living area.

On or about January 25, 2006, in response to petitioner's request, a representative from the Nassau County Department of Assessment Field Division inspected the subject premises and calculated the square footage to be 7,268. Proceeding pursuant to Real Property Tax Law § 554 "Correction of errors on tax

rolls,” by letter dated March 9, 2006 Petitioner purportedly filed a Correction of Errors Application seeking correction of tax for the years 2004/05, 2005/06 and 2006/07 alleging “error in essential fact” together with a request for refunds pursuant to § 6-24.0 of the Nassau County Administrative Code. On or about January 15, 2007, petitioner renewed her request for correction and refunds pursuant to RPL § 554. Respondent did not respond to the letters dated March 9, 2006 and January 15, 2007 for a “correction of errors” and plaintiff commenced the within Article 78 proceeding.

The tentative assessment roll for the 2004/05 tax year was published on January 2, 2003. If unsatisfied with an Assessment, a taxpayer may file an administrative complaint with the Assessment Review Commission (“ARC”) by March 1, 2003 in accordance with Article 5 of the Real Property Tax Law (“RPTL”). Petitioner filed a complaint with ARC for the 2004/05 tax year and never alleged an issue with regard to the square footage of the property.

Dissatisfied with ARC’s determination for the 2004/05 tax year, petitioner timely filed a Small Claims Assessment Review (“SCAR”) petitioner pursuant to Article 7, Title 1-A of the RPTL in April 2004. The SCAR petition never alleged an issue regarding the square footage of the subject property. Petitioner’s SCAR hearing was held on May 17, 2005 for the 2004/05 tax year and an issue regarding the

square footage of the subject property was never raised at the hearing by Petitioner. Petitioner does not refute that the evidence presented by petitioner at the hearing indicated the square footage for the subject property was 9,680 square feet, the same as respondents' evidence. A decision was rendered by the SCAR hearing officer on or about July 26, 2005 denying a reduction in petitioner's assessment.

The tentative assessment roll for the 2005/06 tax year was published on January 2, 2004. If unsatisfied with an assessment, a taxpayer may file an administrative complaint with ARC by March 1, 2004 in accordance with Article 5 of the RPTL. Petitioner filed a complaint with ARC for the 2005/06 tax year and never alleged an issue with regard to the square footage of the property. Dissatisfied with ARC's determination for the 2005/06 tax year, petitioner timely filed a SCAR Petition pursuant to Title 1-A of the RPTL in April 2005. The SCAR Petition never alleged an issue regarding the square footage of the subject property. Petitioner's SCAR hearing was held on July 18, 2006 for the 2005/06 tax year and an issue regarding the square footage of the subject property was never raised at the hearing by petitioner. Evidence presented by petitioner at the hearing indicated the same square footage as respondents. A decision was rendered by the hearing officer on or about August 10, 2006 granting a reduction in petitioner's

[\* 5 ]  
assessment.

The tentative assessment roll for the 2006/07 tax year was published on January 2, 2005. If unsatisfied with an assessment, a taxpayer may file an administrative complaint with ARC by March 1, 2005 in accordance with Article 5 of the RPTL. Petitioner filed a complaint with ARC for the 2006/07 tax year and never alleged an issue with regard to the square footage of the property.

Dissatisfied with ARC's determination for the 2006/07 tax year, petitioner timely filed a SCAR petition pursuant to Article 7, Title 1-A of the RPTL in April 2006. The SCAR Petition never alleged an issue regarding the square footage of the subject property. Petitioner's SCAR hearing was held on January 2, 2007 for the 2006/07 tax year and a decision was rendered by the hearing officer on or about January 29, 2007 granting a reduction in petitioner's assessment. At the hearing held on January 2, 2007 was the first time that petitioner raised the issue regarding the discrepancy in the actual square footage of the subject property. The square footage issue was raised and addressed at the hearing and by the Hearing Officer in her decision.

Petitioner's resort to a mandamus or Article 78 proceeding to compel the respondent to correct the square footage for the tax years 2004/05; 2005/06; and 2006/07 is in essence a complaint of over-valuation and petitioner's remedy was to

file a grievance as prescribed by Real Property Tax Law Article 7. An Article 7 proceeding was commenced for the tax years 2004/05; 2005/06; and 2006/07. The time to challenge the determination made at the aforesaid SCAR hearings has expired. The present petition is not timely. See CPLR 217. *Cathedral Fourth Development Corp. v Board of Assessors and the Assessment Review Commission of County of Nassau*, 25 AD3d 693; *Suffolk Family Equity, Inc. v County of Nassau*, 233 AD2d 436; see *G.A.D. Holding Company v City of New York Dept. of Finance*, 192 AD2d 441.

Petitioner contends that the respondents' records show the gross living area of the subject premises to be 7,171 sq. feet, which is similar to the County inspector's determination after excluding 1309 square feet for an additional structure currently used for storage. Respondents amended the square footage total for the subject premises for the 2007/08 tax year. Petitioner withdrew its claims for 2007/08. There is no explanation why the petitioner failed to raise the issue of square acreage being included for the additional structure currently used for storage in the SCAR hearings for the 2004/05; 2005/06; and 2006/07 tax years.

Petitioner may not get a "second bite of the apple" by claiming the four-month period to bring the Article 78 has not started to run since the respondent failed to answer the purported "correction of error" letters dated March 9, 2006

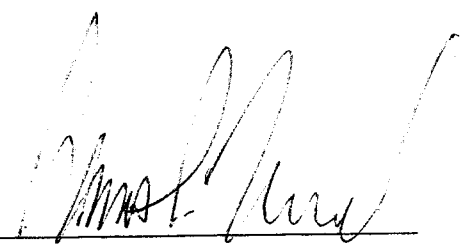
and January 15, 2007. The petitioner had the opportunity to do so, but failed to challenge the square footage at the SCAR hearings held on May 17, 2005 for the 2004/05 tax year; July 18, 2006 for the 2005/06 tax year; and January 2, 2007 for the 2006/07 tax year. See *Jaroff v Board of Assessment Review of the Town of Ossining*, 89 AD2d 617.

Further, the application to correct a "clerical error," an unlawful entry or error in essential fact pursuant to Real Property Tax Law § 554 must be on a "form and shall contain such information as prescribed by the state (RPTL § 554[3]; see also RPTL § 553).

Petitioner's application is denied in its entirety. All proceedings under index no. 011429/07 are terminated.

This decision is the order of the Court.

Dated: 12/31/07

  
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J.S.C.

**ENTERED**  
JAN 18 2008  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE