

Matter of Vollono v Assessor of the Vil. of Freeport
2023 NY Slip Op 35319(U)
April 6, 2023
Supreme Court, Nassau County
Docket Number: Index No. 611096/2021
Judge: Randy Sue Marber
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAUPresent: **HON. RANDY SUE MARBER****JUSTICE**

TRIAL/IAS PART 2

_____X
In the Matter of the Application of
PHILIP VOLLONO, MILLICENT VOLLONO,
and all other similarly situated Petitioners on the
annexed SCHEDULE A,

Petitioners,

-against-

Index No.: 611096/21
Motion Sequence...01, 02
Motion Date...11/18/22
XXX

THE ASSESSOR OF THE VILLAGE OF FREEPORT
and THE BOARD OF ASSESSMENT REVIEW OF
THE VILLAGE OF FREEPORT,

Respondents.

_____X
Papers Submitted:
Notice of Petition (Mot. Seq. 01).....x
Notice of Motion (Mot. Seq. 02).....x
Memo of Law in Support.....x
Affirmation in Opposition.....x
Supplemental Affirmation in Opposition.....x

Upon the foregoing papers, the Petition filed by the Petitioners, PHILIP VOLLONO, MILLICENT VOLLONO, and all other similarly situated Petitioners on the Annexed SCHEDULE A (hereinafter collectively referred to as the “Petitioners”), seeking an Order pursuant to CPLR Article 78 annulling, vacating and setting aside the decisions of a Small Claims Assessment Review (“SCAR”) hearing officer who denied the underlying petitions, remanding the matters to new hearing officers in compliance with 22 NYCRR §202.58(e) and Real Property Tax Law (“RPTL”) §731, and remanding said

matters for new hearings *de novo*; and the motion (Seq. 02) by the Respondents, THE ASSESSOR OF THE VILLAGE OF FREEPORT and THE BOARD OF ASSESSMENT REVIEW OF THE VILLAGE OF FREEPORT (the “Village”), seeking an order, pursuant to CPLR §§ 3211 (a)(2), (3), (7), and (10) and CPLR §7804(f), dismissing the petition, are decided as hereinafter provided.

The Petitioners are the owners of a single-family, owner-occupied properties located within the County of Nassau and designated by the section, block and lot numbers as set forth in Schedule A, annexed to the Petition. On the respective dates of the SCAR hearings set forth in Schedule A, the Petitioners challenged excessive and unequal assessments relating to their respective properties pursuant to RPTL 730(1). For all Petitioners herein, the SCAR Hearing Officer issued identical determinations rejecting the Petitioners’ challenge to the Residential Assessment Rate (“RAR”), which was set by New York State’s Office of Real Property Tax Services (“ORPTS”) and utilized by the Village to assess single-family homes for the 2020/2021 Tax Year. The Petitioners argued that the RAR was inflated and sought to present evidence at the SCAR hearings which supported a lower level of assessment for the Village. In denying the Petitioners’ respective claims, the Hearing Officer found that the Petitioners lacked standing to challenge the RAR in their SCAR proceedings.

In support of the Village’s motion to dismiss, the Respondents argue that the Petitioners lacked standing to challenge the RAR set by the ORPTS, based primarily upon the limitations of RPTL 1218. In so arguing in their moving papers, the Respondents relied heavily on a decision by the Hon. Leonard D. Steinman in *Costigan v. Assessor of the*

Village of Garden City, et al, with Index No. 610725/20, wherein Justice Steinman agreed with the Hearing Officer that the petitioners lacked standing to challenge the RAR set by the ORPTS.

Following the full submission of the Petition and the Respondents' motion to dismiss, Petitioner's counsel requested leave to submit a supplemental affirmation in opposition to the Respondents' motion to dismiss based on a subsequent determination by Justice Steinman which granted a motion to reargue in *Costigan*, and upon reargument, granted the petition, denied the respondents' motion to dismiss, and remanded the matters to a new hearing officer for new hearings (*See* SFO dated 9/29/22, Steinman, J.S.C., Index No. 610725/20). This Court granted the request by Petitioners' counsel to submit a supplemental affirmation in opposition together with any recently issued determinations on this issue, and also permitted Respondents' counsel an opportunity to respond to such supplemental papers. The Petitioners duly filed supplemental opposition papers (*See* NYSCEF Doc. Nos. 19-21), and the Respondents elected not to file any responsive papers.

Based on the parties' respective submissions and review of the determinations proffered by Petitioners' counsel in support of their supplemental affirmation in opposition, this Court agrees that RPTL 1218 has no bearing on SCAR proceedings or the evidence that may be introduced in such proceedings. It is true that pursuant to RPTL 1218, only a county, city, town or village may challenge a state equalization rate by way of an Article 78 proceeding. However, individual taxpayers may challenge their SCAR assessments pursuant to RPTL 732, which includes the ability to challenge the RAR as it affects the assessment of their individual property. At such SCAR

hearing, a petitioner may adduce proof of what he or she believes the appropriate percentage of value should be used to determine the correct assessment, which proof may include the equalization rate, the RAR, the assessor's statement of percentage, or the assessments of comparable residential properties. (*Matter of Pace v. Assessor of Town of Islip*, 252 A.D.2d 88, 90 [2d Dept. 1998], *lv to appeal denied* 93 N.Y.2d 805 [1999]; *Matter of Meola v. Assessor Town of Colonie*, 207 A.D.2d 593 [3d Dept. 1994]; *see also*, *Matter of Leone v Bd. Of Assessors*, 100 A.D.3d 6365, 637 [2012]; *Matter of Sofia v. Assessor of Town of Eastchester*, 294 A.D.2d 509 [2d Dept. 2002]). As such, the decisions of the Hearing Officer as relating to the Petitioners' underlying claims should be annulled and set aside, and these matters shall be remanded for hearings de novo before new hearing officer(s).

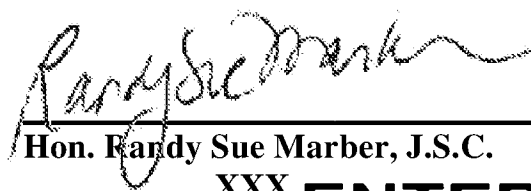
Accordingly, it is hereby

ORDERED, that the Petition (Mot. Seq. 01) filed by the Petitioners, seeking an Order pursuant to CPLR Article 78, annulling, vacating and setting aside the decisions of the Hearing Officer as set forth in Schedule A annexed to the Petition, and remanding those matters for a *de novo* hearing before new Hearing Officer(s), is **GRANTED**; and it is further

ORDERED, that the motion (Seq. 02) by the Respondents is **DENIED**, in its entirety.

This constitutes the decision and Order of this Court.

Dated: Mineola, New York
April 6, 2023


Hon. Randy Sue Marber, J.S.C.
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ENTERED
Apr 06 2023

NASSAU COUNTY
COUNTY CLERK'S OFFICE