

**Matter of McLaughlin v The Assessor of County of Nassau**

2008 NY Slip Op 32861(U)

September 22, 2008

Supreme Court, Nassau County

Docket Number: 009148/2008

Judge: F. Dana Winslow

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SCAR

**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

**Present:**

**HON. F. DANA WINSLOW,**

**Justice**

**TRIAL/IAS, PART 7  
NASSAU COUNTY**

**In the Matter of the Application of  
TIMOTHY MCLAUGHLIN,**

**Plaintiff,**

**-against-**

**MOTION DATE: 6/18/08  
MOTION SEQ. NO.: 001**

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

**INDEX NO.: 009148/2008**

**Defendants.**

**The following papers having been read on the motion (numbered 1-2):**

**Notice of Petition.....1  
Verified Answer.....2**

**PRELIMINARY STATEMENT**

The Petitioner seeks to annul the determination of a Small Claims Assessment Review (SCAR) hearing officer, a declaration that the assessment on the premises owned by the Petitioner is excessive and unequal, a direction that the Respondents reduce the 2007/08 assessment in accordance with evidence proffered after the SCAR hearing, a direction that the Respondents correct the 2007/08 tax roll to reflect a reduced assessment, and a direction that the Respondents refund excess real property taxes paid by the Petitioner on account of the 2007/08 assessment of the property.

**BACKGROUND**

The petitioner owns a single-family residence with guest house located at 65 Bryant Avenue, Roslyn Harbor, known as Section 20, Block A, Lot 25 (the "subject property"). The 2007/08 assessment on the property was \$11,214, representing a full value assessment of \$4,485,600. The Petitioner timely filed an administrative complaint,

and upon denial of relief, sought a reduction in assessment pursuant to Real Property Tax Law § 730 et seq.

On February 28, 2008 a SCAR Hearing was conducted by Hearing Officer Wayne Greene (“Greene”). When counsel for the Petitioner sought to present evidence of over-assessment, she discovered that she had the incorrect file, one involving another client of the firm by the same name. She requested permission to submit evidence in support of the claim when she returned to her office after the hearing, but the application was **denied**.

On the following day, counsel sent to both the Hearing Officer and the Respondent’s representative, by Federal Express, information which was drawn from the correct file and which she contended showed that the subject property was excessively assessed.<sup>1</sup> On March 17, 2008, some two and one-half weeks later, Greene filed his Decision with the Clerk. The Decision denied relief to the Petitioner and the text of it reads as follows:

Based on evidence submitted by the parties, the correct ratio is .0025.

County submitted 4 comps - all of which are on same street as subect - and they support the AV. They are credible.

Petitioner failed to submit credible evidence @ the hearing.

Note - any evidence submitted by the parties after the hearing date is not considered.

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<sup>1</sup> Exh. “B” to Motion.

Petitioner failed to meet the burden of proof.

AV remains @ 11,214.

Quare: Was there a rational basis for Greene's decision?

#### DECISION

The refusal of the Hearing Officer to consider information submitted within one day of the hearing was arbitrary and capricious, denied the Petitioner the right to a hearing in accordance with Real Property Tax Law § 732, and the decision is without a rational basis. The determination is annulled and the matter is returned to the jurisdiction of the Department of Assessment with a direction that they schedule a further SCAR Hearing before a different Hearing Officer. For the following reasons, the requests for a determination of value and directions to the Respondents to correct the 2007/08 assessment roll and refund excessive taxes are **denied** as beyond the authority of the Court in the context of an Article 78 proceeding.

In reviewing the determination of a SCAR Hearing Officer, the Court is limited to ascertaining whether there was a rational basis for the decision. *Barbera v. Assessor of the Town of Pelham*, 278 A.D.2d 412 (2d Dept. 2000), *leave to appeal denied*, 96 N.Y.2d 711 (2001). There is no rational basis for the Hearing Officer's determination not to consider material submitted to him promptly after the hearing, and well before he rendered a decision.

The procedure for the conduct of SCAR hearings is set forth in Real Property Tax Law § 732, which provides in pertinent part as follows:

#### § 732. Hearing procedures

\* \* \* \*

2. The petitioner need not present expert witnesses nor be represented by an attorney at such hearing. Such proceedings shall be conducted on an informal basis in such manner as to do substantial justice between the parties according to the rules of substantive law. The petitioner shall not be bound by statutory provisions or rules of practice, procedure, pleading or evidence. All statements and presentation of evidence made at the hearing by either party shall be made or presented to the hearing officer who shall assure that decorum is maintained at the hearing. The hearing officer shall consider the best evidence presented in each particular case. subdivision. The hearing officer may, if he deems appropriate, view or inspect the real property subject to review. The petitioner shall have the burden of proving entitlement to the relief sought.

\* \* \* \*

If there were any doubt as to the informal tenor such hearings should take, they are allayed by the Executive Comment of Governor Hugh Carey, which accompanied L. 1981, c. 1022, p. 1981-77, which provides in part as follows:

This bill is designed to afford speedy and inexpensive relief to homeowners who suffer from inequitable assessments and who have not been successful in administrative proceedings before Boards of Assessment Review. The objective of this bill is a laudable one and is consistent with the objectives of

legislation which I have supported for improved administration of the real property tax assessment system in the past.

Nothing less than substantial improvement of current assessment practices will cure all of the existing inequities in the assessment of one, two and three family residential property. However, homeowners should not be denied equitable assessments because of the expense and time involved in successfully prosecuting real property tax review proceedings.

I have consistently stated that protection of the homeowner is one of the touchstones of an improved real property tax assessment system. This bill affords an effective remedy to inequitably assessed homeowners where none presently exists in many assessing units, and therefore, in large measure achieves the objective of homeowner protection.

It is difficult to conclude that the Hearing Officer considered the "best evidence" when he arbitrarily refused to consider the information which the Petitioner offered. In addition, his ipse dixit conclusion that the four comparable sales submitted by the County are on the same street and that they support the assessment, is hardly a rational basis. There is no discussion of any factors which may support the comparability of these homes to the subject. For example, the subject was built in 1935, but there is no comment as to the age or size of the comparable sales. The subject is significantly affected by wetland restrictions and a good part of the plot encompasses a pond. There is no comment as to the plot size or utility of the comparable sales, or the existence of extended docks, which

the subject apparently does not have.

The Hearing Officer has not complied with Real Property Tax Law § 733(4) which states that “(t)he decision of the hearing officer shall state the findings of fact and the evidence upon which it is based”. Simply stating that the comparable sales “are on the same street as subject - and they support the AV. They are credible”, does not constitute findings of fact and the evidence upon which they are based as required by statute. Simply saying the County’s comparable sales are “credible” does not give insight into what factors were considered in reaching this conclusion.

The Respondent points to selected portions of the Small Claims Assessment Review Hearing Officer’s Handbook.<sup>2</sup> For example, ¶ 6 at page 6 includes the statement that “(o)nce a hearing is over do not accept any further evidence from either party. Each party had ample opportunity to prepare prior to the hearing”. But a hearing is not “over” until the Petitioner has had an opportunity to present their case. Some of the other comments in ¶ 6 are that “(a)t all times you must do justice and appear to do justice”, and “(y)ou may grant an adjournment if you feel it is necessary but this is not encouraged”.

The reason propounded by the Petitioner for her inability to produce information at the time of the hearing was entirely credible. Cases granting counsel relief from default on the basis of “law office failure” are legion, and need not be reiterated. Declining to consider evidence, or grant an adjournment, when there is a reasonable excuse for inability to proceed, evidence of a meritorious case, and lack of prejudice to the adversary, is not acceptable. This would be so even in judicial proceedings in which rules of practice, procedure, rules, and evidence apply. It is far less acceptable in proceedings where they do not. Real Property Tax Law § 732(2).

Since the Court is not authorized to substitute its judgment for a Hearing Officer in

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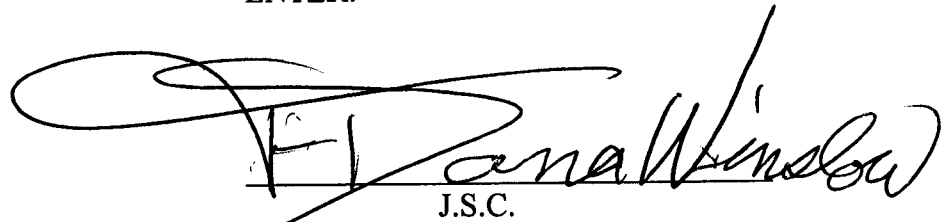
<sup>2</sup> Exh. “A” to Verified Answer.

an Article 78 proceeding, the matter is remanded to the Department of Assessment, which is directed to schedule a SCAR Hearing, before a different Hearing Officer, at which time both the Petitioner and Respondent are entitled to offer evidence to substantiate their position with respect to the accuracy of the 2007/08 assessment of the subject premises.

This constitutes the Order of the Court.

Dated: 9/22/08

ENTER:

  
J.S.C.

**ENTERED**  
OCT 10 2008  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE