Matter of Kiernan v Assessor of the Vil. of Rockville Ctr.
2023 NY Slip Op 35305(U)
October 18, 2023
Supreme Court, Suffolk County
Docket Number: Index No. 616673/22
Judge: Randy Sue Marber

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

Present: **HON. RANDY SUE MARBER**
JUSTICE

TRIAL/IAS PART 2

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In the Matter of the Application of
STEPHEN KIERNAN, TRICIA KIERNAN, and all other similarly situated Petitioners on the annexed SCHEDULE A,

Petitioners,

-against-

THE ASSESSOR OF THE VILLAGE OF ROCKVILLE CENTRE and THE BOARD OF ASSESSMENT REVIEW OF THE VILLAGE OF ROCKVILLE CENTRE,

Respondents.

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Index No.: 616673/22
Motion Sequence…01, 02
Motion Date…06/08/23
XXX

Papers Submitted:
Notice of Petition (Seq. 01)..…......................x
Notice of Cross-Motion (Seq. 02)……………x
Memo of Law in Support……………………x
Memo of Law in Opposition…………………x
Reply Memo of Law………………………….x

Upon the foregoing papers, the petition (Seq. 01) filed by the Petitioners, STEPHEN KIERNAN, TRICIA KIERNAN, and all other similarly situated Petitioners on the annexed Schedule A (collectively the "Petitioners"), seeking an Order, pursuant to CPLR Article 78: (a) annulling, vacating, and setting aside the decisions issued in their respective underlying Small Claims Assessment Review ("SCAR") proceedings;

b) appointing new hearing officers; and c) remanding these matters to said new hearing officers for hearings *de novo*; and the cross-motion (Seq. 02) by the Respondents, THE ASSESSOR OF THE VILLAGE OF ROCKVILLE CENTRE and THE BOARD OF ASSESSMENT REVIEW OF THE VILLAGE OF ROCKVILLE CENTRE, seeking an Order pursuant to CPLR §§ 3211(a)(1), (a)(7), (a)(10) and CPLR §7804(g), dismissing the petition, are hereby consolidated for determination as set forth hereinafter.

Factual and Procedural Background

This special proceeding is brought on behalf of a group of similarly situated petitioners who own real property located within the Village of Rockville Centre ("the Village"). The Petitioners seek review of 51 decisions issued in their underlying SCAR proceedings (collectively, "the SCAR decisions"), which denied their respective requests for a reduction in their properties' 2021/2022 final assessed values.

In the underlying SCAR proceedings, Petitioners asserted claims of excessive and unequal assessment of their properties' values. At their respective hearings, the Petitioners argued that the residential assessment ratio ("RAR") established by the Office of Real Property Tax Services ("ORPTS") was incorrect and submitted, *inter alia*, a ratio study indicating a lower level of assessment. In the SCAR decisions, the hearing officer rejected Petitioners' "request to establish an RAR . . . rather than utilize the RAR established by the ORPTS" (NYSCEF Doc. No. 3). In reaching this determination, the hearing officer found that Petitioners lacked standing to challenge the RAR based upon the

Second Department's decision in *Matter of Fair Assessment Comm., LLC v New York State Off. of Real Prop. Servs.* ("*Fair Assessment*"), which held, in pertinent part, that "[a] taxpayer does not have standing to challenge an equalization rate" (65 AD3d 1143 [2d Dept 2009]). Nevertheless, the hearing officer then proceeded with an analysis of Petitioners' ratio study and determined that it was appropriate to utilize the RAR established by the ORPTS "based upon the presumption of regularity accorded to government entities" (NYSCEF Doc. No. 3). Accordingly, taking the parties' respective comparable property sales and applying the RAR established by the ORPTS, the hearing officer ultimately concluded that the Petitioners did not demonstrate their entitlement to a reduction in their properties' 2021/2022 final assessed values.

<u>The Instant Motions</u>

By a verified petition filed on November 28, 2022, Petitioners move, *inter alia*, to vacate the SCAR decisions, with the crux of their argument being that the hearing officer improperly relied upon *Fair Assessment* and erroneously disregarded Petitioners' evidence. The Petitioners argue that *Fair Assessment* is irrelevant insofar as it pertains to a taxpayer's lack of standing in a proceeding brought pursuant to RPTL § 1218, which involves a municipal assessing unit's right to challenge the equalization rate and has the precedential effect of changing the equalization rate throughout the municipal assessing unit's jurisdiction. Contrastingly, the Petitioners assert that in a SCAR proceeding brought pursuant to RPTL Article 7, a taxpayer's right to challenge the RAR is, in effect, incorporated in their right to challenge the assessed value of their real property and lacks the precedential effect of changing the RAR beyond the subject property. Rather than *Fair Assessment*, the Petitioners rely upon, *inter alia*, *Costigan v Assessor of the Village of Garden City* (Sup Ct, Nassau County, October 5, 2022, Steinman, J., Index No.: 610725/2020) and *Hegermiller v Assessor of the Village of Floral Park* (Sup Ct, Nassau County, October 21, 2022, Pineda-Kirwan, J., Index No.: 615569/2021), which found that taxpayers may submit evidence challenging the RAR established by the ORPTS. Ultimately, the Petitioners assert that in finding that they lacked standing to challenge the RAR, the hearing officer denied them of their right to present their ratio study and, in doing so, denied them of their right to challenge their assessment.

By notice of cross-motion filed on February 23, 2023, the Respondents oppose the Petitioners' petition and cross-move for dismissal. Initially, the Respondents assert that dismissal is warranted based on procedural grounds, arguing that Petitioners failed to name a necessary party and failed to submit an affidavit by an individual with personal knowledge. The Respondents also assert that, in any event, the SCAR decisions were properly based upon the undisturbed precedent set forth in *Fair Assessment*; and, independently, were rationally based upon the hearing officer's review of the best evidence.

The Petitioners filed papers in opposition; and, the Respondents filed papers in reply.

Analysis

i. Dismissal of the Petition on Procedural Grounds

At the outset, this Court addresses the Respondents' request for dismissal of the petition on procedural grounds. First, although RPTL § 736(2) provides that judicial review of a SCAR decision "shall be maintained against the same parties named in the [SCAR] petition," the Second Department has recognized the remedial nature of assessment proceedings and found that the statutory provisions governing them should be liberally construed so that review is not "defeated by a technicality" (*Sivin v Bd. of Assessors*, 57 AD3d 115 [2d Dept 2008]). Here, the underlying SCAR proceedings named the Village, whereas the subject petition names THE ASSESSOR OF THE VILLAGE OF ROCKVILLE CENTRE and THE BOARD OF ASSESSMENT REVIEW OF THE VILLAGE OF ROCKVILLE CENTRE. Affording RPTL § 736(2) liberal construction, the difference in specifically naming subdivisions of the Village rather than the Village itself is negligible, particularly as it cannot be reasonably asserted that the Village is not on notice of these proceedings. Moreover, as an exception to the rule that a pleading must be verified by a party, CPLR § 3020(d)(3) provides that a pleading may be verified by an attorney "if all the material allegations of the pleading are within the personal knowledge of . . . the attorney." Here, the material allegations of the petition are premised upon legal arguments that are well within the attorney's personal knowledge thereby rendering her verification permissible. Therefore, contrary to Respondents' contentions, dismissal of the petition on procedural grounds is unwarranted.

ii. Vacatur of the SCAR Decisions

"The Real Property Tax Law provides that 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" (*Matter of Meirowitz v Bd. of Assessors*, 53 AD3d 549 [2d Dept 2008]). In pertinent part, RPTL § 732(2) provides that "[t]he hearing officer shall consider the best evidence presented in each particular case," which evidence may include, without limitation, the RAR. "When the hearing officer's determination is contested, the court's role is limited to ascertaining whether there was a rational basis for that determination" (*Meirowitz*, 53 AD3d at 550).

As a threshold issue, this Court first addresses whether the hearing officer's determination that the Petitioners lacked standing to challenge the RAR was based upon an error of law.

RPTL § 1218 is the "sole statute authorizing judicial review of equalization rates" (*Town of Riverhead v New York State Bd. of Real Prop. Servs.*, 5 NY3d 36 [2005]). In *Fair Assessment*, the Second Department not only found that "[a] taxpayer does not have standing to challenge an equalization rate," it established that RPTL § 1218 also governs challenges to class ratios, which are "a species or subset of equalization rates that are applicable only in special assessing units" (65 AD3d at 1143-1144). The RAR "is the percentage multiplier used by the municipal assessing unit (*i.e.*, county, town, village, etc.) to calculate the amount of property tax to be assessed" (*Yueng v Assessor of Village of Great Neck Estates*, 2023 NY Slip Op 23224 [Sup Ct, Nassau County, 2023]; RPTL § 738). As such, the RAR is a class ratio considered as a subset of the equalization rate. Therefore, a challenge to the RAR, as a class ratio, is governed by RPTL § 1218.

The RAR was developed in an effort to achieve "a fair and equal system of real property taxation despite the disparate values of parcels of real property throughout the state" (*Yueng*, 2023 NY Slip Op 23224, at *5). Pursuant to RPTL § 1218, a final order directing a revised equalization rate is binding upon "any county, village or school district that used the former rate," which results in a comprehensive application of the revised equalization rate to all properties within the municipal assessing unit's jurisdiction. Contrastingly, a SCAR determination, which pursuant to RPTL § 735, lacks precedential value, would only serve to change the RAR as applied to the subject property, producing inconsistent assessments throughout the same jurisdiction. Thus, while fairness and equity are achieved by an RPTL § 1218 determination, "the end result of a SCAR proceeding would be to create the very inequities that the proceeding is supposed to remedy" (*Yueng*, 2023 NY Slip Op 23224, at *5).

Therefore, the hearing officer's determination that Petitioners lacked standing to challenge the RAR was not based upon an error of law, but a rational interpretation of *Fair Assessment*, which remains undisturbed and binding upon this Court.

Yet, contrary to Petitioners' contentions, the SCAR decisions were not based solely upon the determination that Petitioners lacked standing, but, independently, upon consideration of the evidence submitted by both parties. Notably, the SCAR decisions provide that the hearing officer analyzed Petitioners' ratio study and determined that it was appropriate to utilize the RAR established by the ORPTS "based upon the presumption of regularity accorded to government entities" (NYSCEF Doc. No. 3). The SCAR decisions then provide that the hearing officer applied the RAR established by the ORPTS to the parties' respective comparable property sales before ultimately concluding that Petitioners had not demonstrated their entitlement to a reduction in their properties' 2021/2022 final assessed values. Therefore, there was a rational basis for the hearing officer's determination denying Petitioners' requests for a reduction in their properties' 2021/2022 final assessed values.

Accordingly, it is hereby

ORDERED, that the petition (Seq. 01) is hereby **DENIED**, in its entirety; and it is further

ORDERED, that the cross-motion (Seq. 02) by the Respondents seeking dismissal of the petition, is **GRANTED,** and the petition is hereby **DISMISSED**.

This constitutes the decision and Order of this Court.

DATED: Mineola, New York
October 18, 2023

Randy Sue Marber

HON. RANDY SUE MARBER, J.S.C.
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ENTERED
Oct 25 2023
NASSAU COUNTY
COUNTY CLERK'S OFFICE