

**Matter of MLK LY LLC v Commissioner of Fin. of the
City of N.Y.**

2022 NY Slip Op 33386(U)

October 6, 2022

Supreme Court, Kings County

Docket Number: Index No. 502541/22

Judge: Karen Rothenberg

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At an IAS Term, Part 35 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 6th day of October, 2022.

P R E S E N T:

KAREN B. ROTHENBERG,
Justice.

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In the Matter of the Application of
MLK LY LLC,

Petitioner,

For a Judgment under Article 78 of the Civil Practice Law
and Rules and/or for a Declaratory Judgment

-against-

Index No. 502541/22

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

Respondents.

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The following e-filed papers read herein:

NYSCEF Nos.:

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and

Affidavits (Affirmations) Annexed _____ 2-1 _____

Opposing Affidavits (Affirmations) _____ _____

Affidavits/ Affirmations in Reply _____ 30 _____

Other Papers: _____ _____

Upon the foregoing papers, petitioner MLK LY LLC seeks a judgment, under Article 78 of the Civil Practice Law and Rules: (1) vacating and reversing the October 1, 2021 final administrative determination of respondent Commissioner of Finance of the City of New York (DOF) that denied petitioner’s administrative application to change the building and tax class of the subject property from Building Class V1 (Zoned

Commercial or Manhattan Residential) and Tax Class 4 (Commercial) to Building Class V0 (Zoned Residential; Not Manhattan) and Tax Class 1 (Residential); (2) declaring that the property in question should hereafter be classified as Building Class V0 and taxed as a Tax Class 1 so long as the property remains vacant unimproved land; and (3) recalculating the assessment in each fiscal year and the real estate taxes that are due as described in the petition.

Petitioner is the owner of a parcel of property located at 98 Martin Luther King Jr. Place in Brooklyn. According to the petition, although the subject property consists of vacant unimproved land in Kings County that was and is zoned as residential, the DOF erroneously classified the property as Building Class V1 (Zoned Commercial or Manhattan Residential), which is a Tax Class 4 commercial property. Petitioner maintains that the property should have been classified pursuant to Real Property Tax Law [RPTL] § 1802 (1) (d) as Building Class V0 (Zoned Residential; Not Manhattan) and Tax Class 1 (Residential). On June 30, 2021, petitioner applied to the DOF requesting that it correct the alleged error, stating:

“The issue that exists is that this BBL has been vacant land in Brooklyn that is zoned residential, R6A, which is required to be assessed as Tax Class 1B, Building Class V0. The assessor made a clerical error in assessing this property as Tax Class 4, Building Class V1, Zoned Commercial. We are requesting that you review this matter and reassess the BBL from fiscal year 2016 to date as Tax Class 1B, Building Class V0.”

On October 1, 2021, the DOF issued a final determination denying petitioner’s request, stating:

“We reviewed the assessment of this property in response to your request. In our review, we considered the information that you supplied and other available information about the property. After considering this information, we found that the original consideration of assessment, exemption, and lot characteristics will remain unchanged for the years indicated on your filing.

“Specifically:

“We have determined that the issue in your application is not due to a clerical error or an error in description, and therefore no action has been taken. Vacant land zoned with commercial overlay greater than 50% are correctly classified as V1/TC 4.”

The instant Article 78 proceeding ensued.

In an Article 78 proceeding, the court’s review of an agency determination that was not made after a quasi-judicial hearing is limited to consideration of whether the determination was made in violation of lawful procedure, was affected by an error of law, was arbitrary and capricious or an abuse of discretion (*see* CPLR 7803 [3]; *Matter of London Leasing Ltd. Partnership v Division of Hous. & Community Renewal*, 98 AD3d 668, 670 [2d Dept 2012]; *Matter of Halperin v City of New Rochelle*, 24 AD3d 768, 770 [2d Dept 2005]). In such a proceeding, courts “examine whether the action taken by the agency has a rational basis,” and will overturn that action “where it is ‘taken without sound basis in reason’ or ‘regard to the facts’” (*Matter of Wooley v New York State Dept. of Correctional Servs.*, 15 NY3d 275, 280 [2010], quoting *Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]; *see Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 232 [1974]).

Under Administrative Code [AC] § 11-206, the DOF is authorized to correct any assessment or tax which is erroneous due to a “clerical error” or to an “error of description” contained in the several books of annual record of assessed valuations, or in the assessments-rolls, and if the taxes computed on such erroneous assessment have been paid, the DOF is authorized to refund or credit the difference between the taxes computed on the erroneous and corrected assessments. In the petition, petitioner argues that the DOF’s rejection of its request on the ground that the error does not constitute a “clerical error” or “error in description” was arbitrary and capricious. Petitioner maintains that the alleged error was a misclassification of the property’s building class as V1 (vacant property outside of Manhattan in a commercial zone) rather than V0 (vacant property outside of Manhattan in a residential zone), which misclassification constitutes an “error in description” properly reviewable by the DOF under AC 11-206 according to Second Department case law as well as the DOF’s own rules. In opposition, the DOF contends that the error is beyond the narrow scope of review under AC 11-206 and that the alleged misclassification must be addressed in a tax certiorari proceeding under Article 7 of the RPTL.

While, generally, the proper method for challenging an allegedly excessive or unlawful real property tax assessment is by the commencement of a tax certiorari proceeding pursuant to RPTL article 7 (*see* RPTL 706; *see Matter of Better World Real Estate Group v. New York City Dept of Fin.*, 122 AD3d 27, 33 [2d Dept 2014]), RPTL 700 itself makes clear that a tax certiorari proceeding is not a taxpayer’s exclusive remedy for seeking review of an excessive assessment. RPTL 700 provides that “[a]

proceeding to review an assessment of real property shall be brought as provided in this article *unless otherwise provided by law*” (RPTL 700 [1] [emphasis added]; see *Matter of Better World Real Estate Group*, 122 AD3d at 34).

In *Matter of Better World Real Estate Group*, the Appellate Division, Second Department held that the errors reviewable under AC 11-206 may include a misclassification of the building class of a property. In 2016, the DOF promulgated a new rule (19 RCNY ch 53) concerning the correction under AC 11-206 of any assessment or tax which is erroneous due to a clerical error or error in description. 19 RCNY 53-02 (b) (10) provides that an “error in description” includes, but is not limited to, “[i]naccurate building class that affected assessed value.”

The Zoning Map from the New York City Department of City Planning (NYSCEF Doc No 13) indicates that the property is located in a 6A (residential) zoning district with a C2-4 commercial overlay. According to RPTL 1802 (1), there are four tax classifications: class one: one, two and three-family homes as well as vacant land outside of Manhattan that is zoned residential; class two: residential properties not covered by class one, except hotels and motels and other similar commercial properties; class three: utility real property; and class four: all other real property. Here, the DOF incorrectly classified the property as a commercial property, when the property is zoned as residential with a commercial overlay. Since the subject vacant property is not in a commercial zone, but rather a residential zone, DOF committed an error in classifying the property as Building Class V1 rather than Building Class V0. Moreover, the DOF has not presented any authority which allows it to classify vacant properties outside of

Manhattan located in a residential zone in the same category as vacant properties outside of Manhattan in a commercial zone simply because those vacant properties are located in a commercial overlay district.

Therefore, the court finds that the October 1, 2021 determination denying petitioner's request for a correction under AC 11-206 was arbitrary and capricious (*see Matter of Richmond SI Owner LLC v Soliman*, 75 Misc 3d 1211[A], 2022 NY Slip Op 50462[U] [Sup Ct, Richmond County 2022]).

Accordingly, it is hereby

ORDERED that the instant Article 78 petition is granted; and it is further

ORDERED that the DOF's final determination dated October 1, 2021 is hereby vacated; and it is further

ORDERED that petitioner's application for tax reassessment and reclassification is hereby granted and the court declares that the subject property known as 98 Martin Luther King Jr. Place, Brooklyn, NY a/k/a BBL: Brooklyn, Block: 1743, Lot: 10 be assessed and classified as Building Class V0 (Zoned Residential; Not Manhattan) and Tax Class 1 (Residential Property); and it is further

ORDERED that the DOF is directed to correct the clerical error and error of description with respect to the subject property to reflect said reassessment and reclassification for the tax years 2015/2016 through 2020/2021; and to refund or credit the difference between the taxes computed on the erroneous and corrected assessments; and it is further

ORDERED that this order is without prejudice to petitioner to bring an administrative application or other action seeking any refunds or credits for overpayments which occurred following June 30, 2021.¹

The foregoing constitutes the decision, order and judgment of the court.

ENTER,



J. S. C.

¹ The doctrine of exhaustion of administrative remedies requires that one first exhaust all available administrative channels before seeking relief in a judicial proceeding pursuant to CPLR article 78 (*see e.g. Watergate II Apts. v Buffalo Sewer Auth.*, 46 NY2d 52, 57 [1978]). As a request for relief for the tax years 2021/2022 and 2022/2023 was not before the DOF when it made its final determination, this court cannot grant relief for these years in the instant Article 78 proceeding.