

Lederman v Nassau County

2011 NY Slip Op 32474(U)

September 14, 2011

Sup Ct, Nassau County

Docket Number: 2158/11

Judge: Anthony L. Parga

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SHORT FORM ORDER

**SUPREME COURT-NEW YORK STATE-NASSAU COUNTY
PRESENT:**

HON. ANTHONY L. PARGA
JUSTICE

-----X PART 8

MARILYN LEDERMAN, as owner of a life estate at
43 Wynsum Avenue, Merrick, NY 11566, MARILYN
LEDERMAN, KEITH LEDERMAN , and MARK
LEDERMAN, as owners of 43 Wynsum Avenue,
Merrick, NY 11566,

Petitioners,

INDEX NO.: 2158/11

XXX

MOTION DATE: 07/20/11

SEQUENCE NO. 001

-against-

NASSAU COUNTY, NASSAU COUNTY DEPARTMENT
OF ASSESSMENT, NASSAU COUNTY ASSESSMENT
REVIEW COMMISSION, TAMMI D. PERE, ESQ., in
her capacity as NASSAU COUNTY ASSESSMENT
REVIEW COMMISSION HEARING OFFICER,

Respondents,

-----X

Notice of Petition, Affs & Exs.....	1
Affirmation in Partial Opposition.....	2
Reply Affirmation.....	3

Upon the foregoing papers, Petitioners' application for an order compelling the Respondents to perform the duty of providing a hearing regarding the petitioners' grievance of the denial of their tax exemptions, and compelling respondents to perform a hearing of the petitioners' grievance of the assessed value of their property based upon proper consideration of the evidence provided concerning its value, is denied to the extent directed below.

The following facts are taken from pleadings and submitted papers and do not constitute findings of fact by this Court.

Petitioner, Marilyn Lederman, is the owner and holder of a life estate in a residential property located at 43 Wynsum Avenue, Merrick, New York 11566. The life estate was granted

to her and her late husband, Jack Lederman. The petitioner, Keith Lederman, who also serves as the attorney of record for the petitioners herein, and the petitioner, Mark Lederman, are the children of Marilyn Lederman and are the owners and holders of the beneficial remainder interest in said residential property.

Petitioners contend that Marilyn Lederman was and is entitled to the Tax Exemption for Real Property of Senior Citizens, the Enhanced School Tax Relief STAR Exemption, or in the alternative, the Basic STAR School Tax Relief Property Tax Reduction for the year 2010-2011. In January 2010, Marilyn Lederman was informed by the Nassau County Department of Assessment that her application for the Tax Exemption for Real Property of Senior Citizens and Enhanced School Tax Relief STAR Exemption for the tax year 2010-2011 was denied. The Nassau County Department of Assessment further denied her Basic STAR School Tax Relief Property Tax Reduction for the tax year 2010-2011. The basis set forth in the denial letter was that Marilyn Lederman had “multiple exemptions,” because she owned a property in South Fallsburg, New York, for which she had already received an exemption. Marilyn Lederman co-owns said “vacation property” in South Fallsburg with a co-tenant, Rafael Martinez, who she contends made an improper application for an exemption upon said property.

Since the filing of the within application, petitioners have provided information regarding the South Fallsburg property to the Respondents, who do not oppose petitioners’ request regarding their entitlement to the Enhanced School Tax Relief STAR Reduction and the Tax Exemption for the Real Property of Senior Citizens for the 2010/2011 tax year. Upon receipt of said information, Respondents confirmed that Marilyn Lederman does not receive any tax exemptions from the Town of Fallsburg. As such, the Respondents have reviewed their initial position and have now determined that the Petitioners were entitled to both the Enhanced School Tax Relief STAR Reduction and the Tax Exemption for the Real Property of Senior Citizens for the 2010/2011 tax year on the property located at 43 Wynsum Avenue, Merrick, New York. Accordingly, petitioner’s request for an order compelling the Respondents to conduct a hearing regarding said denial of their tax exemptions is denied as moot, and the Respondents are hereby directed to apply said exemptions to the Petitioners’ Merrick property for the tax year 2010/2011.

Pursuant to Article 78 of the CPLR, Petitioners additionally seek a vacatur of the decision

issued by Nassau County Assessment Review Commission hearing officer, Tammi D. Pere, Esq., on November 12, 2010, after a small claims assessment (“SCAR”) hearing was held on October 12, 2010. Petitioner Marilyn Lederman challenged the assessed value of her home, and a SCAR hearing was held which was limited to hearing the tax assessment valuation grievance only. Hearing Officer Tammi D. Pere denied Petitioner’s request for a reduction to the assessed value of the property. In her decision, she stated the following reasoning for her decision:

The respondent, Nassau County’s comparable [property] number four is located .19 miles from the subject property, is the same property style as the subject property, was built the same year as the subject property, and has a sales date with four months of the January 2, 2009 target sales date. In addition, said comparable was given adjustments for its difference of 6 square feet of gross living area, as well as for its difference of one bathroom to that of the subject property. It should be noted that the petitioner submitted into evidence four MLS work-ups. Two of these work-ups reflected that they had been bank owned. None of these work-ups indicated their proximity to the subject property. In addition, these work-ups were given no adjustments for their differences to the subject property.

The petitioners have failed to show that the decision of SCAR Hearing Officer Pere was arbitrary and capricious. Hearings held pursuant to the Small Claims Assessment Review procedure are to be conducted on an informal basis, and the hearing officer is vested with the discretion to consider a wide variety of sources and information. (*Meiowitz v. Board of Assessors*, 53 A.D.3d 549, 861 N.Y.S.2d 414 (2d Dept. 2008)). 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. (*Meiowitz v. Board of Assessors*, 53 A.D.3d 549, 861 N.Y.S.2d 414 (2d Dept. 2008); *Lauer v. Board of Assessors*, 51 A.D.3d 926, 857 N.Y.S.2d 724 (2d Dept. 2008); *Gershon v. Nassau County Assessment Review Com’n*, 29 A.D.3d 909, 814 N.Y.S.2d 549 (2d Dept. 2006); *Barbera v. Assessor of Town of Pelham*, 278 A.D.2d 412, 717 N.Y.S.2d 366 (2d Dept. 2000); *Scherbyn v. Wayne-Finger Lakes Board of Co-op Ed. Services*, 77 N.Y.2d 753, 573 N.E.2d 562 (1991); *Pell v. Board of Education*, 34 N.Y.2d 222, 356 N.Y.S.2d 833 (1974)). Where a hearing has been held, a determination has been made, and the hearing officer has not acted “in excess of [her] jurisdiction, in violation of lawful procedure, arbitrarily, or in abuse of [her] discretionary

power,” the determination must be confirmed. (*Pell v. Board of Education*, 34 N.Y.2d 222, 356 N.Y.S.2d 833 (1974)).

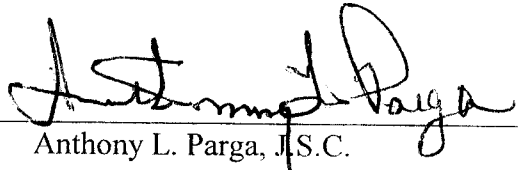
It is well settled that in a proceeding brought under Article 78 of the CPLR, the function of this Court is only to see that a determination of an administrative body or officer was made in the manner prescribed by law (*See, Laureano v. Kuhlmann*, 75 N.Y.2d 141, 550 N.E.2d 437 (1990); *Voelckers v. Guelli*, 58 N.Y.2d 170, 446 N.E.2d 764 (1983)). Generally, an administrative agency's determination requires deference in the area of its expertise (*See, Rosen v. Public Empl. Relations Bd.*, 72 N.Y.2d 42, 47-48, 526 N.E.2d 25 (1998)). The standard of review in an Article 78 proceeding is “whether the agency determination was arbitrary and capricious or affected by an error of law.” (*See, Scherbryn v. Wayne FINDER Lakes Bd. of Coop. Educ. Services*, 77 N.Y.2d 753, 573 N.E.2d 562 (1991)).

In the instant matter, contrary to Petitioners’ contentions, the respondent’s proof of value and the petitioner’s failure to indicate the proximity of the comparable properties to the subject property, their failure to make adjustments for the differences in the comparable properties to the subject property, and their submission of comparable properties that had been bank owned and sold accordingly, provided a rational basis for Hearing Officer Pere’s determination. (*See, generally, Matter of Allied Corp. V. Town of Camillus*, 80 N.Y.2d 351, 604 N.E.2d 1348 (1992)(the best evidence of value is a recent sale of the subject property between a seller under no compulsion to sell and a buyer under no compulsion to buy); *Krzyz v. Town of Clifton Park*, 267 A.D.2d 658, 699 N.Y.S.2d 554 (3d Dpet. 1999)(the purchase of a property at a mortgage foreclosure auction may not always represent an arms’ length transaction). As the hearing officer’s determination was not affected by an error of law and was not arbitrary and capricious, it shall not be vacated, and the petitioners’ application is hereby denied. (*Gershon v. Nassau County Assessment Review Com’n*, 29 A.D.3d 909, 814 N.Y.S.2d 549 (2d Dept. 2006)).

Lastly, petitioners’ request for costs, disbursements, and attorneys’ fees is denied. (*See, RPTL §736; see also, Bellomo v. Board of Assessment Review, Town of Mamakating*, 185 A.D.2d 574, 586 N.Y.S.2d 404 (3d Dept. 1992), *leave to appeal denied*, 80 N.Y.2d 761, 607 N.E.2d 817 (1992); RPTL §733(1)).

This constitutes the decision and Order of this Court.

Dated: September 14, 2011



Anthony L. Parga, J.S.C.

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ENTERED
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