

Matter of Ackerman v Nassau County Assessor

2011 NY Slip Op 31818(U)

June 27, 2011

Supreme Court, Nassau County

Docket Number: 1098/11

Judge: Denise L. Sher

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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

In the Matter of the Application of

CRAIG ACKERMAN and 130 OTHER PETITIONERS,

Petitioners,

- against -

NASSAU COUNTY ASSESSOR and
NASSAU COUNTY ASSESSMENT REVIEW
COMMISSION,

Respondents.

For a Judgment Pursuant to CPLR Article 78

TRIAL/IAS PART 32
NASSAU COUNTY

Index No.: 1098/11
Motion Seq. Nos.: 01, 02
Motion Dates: 03/07/11
03/07/11

XXX

The following papers have been read on these applications:

	Papers Numbered
Notice of Petition (Seq. No. 01), Petition, Affirmation and Exhibits and Memorandum of Law	1
Notice of Motion (Seq. No. 02), Affirmation and Exhibits	2
Affirmation in Opposition and Reply Affirmation	3
Reply Affirmation in Further Support of Motion to Dismiss	4

Upon the foregoing papers, it is ordered that the applications are decided as follows:

Petitioners bring this proceeding (Seq. No. 01), pursuant to Article 78 of the Civil Practice Law and Rules, for a judgment vacating one hundred thirty-one (131) decisions made by Small Claims Assessment Review Hearing Officers on the ground that none of the decisions

provide any explanation or rationale for the adoption of the .25% Residential Assessment Ratio (“Ratio”) propounded by the Respondents, without reference to the report of an economist which they submitted with their petitions, showing that the correct ratio is .232% or less.

Respondents cross-move (Seq. No. 02) to dismiss the petitions, or in the alternative, for a severance of the individual claims and a direction that petitioners purchase individual index numbers and file separate petitions.

BACKGROUND

Challenges to real property assessments are big business in Nassau County. By most accounts, tax certiorari proceedings in Nassau result in refunds in excess of \$100,000,000.00 annually. As of 2009, the Nassau County Assessor placed the figure at approximately \$90,000,000.00, 83% of which involved commercial properties.¹ Nassau County and New York City are the only two special assessing districts in New York. This enables Nassau County to maintain separate classes of property, with different tax rates and levels of assessment.² This matter involves challenges to the assessments of Class I properties, which include one, two and three-family homes. For the 2010-2011 tax year approximately 33,600 owners filed complaints on their real property assessments. As one can readily imagine, the resolution of this volume of complaints is a daunting task.

In an effort to provide an expeditious, inexpensive and informal venue for the resolution of challenges to assessments on Class I properties, the legislature enacted Title 1-A to Article 7 of the Real Property Tax Law.³ The procedures for the conduct of these small claim hearings have been laid out in detail.⁴

Petitioners in this action assert that the hearing officer failed to consider their evidence

¹ RICHARD JANKOWSKI, Nassau County Assessment Administration Assessment Review, May 29, 2009, www.nassaucountyny.gov/agencies/Assessor/Docs/Assessment_Review-FINAL_5-2-09.

² Real Property Tax Law § 1801.

³ *Id.* at §§ 729, et seq.

⁴ *Id.* at § 730.

of "unequal assessment." That term is defined as follows:

(a) an entry on an assessment roll of the assessed valuation of real property improved by a one, two or three family residential structure which is made at a higher proportion of full value than assessed valuation of other residential real property on the same roll; or

(b) an entry on an assessment roll of the assessed valuation of real property which is made at a higher proportion of full value than the assessed valuation of all real property on the same roll.

Hearing officers are required to make a decision in writing with respect to the Small Claims Assessment Review within thirty days after the conclusion of the hearing. "The decision of the hearing officer shall state the findings of fact and the evidence upon which it is based. Such decisions shall be attached to and made part of the petition for review and shall be dated and signed."⁵ The election to file a Small Claims Assessment Review petition is irrevocable and constitutes a waiver of the right to commence a review proceeding under Title I of Article 7. Judicial review is available pursuant to Article 78 of the Civil Practice Law and Rules.⁶

The statutory scheme sets out a methodology for the development of the residential assessment ratio.⁷ It provides in pertinent part as follows:

1. (a) For the purposes of this title, sixty days prior to the date for the filing of the tentative assessment roll of an assessing unit, the commissioner shall determine the residential assessment ratio for such assessing unit. The residential assessment ratio shall be equal to the level of assessment of residential property in the assessing unit as determined in the market value survey used or to be used to calculate the state equalization rate for that assessment roll pursuant to article twelve of this chapter, subject to the provisions of paragraph (b) of this subdivision.

b) The commissioner shall increase or decrease the residential assessment ratio to account for a change in level of assessment in

⁵ *Id.* at § 733 (4).

⁶ *Id.* at § 736 (1) (2).

⁷ *Id.* at § 738

[* 4]

the total assessed value of residential real property or, if not available, of all taxable real property. For purposes of this section, "change in level of assessment" has the meaning set forth in section twelve hundred twenty of this chapter except that a change in level of assessment shall be determined with reference only to residential real property if the necessary information is available.

Petitioners now seek a review of the various hearing officers' adoption of the ratio propounded by the New York State Office of Real Property Services and adopted by Nassau County.

DISCUSSION

"When a hearing officer's determination is contested, the court's role is limited to ascertaining whether that determination has a rational basis" . . . "that is, whether it is not affected by an error of law or not arbitrary and capricious."⁸ In *Sass v. Town of Brookhaven*, 73 A.D.3d 785, 900 N.Y.S.2d 383 (2d Dept. 2010), the Court concluded that the hearing officer's denial of the homeowner's claim for a disability exemption was not an error of law, and not arbitrary and capricious, where the homeowner refused to provide documentation to substantiate her claim. It further concluded that the determination to deny petitioner's claim for an assessment reduction on the ground that the assessment did not reflect a true market value was arbitrary and capricious where the petitioner submitted sales figures from six comparable properties tending to establish that the assessment was excessive or unequal within the meaning of RPTL §§ 729 (2) or (4), and the Town submitted no comparable sales in opposition.

The state residential assessment ratio, as developed in accordance with RPTL § 738, is the product of a mandated analysis of sales and assessments of properties within the assessing district. It is entitled to consideration by the hearing officer and reliance upon it cannot be classified as a violation of law or as arbitrary and capricious. In the instant matter, while the hearing officers did not, in other than thirty (30) instances, even make reference to the economic studies provided, this does not mean that they failed to consider them. The procedures for the review of small claims specifically states that "[f]or the purpose of this section, the equalized value of the property shall equal the assessed value of the property divided by the most recent

⁸ *Sass v. Town of Brookhaven*, 73 A.D.3d 785, 900 N.Y.S.2d 383 (2d Dept. 2010)

equalization rate or, in the case of a special assessing unit, the most recent class one ratio, when established.”⁹ It is the established Class I ratio upon which they relied in the instant matters.

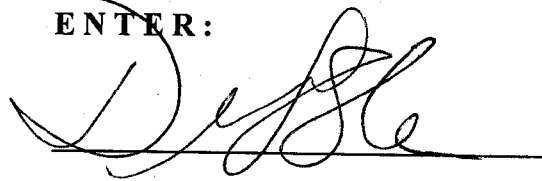
Petitioners have chosen a forum which intentionally provides for limited judicial review, with a heightened standard requiring unlawfulness or lack of rational basis. Others have not.¹⁰ The petitioners in the *Halpern v. The Board of Assessors and Assessment, Assessment Review Commission of the County of Nassau* action cited below have proceeded under Article I of Title 7 and will be entitled to a determination based upon the preponderance of the evidence. The petitioners in the instant proceeding are not entitled to a decision on that basis.

Petitioners’ application (Seq. No. 01) to vacate the determination of the hearing officers is hereby **DENIED**.

Respondents’ cross-motion (Seq. No. 02) to dismiss the petition is hereby **GRANTED**. The alternative request for severance of the petition into individual petitions, each with their own Index Number, is rendered moot in the face of the determination of the Court.

This constitutes the Decision and Order of the Court.

ENTER:



**DENISE L. SHER, A.J.S.C.
XXX**

Dated: Mineola, New York
June 27, 2011

**ENTERED
JUN 29 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE**

⁹ Real Property Tax Law § 730 (d).

¹⁰ *Halpern v. The Board of Assessors and Assessment, Assessment Review Commission of the County of Nassau*, Index No. 410228/2010 (Adams, J.).