

**Matter of Rudolph Props., Inc. v Board of
Assessors**

2008 NY Slip Op 30771(U)

March 4, 2008

Supreme Court, Nassau County

Docket Number: 3584-07/

Judge: Joseph P. Spinola

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SHORT FORM ORDER
SUPREME COURT, STATE OF NEW YORK
COUNTY OF NASSAU

Application of
RUDOLPH PROPERTIES, INC.,
Petitioner

Trial/IAS Part 19
Index No. 07-13584
Sequence No. 01
Submit Date 10/2/07

against

BOARD OF ASSESSORS AND
ASSESSMENT REVIEW COMMISSION
OF THE COUNTY OF NASSAU THE
VILLAGE OF KINGS POINT,
Respondent

The following papers read on this motion:

- Notice of Motion/Petition..... X**
- Cross-Motions.....**
- Answering Affidavits..... X**
- Replying Affidavits..... X**

PRESENT: HON. JOSEPH P. SPINOLA

This is a proceeding pursuant to Article 78 of Civil Practice Law and Rules in which the Petitioner challenges the upward modifications of the assessments for tax years 2006/07, 2007/08, and 2008/09 on the ground that the Respondents Petitions for Correction numbers 1104-2007, 8125-2007, and 9028-2007 were improvidently granted by the Assessment Review Commission.

BACKGROUND

The subject of this proceeding is an improved 27-acre parcel of residential land in Upper Brookville. According to the Respondent, it was acquired by the Petitioner in 2000 for \$8,400,000. ¹ Since its acquisition, the Petitioner has made significant

¹ Affirmation of Opposition, ¶ 2.

modifications and improvements, which in part account for the increases of assessments for the years in question.

The Verified Petition enumerates the final assessments for 2006/07-2007/08 as \$17,903 and \$27,599 respectively. The tentative assessment as of January 1, 2007 for the 2008/09 tax year is stated to be \$29,360.² Based upon the 25% ratio propounded by the Petitioner, these fractional assessments reflect fair market value of \$7,161,200, \$11,079,600 and \$11,744,000 for each of the tax years respectively.³

By letter dated March 16, 2007, the Department of Assessment advised the Petitioner that the foregoing assessed values were “incorrect due to a clerical error.” Attached to the letter were Petition No. 1104-2007, which stated that the entry on the tentative assessment roll for the 2006/07 tax year should be \$28,887; Petition No. 8128-2007, stating that the entry on the tentative assessment roll for tax year 2007/08 should be \$39,342; and Petition No. 9028-2007, setting forth the request for a corrected tentative assessment on the 2008/09 roll to be \$39,810. Utilizing the same equalization rate of 25%, these fractional assessments translate to fair market values of \$11,554,800, \$15,736,800 and \$15,924,000.

The Respondents’ Answer denies the essential allegations of the Petition and raises three Affirmative Defenses. The First Affirmative Defense alleges that the Petitioner is barred from proceeding under Article 78 because Real Property Tax Law § 553(4)(c) limits relief to a proceeding under Article 7. The Second alleges that the Petitioners have failed to state a claim upon which relief can be granted, and the Third raises the Statute of Limitations.

The Respondent propounds an explanation for the incorrect data on the final assessment roll for the tax year 2005/06, which they did not seek to correct, and is not directly at issue. According to the Respondent, the tentative land assessment for that year was \$23,215 and the building value was \$11,347, for a total tentative assessment of \$34,562. At the 5% equalization rate in effect for that tax year, the assessment equated to a fair market value of \$6,912,400.

But when it came to finalizing the roll, the assessed land value was listed at \$4,000 and the building value \$11,262, for a total of \$15,262, equalizing to a fair market value of \$3,052,400.⁴ The Respondent claims that for the three subsequent years the error was carried forward. But this does not appear to be so.

² Verified Petition ¶¶ 3 — 5.

³ Reply Affirmation at ¶ 5.

⁴ Affirmation in Opposition at ¶ 4.

For 2006/07 the final land assessment for Land was \$13,035, which equates to \$5,214,000 at the .25% ratio. This is more than five times greater than \$800,000, the equalized value of the previous year's \$4,000 Land assessment at the 5% ratio. The improvements, on the other hand went from an equalized value of \$2,252,400 for 2005/06 to \$1,947,200 for 2006/07. The 2005/06 combined equalized value of \$3,052,400 increased to \$7,161,200 for 2006/07, but not because the 2005/06 land value of \$800,000 was carried forward.

In fact, it appears that the Respondent had fully rectified the Land Value assessment as of January 2, 2005, the valuation date for the 2006/07 tax roll. The land value as of January 2, 2003 was \$4,643,020.⁵ The \$800,000 value as of January 2, 2004 for the 2005/06 tax roll was obviously an error, but by January 2, 2005 the land value was already increased to \$5,214,000 for the 2006/07 tax rolls. Further corrections based on the error in the 2005/06 tax roll would therefore seem inappropriate.

For the next ensuing two years, the Assessor applied the 6% per year limitation on increases in assessment as required by Real Property Tax Law § 1805, and added an amount referable to physical changes in the improvements. For 2007/08, the Assessor added \$1,074, 6% of \$17,903, and \$8,722, representing the estimated physical changes, for a total of \$27,699. This was the final assessment for 2007/08. For the tentative 2008/09 tax roll, they added 6% to \$27,699, which brought the assessment to \$29,360, for an equalized value of \$11,744,000.

As previously noted, the Department of Assessment advised the Petitioner that the assessed values for 2006/07 — 2008/09 were “incorrect due to a clerical error.” Attached to the letter were Petitions 1104-2007, 8128-2007, and 9028-2007, which claimed that the correct assessments were \$28,887, \$39,342 and \$39,810 respectively. These translate to equalized values of \$11,554,800, \$15,736,800 and \$15,924,000. After a hearing on March 27, 2007,⁶ the Assessment Review Commission, by letter dated March 30, 2007, advised the Petitioner that the three Petitions were approved and that the Petitioners were entitled to seek judicial review pursuant to Real Property Tax Law § 553(4)(c).⁷

That statute provides that “(a)n assessment of real property made pursuant to this section shall be subject to review as provided in article seven of this chapter. Such a proceeding shall be commenced within thirty days of the date of the mailing of the notice as provided for by paragraph (b) of this subdivision.”

Rather than commence a proceeding under Article Seven of the Real Property Tax

⁵ Exh. “C” to Petition at pp. 28 — 29.

⁶ Exh. “C” to Petition.

⁷ Exh. “F” to Petition.

Law, the Petitioner filed a Petition under Article 78 of the Civil Practice Law and Rules. The time within which to commence such a proceeding is set forth in Civil Practice Law and Rules

§ 217(1):

Unless a shorter time is provided in the law authorizing the proceeding, a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner or the person whom he represents in law or in fact, or after the respondent's refusal, upon the demand of the petitioner or the person whom he represents, to perform its duty; or with leave of the court where the petitioner or the person he represents, at the time such determination became final and binding upon him or at the time of such refusal, was under a disability specified in section 208, within two years after such time.

DISCUSSION

The threshold consideration is whether the issue is appropriately before the Court. This involves determinations as to whether an Article 7 proceeding under the Real Property Tax Law is an exclusive remedy, and if not, whether the Article 78 proceeding, pursuant to Civil Practice Law and Rules, has been timely commenced.

“The proper method for challenging excessive real estate tax assessments is by a proceeding pursuant to Real Property Tax Law article 7.” *Cathedral Fourth Development Corp. v. Board of Assessors and the Assessment Review Commission of County of Nassau*, 25 A.D.3d 693, 694, 811 N.Y.S.2d 728, 729 (2d Dept. 2006). An Article 78 proceeding is capable of conversion to an Article 7 proceeding, if necessary, but only if the Article 78 was commenced within the 30-day time limit established in Article 7.

But this does not mean that all challenges to assessments are restricted to the procedure established in the Real Property Tax Law. Where the claim is not simply one of excessive assessment, but of illegal use of a procedure, Civil Practice Law and Rules Article 78 is an appropriate remedy. *Id.*

The Petitioner's contention is that the Respondent illegally increased the assessment for the property for tax years 2006/07 and 2007/08 after the assessment was finalized on April 1, 2006 and April 1, 2007 respectively. It is further claimed that the then tentative assessment for 2008/09 was based on the illegally increased assessments for the preceding two years. For these reasons the Court determines that a proceeding under Article 78 of the Civil Practice Law and Rules is an appropriate, although not the only, method for seeking relief.

The next question is whether it has been timely commenced. Exhibit “F” to the

Petition is the notice to the Petitioner that the Respondents' petitions for correction were approved. An Article 78 proceeding must be commenced within four months of the date when the determination to be reviewed became final and binding upon the Petitioner. This determination was on or before March 30, 2007, the date of the letter advising the Petitioner that the Petitions had been granted. The Article 78 Petition is dated August 3, 2007, four months and three days after the final determination.

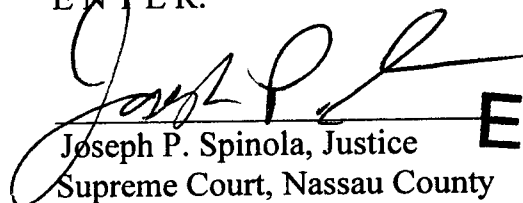
The Court recognizes that a date stamp on Exhibit "F", presumably placed by counsel for the Petitioner upon receipt of the courtesy copy, reflects a receipt of April 6, 2007. If the receipt of the notice of final determination were what the legislature intended when they enacted Civil Practice Law and Rules § 217, they would have said so. But they did not. The Court need not address the question as to what would happen if the Petitioner were never sent notice of a final determination. The Assessment Review Commission advised the Petitioner of the final determination as of March 30, 2007 at the latest. The Petitioner did not commence this proceeding until more than four months thereafter.

As in *Matter of Best Payphones, Inc. V. Department of Info. Tech. & Telecom. of City of N.Y.*, 5 N.Y.3d 30, 35, 799 N.Y.S.2d 182, 184, 832 N.E.2d 38, 40 (2005), the March 30, 2007 letter left no doubt but that the Assessment Review Commission had reached a definitive position regarding the Respondents' Petitions to correct the assessments, and that the Petitioner could expect no further administrative action. Upon receipt of the March 30, 2007 letter it was incumbent upon the Petitioner to seek judicial review, either within thirty days of the mailing of the letter for relief under Article 7 of the Real Property Tax Law, or within four months of the final determination of the administrative agency for an Article 78 proceeding. The Petitioner did neither.

For the foregoing reasons, the Petition under Article 78 of the Civil Practice Law and Rules is untimely, and must be dismissed.

This constitutes the decision and order of the Court.

ENTER:


Joseph P. Spinola, Justice
Supreme Court, Nassau County

ENTERED

Dated: March 4, 2008
Mineola, NY

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NASSAU COUNTY
COUNTY CLERK'S OFFICE