

**Matter of Small Claims Assessment Review (SCAR)
v Krul**

2011 NY Slip Op 31023(U)

April 19, 2011

Supreme Court, Wayne County

Docket Number: 72195/2011

Judge: Dennis M. Kehoe

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STATE OF NEW YORK
SUPREME COURT : COUNTY OF WAYNE

In the Matter of a Small Claims Assessment
Review (SCAR) of:

EDWARD P. DODGE and
AMYLYNN M. DODGE,
Petitioners

DECISION
AND
ORDER

-vs-

Index No. 72195

DAWN KRUL, Town of Wolcott Clerk,
DIANNA BLANKLEY, Tax Assessor,
RED CREEK CENTRAL SCHOOL
DISTRICT, WAYNE COUNTY TREASURER,
Respondents.

2011

Edward P. Dodge and Amylynn M. Dodge
Petitioners, Pro Se

Nesbitt & Williams
Arthur B. Williams, Esq., of counsel
Attorneys for Respondents

The Petitioners have commenced this Article 78 proceeding, *pro se*, by Order to Show Cause, seeking relief in the nature of “certiorari, mandamus and prohibition.” The Respondents have filed an Answer and Return, setting forth two Affirmative Defenses and three Objections in Point of Law. The Petitioners have submitted a reply.

The Petitioners have requested relief through the Small Claims

Assessment Review (SCAR), process, seeking a reduction in the real property tax assessment imposed in 2010 on premises owned by them at 13922 Ingersall Lane, Sterling, New York 13156. The property was originally assessed at \$154,600.00. The Petitioners maintained that the assessed value was excessive, and requested a reduction in value to \$122,400.00. A hearing was held on September 1, 2010 before Judicial Hearing Officer John Ferlicca. At the time of the hearing, the Petitioners submitted their own professional appraisal report, which concluded that the value of the subject premises is \$140,000.00. The Judicial Hearing Officer ultimately adopted that figure as the correct assessment in his decision.

In this proceeding, the Petitioners seek a determination that the assessment of their premises should be reduced to \$21,000.00. Essentially, the Petitioners maintain that the property, which is located on a strip of waterfront traditionally referred to as Blind Sodus Creek, is misclassified. Currently the property's classification is "Deep Water Improved, Prime Waterfront". Based on an affidavit submitted by an individual named Wayne Forbes, together with maps and an aerial photograph, the Petitioners contend that the property should be reclassified as "Creek or Stream, Marshy Areas". (The Court notes that

these exhibits were not presented to the Judicial Hearing Officer at the hearing.)

The Forbes affidavit sets forth water depths allegedly based on actual measurements taken by Mr. Forbes along the shoreline of the Petitioners' property. This data, claim the Petitioners, supports their position that the property is misclassified, due to erroneous calculations by the Town. The Petitioners also allege various other violations including:

- 1) alleged "fraudulent" and "malicious" changes to the description of the property's dimensions, pertaining to both the land and the house;
- 2) erroneous use of comparable sales of residences outside the Town of Wolcott;
- 3) The Town's failure to provide full disclosure of their data collection methods and to preserve the accuracy of their records.

A review of the hearing officer's decision in the context of an Article 78 proceeding differs from the standard procedure generally utilized in other forms of appellate review. While an appellate court is usually limited to consideration of only that evidence introduced at the original hearing,

the scope of review in an Article 78 is somewhat broader. For example, in Southwind Retirement Home, Inc. v. City of Middletown, 74 AD3d 1085 (2nd Dept, 2010), the Second Department held that “(the petitioner’s) submission of evidence to the trial court which was not proffered during the grievance proceeding was proper.” Likewise, the Fourth Department stated as follows in Katz Buffalo Realty, Inc. v. Anderson (1966) that a proceeding to correct an assessment “is a trial de novo to decide whether the total assessment of the property is correct and if it is not to correct it.” Therefore, under the theory of these cases, it is arguable that the Forbes affidavit with attachments, could be considered by this Court.

Nevertheless, even were this Court to consider the Petitioners’ additional submissions, which are of questionable value, under the standard of review utilized in Article 78 proceedings involving SCAR matters, this Court finds it appropriate to affirm the determination of the Judicial Hearing Officer. The Second Department held in Greenfield v. Town of Babylon Dept. Of Assessment, 76 AD3d 1071 (2010) that “when (a SCAR) determination is contested, the court’s role is limited to ascertaining whether there is a rational basis for that determination.” In this proceeding, it was clear that all properties located on Blind Sodus Bay are

classified as "Deep Water Improved, Prime Waterfront". Moreover, the Judicial Hearing Officer reduced the Petitioners' assessment from the original amount to the exact value established in the Petitioners' own appraisal, which was admitted as an exhibit at the hearing. There is no basis on this record to reverse the Judicial Hearing Officer or to remit the matter for a de novo hearing. "When a Hearing Officer's determination is challenged, the court's role is limited to ascertaining whether the determination has a rational basis". (See, Sterben v Board of Assessment Review of the Town of Amherst, 41 AD3d 1214 (4th Dept, 2007)). The Court finds that such a rational basis exists.

Therefore, the determination of the Judicial Hearing Officer is affirmed, and the Article 78 Petition is dismissed.

This Decision constitutes the Order of the Court.

Dated: April 19, 2011
Lyons, New York



Honorable Dennis M. Kehoe
Acting Supreme Court Justice

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 SUPREME COURT