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| Walsh v Board of Assessors of the County of Nassau |
| 2009 NY Slip Op 31324(U) |
| May 21, 2009 |
| Supreme Court, Nassau County |
| Docket Number: 411611/08 |
| Judge: Stephen A. Bucaria |
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

RICHARD WALSH, THOMAS WALSH,
PATRICIA BRANTUK,

Petitioners,

TRIAL/IAS, PART 3
NASSAU COUNTY

INDEX No. 411611/08

MOTION DATE: March 31, 2009
Motion Sequence # 001

-against-

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

Respondents.

The following papers read on this motion:

- Notice of Motion..... X
- Affirmation in Opposition..... X
- Reply Affirmation X

This motion, by the attorneys for the petitioners, for an order reducing the 2007/08 assessment from \$2,833, to \$1,895 without prejudice to the pending 2007/08 Article 7 appeal; reducing the 2008/09 assessment from \$2,933 to \$2,088 without prejudice to the pending 2008/09 Article 7 appeal; directing the Nassau County Treasurer to issue a refund for the reduction in the 2007/08 taxable assessment from \$2,833 to \$1,895 with statutory interest and directing the Nassau County Treasurer to issue a refund for the reduction in the 2008/09 taxable assessment from \$2,933 to \$2,008 with statutory interest is **granted**.

Petitioner filed a Real Property Tax Law (R.P.T.L.) Article 7 tax appeal for the 2006/07 tax year to reduce the assessed value of her property. The 2006/07 tax appeals were resolved with the Nassau County Attorney before trial. An Order and Judgment was entered in December 10, 2007. The Order and Judgment reduced the 2006/07 assessed value from \$2,673 to \$1,788. Walsh filed a 2007/08 tax appeal on or about April 3, 2007; and a 2008/09 tax appeal on or about April 3, 2008. The 2007/08 final assessment of the property is \$2,833. The 2008/09 final assessment of the property is \$2,933.

R.P.T.L. 1805(1) provides that a Special Assessing unit shall not increase the assessment of any Class One parcel as measured from the previous year's assessment roll by more than 6% and shall not increase such assessment by more than 20% in a 5-year period. Pursuant to R.P.T.L. § 1801(a), Nassau County is a Special Assessing unit. Attorneys for the petitioner argue that the 2007/08 assessment of this property is subject to the limitations set forth in R.P.T.L. § 1805(1) and exceeds the 2006/07 revised assessment by more than 6% and the 2008/09 assessment of this property is subject to the limitations set forth in R.P.T.L. § 1805(a) and exceeds the 2007/08 revised assessment requested herein by more than 6%. Petitioner asserts the 2007/08 and 2008/09 assessments are excessive and should be recalculated to reflect the court ordered reduction of the 2006/07 assessment, so that neither assessment exceeds the statutory limitations set forth in R.P.T.L. § 1805(1).

Where a court ordered change in assessment would affect a present or subsequent assessment, case law supports the substitution of the original assessment with the court ordered assessment and the recalculation of the tax. (See *In the Matter of Linden Hill v Tishelman*, 107 Misc2d 799, 801, Sup. Ct. Queens Co. 1981) (“a court-ordered reduction in assessment replaces the original erroneous assessment. . .”).

The Office of Real Property Services (“ORPS”) is an agency within the Executive Department of the State of New York which is responsible for overseeing the administration of real property assessments. ORPS has published an Opinion of Counsel which supports this application. See 8 Op. Counsel SBEA No. 48 (1983), which provides the method of recalculating the taxable assessment after a court ordered reduction. (See *In the Matter of Linden Hill v Tishelman*, *supra*, at 803) (holding that “the judgment of the court should not be substituted in place of the judgment of the agency administering the statute.”); see also *Matter of Fineway Supermarkets v State Liq. Auth.*, 48 NY2d 464, 468, 1979; *Matter of Graham v State Tax Comm.* 48 AD2d 444, *aff'd*. 40 NY2d 889; *Matter of Coleco Indus. v State Tax Comm.*, 49 Misc2d 51).

Respondents concede that the respondent is entitled to correction of the 2007/08 and 2008/09 tax years. However, respondents request the Court defer a determination on petitioner's motion until the Article 7 valuation claim is decided. Respondents also request a trial preference and that a trial appraisal exchange be scheduled no less than 90 days from the date of this order. Respondent's have not filed a Trial Term Note of Issue for one of the tax years at issue, nor can the County seek the relief requested without a cross-motion pursuant to CPLR 2215. The County's opposition lacks merit. There is no reason to require the petitioner to pay for a trial appraisal of their property in order to correct a mere mathematical mistake made by the County and correctable by the Court at this time.

Pursuant to the County's own policy of recalculating taxable assessments, New York case law, and in accordance with ORPS Opinion of Counsel, the assessment for the 2007/08 and 2008/09 tax years shall be recalculated to reflect the reductions in the 2006/07 tax year without prejudice to Petitioner's rights to challenge and reduce these revised assessments further. Based on the revised 2006/07 assessment, the 2007/08 assessed value cannot be higher than \$1,895. Recalculated as follows:

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|---------------------------------|---------|
| Revised 2006/07 tax assessment: | \$1,788 |
| 6% permissible increase: | \$ 107 |
| Actual 2007/08 assessment: | \$2,833 |
| Reduction: | \$ 938 |

The 2008/09 assessment should be calculated as follows:

| | |
|---------------------------------|---------|
| Revised 2007/08 tax assessment: | \$1,895 |
| 6% permissible increase: | \$ 113 |
| Revised 2008/09 assessment: | \$2,008 |
| Actual 2008/09 assessment: | \$2,933 |
| Reduction: | \$ 925 |

This application does not seek to resolve the pending Article 7 petition for 2007/08 and 2008/09 tax years on the merits. Rather, it seeks to obtain a reduction

in the assessment without prejudice to the underlying valuation issues which are the subject of these Article 7 appeals. Petitioner is entitled to have the assessments reduced to conform to statutory limitations without prejudice to additional claims of overvaluation and inequality. A final reduction of the actual assessment is expressly reserved for further proceedings before this Court, when the Article 7 appeals are placed on the court's Trial Calendar.

The respondent is directed to revise the assessed valuation of Section 9, block 235, Lot 111-113, 126-129 by reducing the 2007/08 assessment from \$2,833 to \$1,895 without prejudice to the pending 2007/08 Article 7 appeal; and reducing the 2008/09 assessment from \$2,933 to \$2,008 without prejudice to the pending 2008/09 Article 7 appeal. The Nassau County Treasurer is directed to issue a refund for the reduction in the 2007/08 taxable assessment from \$2,833 to \$1,895 with statutory interest and issue a refund for the reduction in the 2008/09 taxable assessment from \$2,933 to \$2,008 with statutory interest.

This decision is the order of the Court.

Dated MAY 21 2009

Stephen A. Bucaria
J.S.C.

ENTERED
MAY 28 2009
NASSAU COUNTY
COUNTY CLERK'S OFFICE