

**174th TIC Owner LLC v Niblack**

2023 NY Slip Op 31591(U)

May 10, 2023

Supreme Court, New York County

Docket Number: Index No. 161172/2022

Judge: Sabrina Kraus

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. SABRINA KRAUS **PART** **57TR**

*Justice*

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174TH TIC OWNER LLC, INDIAN GARDENS LLC

Plaintiff,

- v -

PRESTON NIBLACK, CITY OF NEW YORK,

Defendant.

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**INDEX NO.** 161172/2022

**MOTION DATE** 05/05/2023

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50  
were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

**BACKGROUND**

In this Article 78 proceeding, Petitioners claim that 583-593 West 215th Street a/k/a 11-19 Indian Road, New York County, New York, designated on the New York County tax map as Block 2250, Lot 50 (“Subject Property”) failed to receive a physical increase attributed to certain renovation improvements. This resulted in the denial of a partial J-51 tax exemption pursuant to RPTL § 489, § 11-243 of the Administrative Code, and Chapter 5 of Title 28 of the RCNY. As a result, Petitioners contend that 1) this issue is cognizable as a clerical error or error in description under § 11-206 of the NYC Administrative Code, 19 RCNY § 53-02, and Article 78 of the CPLR, and 2) this Court should reverse DOF’s denial of Petitioners’ application for clerical error.

For the reasons stated below, the court finds Petitioners’ claims lack merit, the petition is denied and the proceeding is dismissed.

## DISCUSSION

### **The Issues Raised by Petitioners Are Not Properly The Subject of An Article 78 Proceeding**

The central issue in this litigation is the valuation of certain physical improvements to the Subject Property, and such claims may only be litigated pursuant to Article 7 of the RPTL, not Article 78 of the CPLR and § 11-206 of the Administrative Code. *Matter of 37 Bay 26 St. LLC v Soliman*, 2023 NY Slip Op 30093[U] (Sup Ct, Kings County 2023); *Matter of 9 Orchard Partners, LLC v. N.Y.C. Dep't of Fin.*, 2022 NY Slip Op 02614, \*527 1 (1st Dept 2022). All questions regarding the valuation of physical increases to property, be they questions of overvaluation or undervaluation, may only be addressed under Article 7 of the RPTL, not Article 78 of the CPLR. *Joon Mgmt. One Corp. v. Town of Ramapo*, 142 A.D.3d 587, 588 (2d Dept 2016); *Tricarico v. Cty. of Nassau*, 120 A.D.3d 658, 660 (2d Dept 2014).

The same is true for Petitioners' challenge to the denial of a partial real property tax exemption under the J-51 program. This claim must also only be litigated pursuant to RPTL Article 7, not Article 78 of the CPLR. In RPTL § 701 the term "excessive assessment" is defined as "an entry on an assessment roll of the taxable assessed valuation of real property which is excessive because the real property failed to receive all or a portion of a partial exemption to which the real property or owner thereof is entitled pursuant to the law authorizing the partial exemption." RPTL § 701(4)(b). As held by the First Department in *Kraebel v. N.Y.C. Dep't of Fin.*, 217 A.D.2d 416, 416 (1st Dept. 1995) a petitioner who challenges the amount of exemption received under the J-51 program is actually alleging that their assessment is excessive, as that term is defined in RPTL § 701(4)(b), and so must proceed according to Article 7 of the RPTL, not Article 78 of the CPLR.


Finally, the court notes that Petitioners filed Article 7 petitions for many of the years at issue and currently have pending Article 7 petitions covering tax years 2020/21 and 2022/23 which raise the same or related issues and seek similar relief. Furthermore, Petitioners entered into a settlement agreement with the Tax Commission of the City of New York (“Tax Commission Settlement”) on August 14, 2019, for tax year 2019/20, thereby explicitly waiving any rights to seek further review of the final assessment for the 2019/20 tax year, or any years prior. After accepting the tax year 2019/20 Tax Commission Settlement, Petitioners sought an administrative review from DOF regarding the final assessment of the Subject Property for tax years 2019/20 and prior, even though tax years 2019/20 and any years prior are covered by the settlements. By accepting the Tax Commission Settlement for tax years 2019/20, Petitioners stipulated to the finality of the assessment for all the years covered by the settlement. Petitioners are, therefore, barred by the terms of the Tax Commission Settlement from seeking review of the assessments for tax years 2019/20 and prior in the instant proceeding.

WHEREFORE it is hereby:

ADJUDGED that the petition for relief pursuant to Article 78 is denied and the proceeding is dismissed; and it is further

ORDERED that, within 20 days from entry of this order, Respondents shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

  
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5/10/2023  
DATE

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SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE