Matter of Keller v Assessor of the Vil. of Garden City
2023 NY Slip Op 35304(U)
August 14, 2023
Supreme Court, Nassau County
Docket Number: Index No. 616001/2022
Judge: Christopher G. Quinn
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU CIVIL TERM PART 16

Present: HON. CHRISTOPHER G. QUINN
Justice of the Supreme Court

In the Matter of the Application of
THOMAS KELLER, and all other similarly situated Petitioners on the annexed SCHEDULE A,

Petitioner(s)

-against-

THE ASSESSOR OF THE VILLAGE OF GARDEN CITY and THE BOARD OF ASSESSMENT REVIEW OF THE VILLAGE OF GARDEN CITY,

Respondent(s).

INDEX NO. 616001/2022

MOTION SEQ. No. 001 - MD
MOTION SEQ. No. 002 - MG

The following papers were read on this motion:

NYSCEF No. 1 - 29

Upon the foregoing papers, Petitioner Thomas Keller's Petition on behalf of himself and all others similarly situated, pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR") for an Order reviewing, annulling and rescinding the determination of Small Claims Assessment Review Hearing Officer Barry Clarke; appointing a new hearing officer; and remanding the matter to the new hearing officer for a *de novo* hearing and Respondents' cross-motion, pursuant to CPLR §§ 3211(a)(1), (7), (10) and CPLR § 7804(g) for an Order denying and dismissing the Petition are consolidated for disposition and determined as set forth hereinafter.

Petitioner, on behalf of himself and thirty-seven (37) other similarly situated taxpayers seeks to have the SCAR decisions and orders issued by Small Claims Assessment Review ("SCAR") Hearing Officer Barry Clarke annulled and vacated as being based on an error of law and therefore arbitrary and capricious. After conducting SCAR hearings for Petitioner and the others similarly situated, the Hearing Officer rendered decisions in each of the matters which determined, on the claim for unequal assessment, that the individual Petitioners did not have standing to challenge the

Residential Assessment Ratio set by the New York State Office of Real Property Tax Services ("ORPTS"). In so doing, the Hearing Officer stated that he was relying on his reading of Real Property Tax Law § 1218, specifically as that statute was interpreted by an Order of this Court (Steinman, J.) dated September 27, 2021 in *The Matter of Costigan v. The Assessor of the Village of Garden City* (Sup. Ct., Nassau County, Index No. 610725/2020) (hereinafter "*Costigan* 1"), wherein the Court concluded that "class ratios are 'species or subsets' of state equalization rates" and are therefore covered by RPTL § 1218." In so doing, the Court in *Costigan* 1 relied on the Second Department's decision in *Matter of Fair Market Assessment Comm., LLC v. New York State Off. of Real Prop. Tax Servs.*, 65 AD3d 1143 [2d Dept 2009]). In reliance on this precedent, the Hearing Officer concluded, citing *Costigan* 1 as the "best evidence," that a "taxpayer does not have standing to challenge an equalization rate (or class ratio)."

Petitioner then filed the instant Article 78 proceeding, on behalf of himself and similarly situated taxpayers, challenging the Hearing Officer's determinations. In so doing, Petitioner primarily argues that the decisions should be set aside because following *Costigan* 1, in an Order entered October 5, 2022, this Court (Steinman, J.) granted reargument to the Petitioners, and upon reargument, concluded it was mistaken in its determination that those Petitioners did not have standing to challenge the RAR (hereinafter "*Costigan* 2"). In *Costigan* 2, the Court found that "an analysis of the applicable statutes and case law—including *Fair Assessment*—reveals that nothing in the law limits a Petitioner's proof of the appropriate percentage of value solely to the RAR promulgated by ORPTS."

Petitioner contends, then, that the Decisions of the Hearing Officer should be vacated and a new Hearing Officer, should, in effect, be compelled to follow *Costigan* 2 because Petitioner and the others similarly situated, have the right to mount a "collateral attack to impeach ORPTS' RAR" by commencing a SCAR. Petitioner asserts that there is no prejudice to Respondent in directing this outcome, because a SCAR decision "has the sole effect of changing the measuring tool in which one evaluates the taxpayer's assessment at that particular SCAR proceeding" and "otherwise has no probative or precedential value" (Petition ¶ 12).

Respondents move to dismiss the Petition on procedural and substantive grounds. Respondents contend that procedurally, the Petition was filed against the wrong entities as it was filed against the "Assessor to the Village of Great Neck Estates" and the "Board of Assessment

Review" as opposed to the Village itself. Respondents contend that the Village, not its agencies, is a necessary party to this proceeding, and that without the Village itself, the Petition should be dismissed. Respondents further argue that the Petition should be dismissed because the Petition is not supported by a party with personal knowledge of the underlying SCAR proceedings. On the merits, Respondents assert that the decision of the Hearing Officer was neither arbitrary nor capricious, arguing that the Hearing Officer correctly determined that Petitioner did not have standing to challenge the RAR, and that, even if that determination was in error, the Hearing Officer nonetheless properly concluded, based upon the evidence, that the Petitioners had not met their burden of establishing their claims of unequal assessment.

In opposition to Respondents' motion, Petitioner argues that (1) it was proper to have its attorney verify the Petition since the material allegations are legal issues, not factual issues; (2) that the proper entities, which are political subdivisions of the Village of Great Neck Estates, have been sued herein; and, (3) that because the Hearing Officer incorrectly relied upon the "admittedly flawed decision," in *Costigan* 1, which was superseded by *Costigan* 2, the determinations, on their face, are unsustainable.

The Court notes, in the first instance, that one of its fellow Justices, the Hon. Diccia T. Pineda-Kirwan, recently considered these very same arguments that are made by the parties herein (*Yeung, et. al. v Assessor the Village of Great Neck Estates*, --NYS 3d --, 2023 N.Y. Slip Op. 23224, 2023 WL 4753838[Supreme Court, Nassau County 2023]). Indeed, Respondents' arguments for dismissing the complaint in that action, both procedurally and substantively, are nearly identical to the arguments for dismissal of the Petition contained herein.

In any event, the *Yeung* court, in a thoroughly reasoned decision, analyzed the history and policy behind ORPTS establishing the RAR and concluded, based on extensive Appellate Division precedent, that an individual taxpayer does not have standing to challenge or "impeach" an RAR at a SCAR Hearing (*see Yeung*, 2023 WL 4753838, *4, *citing*, RPTL § 1218; *Matter of Fair Assessment Comm., LLC* 65 AD3d 1143; *Matter of West End Neighborhood Taxpayers, Inc. v NYS Bd. of Real Prop. Tax Servs.*, 39 AD3d 764 [2d Dept 2007]); *Matter of Brimberg v Commissioner of Finance of the City of New York*, 49 AD3d 298 [1st Dept 2008]; *Matter of Feiner v New York State Office of Real Prop. Tax. Servs.*, 25 AD3d 1005 [3d Dept 2006]; *Matter of Rokowsky v State Bd. of Equalization & Assessment*, 172 AD2d 93 [3rd Dept 1991]).

This Court, mindful of the fact that it is not required, under the rules of precedent, to follow the decision of a coordinate Justice of the Supreme Court (see, e.g., 31 Carmody-Wait 2d § 172:91) is nonetheless persuaded by the *Yeung* Court's analysis. Perhaps the most persuasive part of the *Yeung* court's analysis is the simple conclusion that finding that an individual taxpayer has standing to mount, in Petitioner's words, a "collateral attack" on the RAR established by ORPTS, in any proceeding, leads to the anomalous result of having different RARs for different taxpayers in, in this instance, the Incorporated Village of Garden City. The purpose of the SCAR statutory scheme cannot reasonably be read to create two separate classes of taxpayers within a taxing jurisdiction, i.e., those who mount collateral attacks on RARs and persuade a hearing officer to potentially apply a different RAR than that established by ORTPS and those who do not.

In addition, finding that Petitioners have standing to challenge the RAR in a SCAR proceeding permits a form of litigation to proceed without a necessary party, ORPTS (*see, e.g.*, CPLR § 1001[a]). There can be no serious question that the State of New York is prejudiced by its inability to defend the RAR it promulgated in a SCAR hearing.

Accordingly, it is

ORDERED that the Petition is **DENIED**; and it is further

ORDERED that Respondent's cross-motion to dismiss the Petition is **GRANTED;** and the Petition **DISMISSED**; it is further

ORDERED that all requests for relief not specifically addressed herein are **DENIED.**

This shall constitute the Decision and Order of the Court.

It is **SO ORDERED.**

HON. CHRISTOPHER G. QUINN, J.S.C.

Dated: AUG 1 4 2023

ENTERED
Aug 15 2023
NASSAU COUNTY
COUNTY CLERK'S OFFICE

[* 4]