SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. F. DANA WINSLOW,

Justice

FARAMARZ TASHKISSI

TRIAL/IAS, PART 7
NASSAU COUNTY

Plaintiff,

-against-

MOTION DATE: 01/04/08
MOTION SEQ. NO.: 001

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

INDEX NO.: 1604/2007

Defendants.

The following papers having been read on the motion (numbered 1-5):

Notice of Petition.....1
Notice of Motion.....2
Affirmation in Opposition.....3
Reply Affirmation.....4
Verified Answer.....5

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 petitioner's 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 **denied.**

The attorney for the petitioners 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 RPAPL§ 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 raised herein 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)."

Section 1 of he Fourteenth Amendment to the United States Constitution states that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." Article 1, section 11 of the New York State Constitution likewise states that "[n]o person shall be denied the equal protection of the laws of this state or any subdivision thereof." Plaintiff recognizes that "most laws differentiate in some fashion between classes of person. The equal protection clause does not forbid classifications. It simply keeps governmental decision makers from treating differently persons who are in all relevant respects alike." *Nordlinger v Hagen*, 505 U.S. 1, 10 (1992).

Where a challenged legislation does not involve a suspect class (i.e., race, national origin or religion) or interfere with the exercise of a fundamental right, the scope of judicial review is limited to whether the statutory classification is rationally related to a legitimate government objective. The creation of different classes for purposes of taxation is permissible as long as the classification is reasonable and the taxes imposed are uniform with the class. *Tilles Inv. Co. v Gulotta*, 288 AD2d 303, 304; *Foss v City of Rochester*, 65 NY2d 247. Petitioner does not allege that taxpayers within Class One are being treated unequally.

RPTL § 302(2) requires "all real property in each assessing unit shall be assessed at a uniform percentage of value (fractional assessment). . . ." The uniform percentage of value to be applied to market value may vary among classes. Petitioner's reliance on

Allegheny Pittsburgh Coal Co. v Webster, 488 U.S. 336 (1989) is misplaced. In *Allegheny*, the county assessor practiced elective reassessment also known as "welcome stranger," by reassessing properties based on their recent acquisition price while making only minor modifications to those properties that had not been recently sold. In *Allegheny* the county assessor's practice violated the Equal Protection Clause of the Fourteenth Amendment. The court held "[t]here is no constitutional defect in a scheme that bases an assessment on the recent arm's length purchase price of the property, and uses a general adjustment as a transitional substitute for an individual reappraisal of other parcels. The Equal Protection Clause requires that such general adjustments be accurate enough to obtain, over a short period of time, rough equality in tax treatment of similarly situated property owners." *Allegheny* at 343. The court notes that it may not agree with the statutory scheme described in the RPTL or all the nuances contained therein and a more equitable and efficient method maybe obtained, however the methodology is one that must be left to the legislature to change, if at all.

Petitioners have failed to demonstrate that respondents' lowering of the level of assessment on all class one properties lacked a rational basis.

The petitioner's application is **denied** in its entirety.

Submit on notice a proposed judgment. *See Tilles Investment Co., et., supra* at p. 306.

This decision is the Order of the Court and terminates all proceedings under Index No. 1604/07.

Dated: March 28, 2008

ENTER:

J.S.C.

ENTERED

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COUNTY CLERK'S OFFICE