Matter of Sandie v Assessor of the Vil. of Rockville Ctr.
2023 NY Slip Op 35318(U)
December 4, 2023
Supreme Court, Nassau County
Docket Number: Index No. 602448/2023
Judge: Conrad D. Singer
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

P R E S E N T : HON. CONRAD D. SINGER,
Justice

TRIAL PART: 21

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In the Matter of the Application of,

Frank Sandie 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.: 602448/2023
Motion Seq. Nos.: 001, 002
Motions Submitted: 09/12/2023

DECISION AND ORDER
ON MOTIONS
XXX

The following papers were read on these motions:
Notice of Petition and Supporting Papers [Seq. 001]..X
Notice of Cross-Motion and Supporting Papers [Seq. 002] X
Memorandum of Law in Opposition to Motion to Dismiss [Seq. 002]......................................X
Memorandum of Law in Reply [Seq. 002]..X

Upon the foregoing cited papers, the Petition filed on behalf of Frank Sandie and all others similarly situated, pursuant to Article 78 of the CPLR, seeking an Order which vacates all of the underlying SCAR decisions and remands the affected cases to new, randomly-assigned hearing officers for hearings *de novo* [Seq. 001], and the cross-motion by the Respondents, the Assessor of the Village of Rockville Centre and the Board of Assessment Review of the Village of Rockville Centre [collectively, "Respondents"], for an Order pursuant to CPLR 3211[a][1], [7], [10], and CPLR 7804[f], denying and dismissing the Petition [Seq. 002], are consolidated for disposition and are determined as follows:

On or about September 20, 2022, the named Petitioner, Frank Sandie, and fourteen [14] other similarly situated taxpayers [collectively, "Petitioners"], appeared through their authorized representative at a Small Claims Assessment Review ["SCAR"] hearing pertaining to their respective properties' 2021/2022 Village of Rockville Centre Assessments, and seeking a reduction in their 2021/2022 final assessed values. In each of the Petitioners' cases, they asserted claims of excessive and unequal assessment pursuant to RPTL §730(1). However, their Petition addresses only their unequal assessment claims, and is directed only at the Hearing Officer's determination that the Petitioners lacked standing to impeach the Residential Assessment Ratio ["RAR"] established by the Office of Real Property Tax Services ["ORPTS"] for the Village of Rockville Centre [the "Village"].

In addition to the other evidence that Petitioners submitted in support of their unequal assessment claim, they submitted a Ratio Study [the "Ratio Study"] based upon sales which occurred in the year prior to the taxable status date. The Petitioners contend that the Ratio Study they submitted supported a level of assessment for the Village of 0.9419% (0.009419). The Court notes that in the underlying SCAR hearing decisions, the Hearing Officer's findings of fact stated that the Petitioners were objecting to the Village's RAR of 0.0117, and were arguing for an RAR of .00936.

In each of the hearings, the Hearing Officer found the issue to be whether to use the Village's RAR or the Petitioner's proposed RAR. The Hearing Officer further found that the argument centers on whether the Petitioner can challenge the RAR at a SCAR hearing. Based on his review of the evidence and testimony specified in his decision, the Hearing Officer found that a taxpayer does not have standing to challenge an equalization rate or class ratio, denied the Petitioners' challenge to the RAR, and denied their unequal assessment claims.

Following the Hearing Officer's decisions on the underlying SCAR petitions, the Petitioner filed the instant Article 78 proceeding on behalf of himself and similarly situated taxpayers, seeking to annul and vacate the underlying SCARS hearing decisions. The Petitioners argue that the Hearing Officer's determination that the Petitioners lacked standing to impeach the Village's RAR was "arbitrary and capricious" in that the Hearing Officer used the improper standard to reach his determination and that his reliance on the holding of *Matter of Fair Assessment Committee, LLC v.* New *York State Office of Real Property Services*, 65 AD3d 1143 [2nd Dept 2009] demonstrates a misunderstanding as to the facts of the case and the law.

The Respondents cross-move for an order dismissing the Verified Petition pursuant to CPLR § 7804(f); for failure to state a cause of action pursuant to CPLR § 3211(a)(7); for a defense founded upon documentary evidence pursuant to CPLR § 3211(a)(1); and for failure to name a necessary party pursuant to CPLR § 3211(a)(10).

"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, including comparable recent sales, in evaluating tax assessments. (*Matter of Meirowitz v Bd. of Assessors*, 53 AD3d 549, 550 [2d Dept 2008] [citing, *inter alia*, RPTL § 732(2)]). Specifically, Section 732[2] of the Real Property Tax Law governing SCAR hearing procedures, provides, in pertinent part, that "[t]he hearing officer shall consider the best evidence presented in each particular case. Such evidence may include, but shall not be limited to, the most recent equalization rate established for such assessing unit, the residential assessment ratio promulgated by the commissioner pursuant to section seven hundred thirty-eight of this title, the uniform percentage of value stated on the latest tax bill, and the assessment of comparable residential properties within the same assessing unit." (RPTL § 732[2]).

"Once a homeowner opts to commence a SCAR proceeding, that property owner waives his or her right to commence a tax review proceeding in Supreme Court under RPTL article 7, title 1, and court review of a JHO's determination is limited to commencement of a proceeding pursuant to CPLR article 78". (*Matter of Klein v Dept. of Assessment*, 149 AD3d 935, 937 [2d Dept 2017] [citations omitted]). In this Article 78 challenge to the underlying SCAR Hearing decisions, "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". (*Id.*, at 937).

In this case, the Hearing Officer cited to each party's evidence presented at the hearing in his determination of the fifteen [15] SCAR Petitions at issue in this case. Having determined that the threshold issue was whether the Petitioners lacked standing to challenge the Village's RAR as promulgated by ORPTS, the Hearing Officer determined that the "best evidence" was the Supreme Court of Nassau County decision *Matter of the Application of Costigan, et al., v. the Assessor of the Village of Garden City and the Board of Assessment Review of the Village of Garden City*, Index Number 610725/2020 [Steinman, J] [hereinafter, "Costigan"].

As the Petitioners note, Justice Steinman subsequently reversed the *Costigan* decision following a motion to reargue, resulting in the decision referred to by the parties in their respective motion papers as "Costigan II". However, notwithstanding same, this Court finds that the Hearing Officer's determination to rely upon the first *Costigan* decision as well as on the Second Department case, *Matter of Fair Assessment Committee, LLC v. New York State Office of Real Property Services*, 65 AD3d 1143 [2nd Dept 2009]), was rational and was neither arbitrary nor capricious. As the Respondents point out, the *Costigan II* decision reversing the earlier *Costigan* decision was entered on October 5, 2022, the same day that the Hearing Officer rendered his decisions on the underlying SCAR petitions. The *Costigan II* decision was not presented as evidence at the hearing and this Court finds that it was not arbitrary or capricious for the Hearing Officer to rely upon the evidence that was presented at the underlying hearings.

Furthermore, the Court has reviewed the first *Costigan* decision, the *Costigan II* decision, the Second Department case of *Matter of Fair Assessment Committee, LLC v. New York State Office of Real Property Services*, 65 AD3d 1143 [2nd Dept 2009], as well as the more recent Nassau County Supreme Court decision cited to by the Respondents in their motion reply submission, *Yeung v. Assessor of the Village of Great Neck Estates, et al.* [Index No.: 616335/2022] [Sup. Ct., Nassau County July 24, 2023] [Pineda-Kirwan, J]. The Court finds that the rationale and holding from the first *Costigan* decision and the *Yeung* decision to be more persuasive and is persuaded by those decisions that the Petitioners, as individual tax payers, lack standing to challenge the ORPTS-promulgated RAR at a SCAR proceeding. Notably, in *Matter of Fair Assessment Committee, LLC v. New York State Office of Real Property Services*, 65 AD3d 1143 [2nd Dept 2009], the Second Department explicitly stated that "[a] taxpayer does not have standing to challenge an equalization rate". (*Fair Assessment*, 65 AD3d at 1143-1144; citations omitted).

Likewise, as the Court discussed in *Yeung*, if the Petitioners had standing to impeach the Village's RAR, and if the Hearing Officer was to accept the different and lower RAR submitted by the Petitioner instead of the ORPTS-promulgated Village RAR, the result would be that a subset of the Village's taxpayers [i.e., only those taxpayers who brought the SCAR petition challenging the RAR], would then benefit from a lower RAR than other taxpayers in the same assessing unit. Such result would be illogical and contrary to the purpose of SCAR proceedings, as it would create the very inequity for the non-petitioning taxpayers that the SCAR proceedings are supposed to remedy. Therefore, the Court finds that the Hearing Officer's determination in this case was rational and was not arbitrary or capricious and the Hearing Officer's determination shall be upheld. The Respondents' cross-motion to deny and dismiss the Verified Petition in this case shall therefore be **GRANTED**.

The Court has considered the Respondents' other challenges to the Petitioners' filing, including the failure to commence the Article 78 proceeding against the same parties named in the small claims petition [RPTL § 736(2)] and the failure to submit an affidavit by anyone with personal knowledge of the underlying proceedings [CPLR § 7804(d)]. The Court finds these arguments unavailing but, ultimately, the arguments have been rendered moot anyway as the Petition shall be denied and dismissed as discussed above.

Accordingly, it is hereby,

ORDERED, that the Petitioners' Notice of Petition and supporting papers seeking an Order which vacates all of the underlying SCAR decisions and remands the affected cases to new, randomly-assigned hearing officers for hearings *de novo* [Seq. 001] is **DENIED**; and it is further

ORDERED, that the Respondents' cross-motion seeking an order which denies and dismisses the Notice of Petition and Verified Petition is **GRANTED**; and it is further,

ORDERED, that the Notice of Petition and Verified Petition in this matter are dismissed; and it is further,

ORDERED, that all other requests for relief not specifically addressed herein shall be deemed **DENIED**.

This constitutes the Decision and Order of the Court.

Dated: December 4, 2023
Mineola, NY

HON. CONRAD D. SINGER, J.S.C.

ENTERED
Dec 06 2023
NASSAU COUNTY
COUNTY CLERK'S OFFICE