

**Eleven Riverside Dr. Corp. v Tax Commn. of the City  
of N.Y.**

2009 NY Slip Op 31706(U)

July 28, 2009

Supreme Court, New York County

Docket Number: 203559/95

Judge: Edward H. Lehner

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 19

-----X  
ELEVEN RIVERSIDE DRIVE CORPORATION,

Petitioner,

Consolidated  
Index No. 203559/95

-against-

Block 1184 Lot 31

THE TAX COMMISSION OF THE CITY OF NEW YORK  
and THE COMMISSIONER OF FINANCE OF THE  
CITY OF NEW YORK,

DECISION

Respondents

-----X  
EDWARD H. LEHNER, J.;

Petitioner landlord, a cooperative apartment corporation, applies herein for review of its real property tax assessment, pursuant to Article 7 of the Real Property Tax Law, for eleven tax years, 1995-96 through 2005-06 inclusive. At trial, the appraisal reports of both petitioner's appraiser, James L. Levy ("Levy appraisal") and respondent's appraiser, Steven Schleider ("Schleider appraisal") were received in evidence.

The subject property (the Schwab House) is a seventeen story apartment building with basement and sub-basement. It was built in 1951 and contains a total gross building area of 676,308 square feet, above-grade area of 640,758 square feet and rentable residential area of 564,020 square feet, with 2239 rooms among 644 residential units. Additionally, there are five ground floor professional office units containing approximately 4,585 square feet, and a below-grade garage with licensed capacity for 200 vehicles. The property is situated on Riverside Drive between 73<sup>rd</sup> and 74<sup>th</sup> Streets on a lot containing 76,300 square feet. The actual assessed valuations and the proposed assessed valuations of each of the parties is charted below:

TAX YEAR	ACTUAL AV	SCHLEIDER'S AV (Rounded)	LEVY'S AV (Rounded)
1995-96	\$ 17,865,000	\$ 20,223,000	\$ 9,900,000
1996-97	17,820,000	21,946,500	11,450,000
1997-98	16,695,000	22,432,500	11,450,000
1998-99	17,700,750	26,059,500	12,920,000
1999-2000	18,270,000	27,607,500	14,450,000
2000-01	21,060,000	32,611,500	14,090,000
2001-02	23,355,000	35,374,500	16,490,000
2002-03	25,875,000	36,823,500	16,220,000
2003-04	25,065,000	40,365,000	17,530,000
2004-05	25,740,000	42,826,500	18,220,000
2005-06	40,410,000	48,316,500	19,370,000

The foregoing assessed values are computed from the following market values, based on a forty-five percent ratio, or equalization rate, as stipulated to by the parties:

TAX YEAR	MARKET VALUE ON ACTUAL AV	SCHLEIDER'S MARKET VALUE (Rounded)	LEVY'S MARKET VALUE (Rounded)
1995-96	\$39,700,000	\$44,940,000	\$22,010,000
1996-97	39,600,000	48,770,000	25,450,000
1997-98	37,100,000	49,850,000	25,450,000
1998-99	39,335,000	57,910,000	28,700,000
1999-2000	40,600,000	61,350,000	32,100,000
2000-01	46,800,000	72,470,000	31,310,000
2001-02	51,900,000	78,610,000	36,640,000
2002-03	57,500,000	81,830,000	36,050,000
2003-04	55,700,000	89,700,000	38,960,000
2004-05	57,200,000	95,170,000	40,480,000
2005-06	89,800,000	107,370,000	43,050,000

Both experts agree that the highest and best use of the property is the current use; that the income capitalization method is the correct approach for appraisal; that the direct capitalization technique is appropriate; and that pursuant to Real Property Tax Law 581 (1) (a), the property must be assessed as if it were an apartment building subject to regulation under the New York City Rent Stabilization Law ("RSL") and the Code adopted pursuant thereto (the "Code").

While the actual assessed valuation is presumptively valid, such presumption disappears when an owner comes forward with "substantial evidence" to the contrary. A detailed appraisal report, such as presented herein by petitioner, is sufficient to meet its initial burden and thus overcome the presumption as to the validity of the assessment. The ultimate issue then for the court is whether the owner has, by a preponderance of the evidence, established that its property has been overvalued. In this regard, it has been stated that, despite difficulties, "the market value method of valuation is preferred as the most reliable measure of a property's full value for assessment purposes" [FMC Corporation v. Unmack, 92 NY2d 179, 189 (1988)]. See also, Gibson v. Gleason, 20 AD3d 623 (3<sup>rd</sup> Dept. 2005).

In arriving at a market rental income for the subject property, petitioner's expert opined that the best evidence thereof would be the "history of the rents actually received for apartments which were leased to rent stabilized tenants subsequent to the 1984 conversion to cooperative ownership ..." (Levy appraisal, p. 22). At the time of the effective date of such conversion in 1984, approximately two-thirds of the apartments had been sold. To project income for these units during the years under review, Levy employed an average of the rentals being paid prior to conversion for each line and then projected these rents into future years by making such adjustments as would have been forthcoming under the RSL; i.e., (1) renewal increase every two years according to the findings of the New York City Rent Guidelines Board ("RGB") for two year leases; (2)(a) projected vacancy increases established by the RGB prior to 1998, and (b) at the rate of 20% (set by RSL § 26-511 (5-a); § 2522.8 of the Code) for a vacancy for 1998 and subsequent years; and (3) estimated rental increases for improvements to apartments upon sale (Id., p. 22-23). Levy opined that the renewal increases should be based on two-year renewals as they actually prevail over one-year renewals (Id., p. 22). For units sold subsequent to 1984, Levy employed actual rentals received until sale, and then employed

projections similar to those employed for units sold at the time of conversion. Levy's projections of vacancy increases were based on his personal experience and the United States Census Bureau's triennial Housing and Vacancy Survey (Id.). He opines a turnover rate of 12.5 percent per annum, and thus projected a vacancy increase at eight-year intervals although the building's actual experience is at a rate of 5.3 percent. Upon the foregoing, Mr. Levy derives the estimated residential apartment income from the subject property (Id., pp. 30-31), and converts such income into a rate per square foot. However, the square foot rate set forth in Levy's appraisal is calculated by dividing the total gross building area (676,308 square feet) into the gross residential income rather than dividing by the rentable residential area (564,020 square feet). The revised square foot values are as follows:

TAX YEAR	GROSS ESTIMATED INCOME	GR. EST. INC. PER SQUARE FOOT
1995-96	\$7,111,742	\$12.61
1996-97	7,412,081	13.14
1997-98	7,713,120	13.68
1998-99	8,017,486	14.21
1999-2000	8,391,276	14.88
2000-01	8,699,155	15.42
2001-02	9,153,602	16.23
2002-03	9,765,802	17.31
2003-04	10,250,699	18.17
2004-05	10,717,130	19.00
2005-06	11,221,825	19.90

Levy offered the following comparable per square foot rentals as a "check" against his conclusions — without relying thereon — but only for ten out of eleven years (Levy appraisal, p. 22). His reluctance to rely on these comparables is due to their earlier pre-World War II construction, larger rooms and "other amenities" which "preclude use of rents from these buildings as comparables to the subject building without major adjustments."(Id.) The offerings include the following properties (Levy appraisal, addenda):

Comparable Number	Address (all Manhattan)	Year of Construction
1	98-99 Riverside Drive	1929-renovated 1988
2	125 Riverside Drive	1907
3	240 West End Avenue	1924-renovated 1974
4	365-369 West End Avenue	1925-renovated 1986
5	393 West End Avenue	1927
6	441 West End Avenue	1926-renovated 1986
7	495-97 West End Avenue	1907-renovated 1984
8	498 West End Avenue	1912
9	522-26 West End Avenue	1924-renovated 1985
10	525 West End Avenue	1920-renovated 1986
11	562-68 West End Avenue	1913-renovated 1951

Levy opined rates of income per square foot ("PSF") for all of these properties as follows:

#### FIRST FOUR PROPERTIES

TAX YEAR	COMP.NO 1	COMP.NO 2	COMP.NO 3	COMP.NO 4
1995	\$8.22	no data	\$11.61	\$7.42
1996	8.78	no data	no data	7.39
1997	9.14	no data	12.39	8.24
1998	9.49	no data	12.89	9.16
1999	9.42	21.93	13.23	9.09
2000	9.96	22.30	13.80	10.94
2001	11.54	21.65	14.72	10.93
2002	no data	no data	15.92	10.99
2003	12.51	no data	16.43	12.40
2004	13.06	no data	17.36	14.08

#### REMAINING SEVEN PROPERTIES

TAX YEAR	COMP.5	COMP.6	COMP.7	COMP.8	COMP.9	COMP.10	COMP.11
1995	\$9.07	\$8.70	no data	\$ 8.59	no data	no data	no data
1996	9.17	no data	\$13.09	9.06	no data	\$8.44	no data
1997	9.82	9.93	no data	no data	no data	no data	no data
1998	9.98	8.79	14.26	no data	no data	no data	\$12.33
1999	9.82	12.26	14.80	12.17	\$8.88	no data	14.28
2000	10.85	13.45	15.67	no data	9.73	10.29	16.09

2001	11.35	14.15	16.42	no data	no data	11.23	18.14
2002	11.78	13.12	17.12	13.88	10.12	12.30	17.99
2003	12.22	no data	17.73	no data	no data	12.85	17.25
2004	13.53	14.28	18.55	no data	no data	no data	18.48

When this data is averaged by the number of years for which data is provided, the results are as follows:

1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
\$8.94	\$9.32	\$9.90	\$10.99	\$12.59	\$13.31	\$14.46	\$13.69	\$14.48	\$15.62

Levy's average per square foot rents for his "check" properties may be compared with the average PSF rents derived from his rent stabilized projections as follows:

TAX YEAR	(A) CORRECTED RENT-STABILIZED PROJECTED RENTS PSF	(B) AVERAGES OF UNADJ. "CHECK" PROPERTIES RENT PSF	% OF VARIATION OF B TO A (Rounded)
1995	\$13.02	\$8.94	-31
1996	13.57	9.23	-31
1997	14.13	9.90	-30
1998	14.68	10.99	-25
1999	15.37	12.59	-18
2000	15.93	13.31	-16
2001	16.76	14.46	-14
2002	17.89	13.69	-23
2003	18.77	14.48	-23
2004	19.63	15.62	-20
2005	20.55	no data	no data

The city's appraiser opined nine comparable rental properties as follows:

COMPARABLE NO.	ADDRESS (all Manhattan)	YEAR OF CONSTRUCTION (OR RENOVATION)
1	241 CENTRAL PK W.	1931
2	20 WEST 86 <sup>th</sup> STREET	1929
3	401 AMSTERDAM AVE	1927
4	120 WEST 79 <sup>th</sup> STREET	1926
5	256 WEST 72 <sup>ND</sup> STREET	1913/1969
6	1493 YORK AVENUE	1956/1988

7	1511 YORK AVENUE	1966
8	1111 THIRD AVENUE	1951/87
9	4 EAST 89 <sup>th</sup> STREET	1955

From Schleider's data (appraisal, pp. 123-133) setting forth the building area, and the annualized apartment income, the court has calculated the rental rate per square foot for the Schleider comparables, including the application of his adjustments for size, location and height, as follows:

TAX YEAR	COM1	COM2	COM3	COM4	COM5	COM6	COM7	COM8	COM9
1995	\$09.16	\$11.26	\$09.87	no data	\$13.12	\$14.26	\$09.87	\$10.93	\$13.60
1996	09.78	12.14	10.44	\$11.38	13.35	14.06	09.47	9.93	14.25
1997	10.60	12.61	10.41	11.80	13.51	15.31	10.00	12.00	14.97
1998	11.40	13.64	11.62	12.67	13.93	16.45	11.29	13.72	16.64
1999	12.26	14.76	14.29	12.64	no data	no data	11.68	no data	16.99
2000	13.37	16.40	15.24	13.69	16.01	19.70	13.29	16.78	19.39
2001	no data	18.47	no data	14.41	17.86	20.52	13.52	17.78	19.41
2002	14.96	20.15	19.83	14.92	18.93	23.46	15.21	21.23	19.82
2003	16.06	21.957	20.39	16.51	20.26	24.34	16.02	21.95	20.13
2004	17.71	21.18	22.59	17.30	no data	24.79	16.35	22.96	21.15

These rents are averaged for the year and compared with Levy's stabilized averaged "check" rents as follows:

TAX YEAR	AVERAGES OF UNADJ. "CHECK" PROPERTIES RENT PSF	AVERAGE OF CITY'S COMPS PSF
1995	\$8.94	\$11.48
1996	9.32	11.76
1997	9.90	12.47
1998	10.99	13.48
1999	12.59	13.77
2000	13.31	15.99
2001	14.46	17.42
2002	13.69	18.72
2003	14.48	19.82
2004	15.62	20.51
2005	no data	no data

Schleider, however, opines residential income on a per-room basis as set forth in his appraisal

(pp. 161-162). The court has converted Schleider's monthly per room rental rates into yearly rates per square foot by multiplying the per-room rate by the total number of rooms (2239), dividing the result by the residential square footage (564,020), and multiplying the quotient by 12, with the following results:

TAX YEAR	PSF RATES FROM ROOM RATES
1995	\$ 15.48
1996	15.96
1997	16.91
1998	18.10
1999	18.82
2000	21.67
2001	22.87
2002	25.49
2003	26.91
2004	27.87
2005	29.53

Amongst the flaws in Levy's methodology, alleged by the City, is his assumption that all tenants will choose two-year leases for renewal (Tr. 106), whereas market data indicates that approximately one-third of the time tenants chose one-year renewals (Levy appraisal, p. 22; Schleider appraisal, p. 93; Tr.106). Levy admitted that if he had accounted for a third of the tenants choosing one-year leases, his projected rents for the building would have been higher for that reason alone (Tr. 107). He acknowledged that these calculations lowered the base rents upon which future projected increases would be calculated. Further, he found that no rents would exceed a monthly rental of \$2000 and become decontrolled upon vacancy or by reason of tenant's income exceeding \$175,000 for two consecutive years as provided in the RSL. Also, as aforesaid, his income per square foot was calculated by dividing the total square footage (not just the rentable residential square footage) by the residential income, but this does not affect his gross income figures as the higher per square foot rentals are multiplied by the lower residential square footage.

The City's methodology is flawed by its less than persuasive choice of comparables. "The best comparable(s), from both an appraisal and legal standpoint, are those that are most similar. To the appraiser this means the properties requiring the fewest adjustments to equalize them to the property under appraisal" (J. D. Eaton, *Real Estate Valuation in Litigation*, (2<sup>nd</sup> ed. 1995)]. Appraisal evidence should be rejected if the "purported comparables are not sufficiently similar in structure, location and as many other features as possible" (Henry O. Lcc and Wilford A. Le Forestiere, *Review and Reduction of Real Property Assessments in New York*, [3<sup>rd</sup> ed. 1980]).

The City's comparables, described in Schlclider's appraisal pp.123-133, demonstrate that comparables nos. 6, 7, 8 and 9 are all located in the Upper East Side (UES) sub-market, and have residential square foot areas of, respectively, 240,073, 205,681, 1,006,500 and 70,678, compared to the subject property's residential square foot area of 564,020 (*Id.*). Although the City's comparables 1,2,3, 4 and 5 are also deficient in similarity to the subject property's residential square foot area (i.e. respectively, 253,749, 103,112, 102,521, 114,696 and 70,126 [*Id.*]), the comparison of residential property with those in a different rental market—and in the case of the UES properties, more than 1 mile away—is more significantly disqualifying. What the Upper West Side properties offer in terms of similarity by reason of location, they give back in terms of age as they were built prior to 1930, whereas the subject property was built in 1951. As a general principle, the Court of Appeals stated in *Allied Corporation v Town of Camillus*, 80 NY2d 351, 356 (1992), that the "ultimate purpose of valuation ... is to arrive at a fair and realistic value of the property involved so that all property owners contribute equitably to the public fisc, (and) [a]ny fair and nondiscriminatory method that will achieve that result is acceptable."

Levy opines that the projected stabilized rents are "much more persuasive" (Levy appraisal, p. 22), which is consistent with the heart of petitioner's argument; i.e., that decisional law prefers

the use of projected stabilized rents above all other valuation estimates (*Block v Tax Commission*, 33 AD2d 899 [1st Dept 1970]; *Central Westchester Tenants Corp. v Iagallo*, 136 AD2d 53 [2<sup>nd</sup> Dept 1988]). In *New York Central Railroad v Tax Commission*, 26 AD2d 543 (1<sup>st</sup> Dept. 1966), the court opined that “(i)n determining the value of the building through the use of the capitalization method, we believe that the use of the actual rents received from tenants ... is a better guide to follow than the estimated income testified to by petitioner’s expert.” In that case, there was no exclusion of estimated rents as a consideration in determining value, but rather an expressed preference for actuals over estimates, and approval of estimated replacement cost less depreciation as a check against a value based on actual rents. *Rockaway Crest Section 1, Inc. v Tax Commission*, 38 AD2d 759 (2<sup>nd</sup> Dept. 1972), held that “the actual rents collected in these rent-controlled buildings are the best guide to their rental value.” However, “best” does not mean “only” or “exclusive.” In *Central Westchester Tenants Corporation v Iagallo, supra*, it was held to be error to base a cooperative apartment building’s assessment on illegally collected rents that were higher than the permitted stabilized rents. However, there is no opined exclusion of other methods of valuation which are fair and reasonable.

In pursuit of this ultimate objective, the court must now consider the following issues: 1) to what extent are the City’s comparable rentals a fair, reasonable and realistic basis on which to arrive at a valuation of the subject property, and 2) to what extent are the petitioner’s projected stabilized rents an accurate and realistic projection of the “actual” rents deemed preferred by the weight of decisional law. As both appraisals are not entirely adequate for the variety of reasons referred to above, the court will average Schleider’s per-room rate converted to a square footage rate with Levy’s per square foot rate derived from the court’s corrected computation to determine the subject’s gross potential residential income as follows:

TAX YEAR	LEVY PSF	SCHLEIDER PSF	AVG.	x 564,020	GROSS POTENTIAL RESIDENTIAL INC.
1995	\$12.61	\$15.48	\$14.05	"	\$ 7,924,481.00
1996	13.14	15.96	14.55	"	8,206,491.00
1997	13.68	16.91	15.30	"	8,629,506.00
1998	14.21	18.10	16.16	"	9,114,563.20
1999	14.88	18.82	16.85	"	9,503,737.00
2000	15.42	21.67	18.55	"	10,462,571.00
2001	16.23	22.87	19.55	"	11,026,591.00
2002	17.31	25.49	21.40	"	12,070,028.00
2003	18.17	26.91	22.54	"	12,713,010.80
2004	19.00	27.87	23.44	"	13,220,628.80
2005	19.90	29.53	24.72	"	13,942,574.40

With regard to income derived from other than residential space, both experts appear to be agreed on adopting actual reported income received from all other sources (Levy appraisal, pp. 24 and 26; Schleider appraisal, pp.138-144, 161-62). For some years, the experts have identical figures for other income, but Levy has unexplained gaps and inconsistencies (Levy appraisal, pp. 26,30,31). Accordingly, the court will adopt the City's expert's figures for non-residential space income as follows:

TAX YEAR	GROSS POTENTIAL RESIDENTIAL INC.	+	COMBINED ALL OTHER INCOME	=	TOTAL GROSS POTENTIAL INC.
1995	\$ 7,924,481.00		\$1,211,243.00		\$ 9,135,724.00
1996	8,206,491.00		1,204,910.00		9,411,401.00
1997	8,629,506.00		1,224,878.00		9,854,384.00
1998	9,114,563.20		1,270,920.00		10,385,483.20
1999	9,503,737.00		1,229,239.00		10,732,976.00
2000	10,462,571.00		1,365,198.00		11,827,769.00
2001	11,026,591.00		1,348,509.00		12,375,100.00
2002	12,070,028.00		1,509,908.00		13,579,936.00
2003	12,713,010.80		1,371,594.00		14,084,604.80
2004	13,220,628.80		1,451,611.00		14,672,239.80
2005	13,942,574.40		1,587,464.00		15,530,038.40

Schleider makes no reduction in his gross effective income estimate for vacancy and collection loss based on his assertion that his underlying source for rental figures accounts for actual collections (Schleider appraisal, p. 141). Levy opined a three percent reduction for vacancy and

collection loss (Levy appraisal, p. 24). The court finds that, considering the evidence presented, a vacancy and collection loss deduction of 1.7% to be fair and reasonable.

TAX YEAR	TOTAL GROSS POTENTIAL INC.	MINUS 1.7% VAC. & COLL. LOSS	GROSS EFFECTIVE INCOME
1995	\$ 9,135,724.00	\$155,307.31	\$ 8,980,416.69
1996	9,411,401.00	159,993.82	9,251,407.18
1997	9,854,384.00	167,524.53	9,686,859.47
1998	10,385,483.20	176,553.20	10,208,930.00
1999	10,732,976.00	182,460.59	10,550,515.41
2000	11,827,769.00	201,072.07	11,626,696.93
2001	12,375,100.00	210,376.70	12,164,723.30
2002	13,579,936.00	230,858.91	13,349,077.09
2003	14,084,604.80	239,438.28	13,845,166.52
2004	14,672,239.80	249,428.08	14,422,811.72
2005	15,530,038.40	264,010.65	15,266,027.75

Levy has adopted actual operating expenses for the years under review for labor, insurance, electricity, gas, fuel, water and sewer, but has estimated — based on comparables contained in the addenda — expenses for repairs and maintenance, supplies, exterminators, uniforms, telephone, advertising, and all items contained in petitioner’s miscellaneous portion of its certification (Levy appraisal, p. 25), on the basis that actual expenses in this cooperative, where tenants make and pay for their own repairs, are less than would be incurred in a rental building.

Schleider compared petitioner’s certified expenses to those in the aforelisted nine comparable rent stabilized rental properties (Schleider appraisal, p. 141). Since he concluded that the subject property’s “actual operating expenses are within a reasonable range of overall market parameters,” he employed such actual figures with an adjustment “to reflect the assumed operation as a rent stabilized rental apartment building.” However, contrary to Levy, Schleider opined that since “a cooperative apartment building ... inherently includes a higher level of services to its individual shareholders ... line-items such as repairs and maintenance may be somewhat higher than typical market-rate rental investment properties” (*Id.*). The court rejects such conclusion because (as noted

above) in a rent stabilized building a landlord has the obligation to make repairs and provide essential services, including painting at its expense, whereas in a cooperative the shareholder-tenant normally has to incur the cost of such items. However, the expenses opined by the experts are very similar, the total difference being less than \$200,000 over the eleven year period, with the City's total over that period being the higher.

Accordingly, the court will adopt an average of the two experts' total operating expenses as appropriate for determination of the subject property's net operating income, as follows (Levy appraisal, p. 31; Schleider appraisal, pp. 161-62):

TAX YEAR	PETITIONER'S OPERAT. EXP.	RESPONDENT'S OPERAT. EXP.	AVERAGE OF OPINED OPERATING EXP.
1995	\$4,390,000	\$4,415,526	\$4,402,763
1996	4,286,500	4,138,982	4,212,741
1997	4,665,700	4,646,261	4,655,981
1998	4,502,700	4,392,681	4,447,691
1999	4,469,000	4,517,102	4,493,051
2000	4,777,000	4,988,492	4,882,746
2001	4,848,000	4,898,737	4,873,369
2002	5,406,600	5,500,674	5,453,637
2003	5,469,200	5,518,674	5,493,937
2004	6,052,500	6,082,414	6,067,457
2005	6,054,400	6,059,414	6,056,907

Subtracting the average operating expenses from the adjusted gross effective income will yield the net operating income as follows:

TAX YEAR	GROSS EFFECT. INCOME	minus	AVERAGE OPER. EXPENSES	NET OPERATING INCOME
1995	\$ 8,980,416.69		\$4,402,763	\$4,577,653.69
1996	9,251,407.18		4,212,741	5,038,666.18
1997	9,686,859.47		4,655,981	5,030,878.47
1998	10,208,930.00		4,447,691	5,761,239.00
1999	10,550,515.41		4,493,051	6,057,464.41
2000	11,626,696.93		4,882,746	6,743,950.93
2001	12,164,723.30		4,873,369	7,291,354.30
2002	13,349,077.09		5,453,637	7,895,440.09
2003	13,845,166.52		5,493,937	8,351,229.52

2004	14,422,811.72	6,067,457	8,355,354.72
2005	15,266,027.75	6,056,907	9,209,120.75

In determining the appropriate rate of capitalization to apply to the net operating income in order to determine the market value of the subject property in each year, both parties claim to use a “band of investment” analysis to derive an overall capitalization rate (Levy appraisal, p. 27; Schleider appraisal, p.166-176; Tr. at 193 and 370). This method derives the rate from two components; i.e., the expected rate of return by a lender financing the purchase of the property (mortgage rate), and the rate of return expected by the purchaser of the property who mortgages it to the lender (equity rate). To derive the mortgage rate portion, Schleider relies principally upon the Korpacz Real Estate Investor Survey, published by Price Waterhouse Coopers, as well as other surveys. These review the national market as a whole, rather than the Manhattan market specifically, or any sub-market thereof (Schleider appraisal, p.164; Tr. at 459). Where Schleider offers a Manhattan-specific source (Schleider appraisal, p. 164-6; Tr. at 374-5), it is only available for the last four of the tax years in dispute.

Levy’s mortgage portion of his opined capitalization rate is based on the survey published by the RGB, which would reasonably be more appropriate for an rent-stabilized building in Manhattan. Schleider’s critique of the RGB study is that it is limited to small buildings, in contrast to the relatively large size of the subject property (Tr. at 377). Moreover, Schleider opines, the smaller buildings – which are the basis of the RGB study – are more expensive to finance than buildings like the subject and degrades its value for use in deriving a capitalization rate (*Id.*). Levy disagrees, testifying that, “(m)y experience is that rates don’t necessarily vary from property to property. What varies is the amount of equity that is required and a bank doesn’t necessarily give a lower rate for a big building” (*Id.* at 197). Thus, Levy opines that a lender might demand more security for a smaller building in terms of a larger investment from the owner relative to the loan (*Id.*).

In such cases, the need for the equity owner to commit to more cash would engender a motive for a higher return on the equity, and a higher overall capitalization rate.

Following are the respective conclusions of the experts as to overall capitalization rates for each of the tax years at issue (Schleider appraisal, p. 177; Levy appraisal, pp. 32-42.)

TAX YEAR	LEVY OVERALL CAP. RATE	SCHLEIDER OVERALL CAP. RATE
1995	.10874	.07400
1996	.10283	.07500
1997	.10253	.07300
1998	.10368	.07400
1999	.09993	.07100
2000	.10323	.07000
2001	.09598	.07000
2002	.09326	.07100
2003	.08844	.06600
2004	.08475	.06100
2005	.08320	.05800

The court concludes that the petitioner's development of an overall capitalization rate is, on balance, more persuasive than the City's, but finds that petitioner's development of the equity portion of the overall rate fails of a full and detailed explanation as to its derivation (Levy appraisal, p. 28). Accordingly, the court will adjust the petitioner's overall capitalizations rate downward by twenty percent.

Both experts agree that the overall capitalization rate must be adjusted upward by the effective tax rate for each year as shown below (Schleider appraisal, p. 179; Levy appraisal, pp. 32-42).

TAX YEAR	COURT'S SELECTED CAPITALIZ. RATE	EFFECTIVE TAX RATE	TAX ADJUSTED CAP. RATE
1995	.08699	.04863	.13562
1996	.08226	.04975	.13201
1997	.08203	.04970	.13173
1998	.08299	.04832	.13131
1999	.07994	.04883	.12877
2000	.08258	.04881	.13139

2001	.07678	.04856	.12534
2002	.07461	.05193	.12654
2003	.07074	.05679	.12753
2004	.06780	.05497	.12277
2005	.06656	.05578	.12234

The market value of the property for the disputed years is determined by dividing the net operating income by the tax adjusted capitalization rate as follows:

TAX YEAR	NET OPERATING INCOME	ADJ. CAP. RATE	MARKET VALUE OF PROPERTY
1995	\$4,577,653.69	.13562	\$33,753,529.64
1996	5,038,666.18	.13201	38,168,821.91
1997	5,030,878.47	.13173	38,190,833.30
1998	5,761,239.00	.13131	43,875,097.10
1999	6,057,464.41	.12877	47,040,959.93
2000	6,743,950.93	.13139	51,327,733.69
2001	7,291,354.30	.12534	58,172,604.91
2002	7,895,440.09	.12654	62,394,816.58
2003	8,351,229.52	.12753	65,484,431.27
2004	8,355,354.72	.12277	68,056,974.18
2005	9,209,120.75	.12234	75,274,814.04

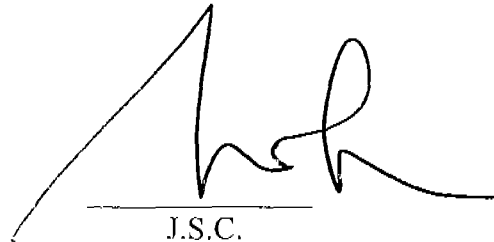
The assessed value of the property is then determined by multiplying the market value by the stipulated equalization ratio of .45 (Tr. 3). The results are shown in comparison to the current assessed valuation and the amount of the reduction:

TAX YEAR	MKT VALUE	x .45 ==	NEW A.V.	CURRENT A.V.	REDUCTION
1995	\$33,753,529.64		\$15,189,088.34	\$17,865,000	\$ 2,675,911.66
1996	38,168,821.91		17,175,969.86	17,820,000	644,030.14
1997	38,190,833.30		17,185,874.99	16,695,000	-0-
1998	43,875,097.10		19,743,793.70	17,700,750	-0-
1999	47,040,959.93		21,168,431.97	18,270,000	-0-
2000	51,327,733.69		23,097,480.16	21,060,000	-0-
2001	58,172,604.91		26,177,672.21	23,355,000	-0-
2002	62,394,816.58		28,077,667.46	25,875,000	-0-
2003	65,484,431.27		29,467,994.07	25,065,000	-0-
2004	68,056,974.18		30,625,638.38	25,740,000	-0-
2005	75,274,814.04		33,873,666.32	40,410,000	6,536,333.68

Accordingly, the contested assessments are reduced in the amounts indicated herein for the years 1995, 1996 and 2005. For all other years, the assessments are confirmed. The respondent shall make such refunds to the petitioner as correspond to the reductions for all years in which assessments were reduced, together with such interest as provided by law.

Settle judgment on ten days' notice.

Dated: July 28, 2009



J.S.C.