Matter of 106 Astoria Blvd., LLC v Niblack
2024 NY Slip Op 35394(U)
June 24, 2024
Supreme Court, Queens County
Docket Number: Index No. 725917-2023
Judge: Kevin J. Kerrigan

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE **KEVIN J. KERRIGAN** Part **10**
Justice

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In the Matter of the Application of,
106 Astoria Bolvd., LLC.,

Petitioner,

- against -

Preston Niblack, in his capacity as the Commissioner of Finance of the City of New York, and the City of New York,

Respondents.

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Index Number: 725917-2023

Motion Date: 6/17/24

Motion Seq. No.: 1

The following papers numbered E1-E23 & E25-E37 read on this application by Petitioner for an order vacating and reversing the August 10, 2023 final determination of the New York City Department of Finance and recalculating and reassessing real estate taxes.

Papers	Numbered
Notice of Petition-Memo of Law-Exhibits..............	E1-22
Affirmation in Opposition-Memorandum-Exhibits.........	E25-36
Affirmation in Reply-Exhibits........................	E37-42

Upon the foregoing papers it is ordered that the motion is decided as follows:

Application by Petitioner for an order vacating and reversing the August 10, 2023 final determination of the New York City Department of Finance and recalculating and reassessing real estate taxes is granted.

In this Article 78 proceeding for declaratory judgment and other relief the Petitioner seeks to reverse the administrative decision of the Department of Finance (DOF), upheld on appeal by the Commissioner of Finance, which determined that the tax classification of Tax Class (TC) 4, assigned to the subject vacant property was correct. At issue, is whether the Commissioner's final determination, that the designation of the subject vacant property as a Tax Class 4, Building Class V1, for such a property zoned residential, outside Manhattan, rather than as Tax Class 1, Building Class V0, was arbitrary, capricious, or in violation of law.

In support of its petition, Petitioner submits, inter alia, the pleadings, the subject Deed, the Notices of Property Value for the years 2017-2023, DOF's "Clerical Error Rule" promulgated by the Commissioner of Finance effective date July 16, 2016, Petitioner's request to DOF to correct the clerical error, a Final Administrative Decision by DOF, multiple decisions involving the same subject matter issued by various New York courts, and examples of stipulations entered by DOF granting the relief requested by the Petitioner to correct the tax class designation, under the same or similar circumstance as within. In opposition, the Respondents submits, inter alia, its Answer, Memorandum of Law in Opposition, three decisions denying similar applications, several excerpts of statutes from the Administrative Code and Local Laws of the City of New York, and page 33 of the Department of City Planning Zoning Handbook. In reply, Petitioner submits, inter alia, additional decisions by courts of coordinate jurisdiction each finding the Commissioner's failure to correct the tax class designation arbitrary and capricious, reversing the Commissioner's determination, and a complete section of the Zoning Handbook.

The subject properties in question are as identified as 106-02 Astoria Boulevard, Block 1693 Lot 1, 106-04 Astoria Boulevard, Block 1693, Lot 2, 106-08 Astoria Boulevard, Block 1693, Lot 3, and 106-14 Astoria Boulevard, Block 1693, Lot 6, located in Queens County (hereinafter referred to as "the properties"). For the relevant time periods, which include fiscal years 2018 through 2022, the premises were all vacant and unimproved land that were zoned as R6B (residential), with a C2-3 commercial overlay. DOF classified the properties as Building Class V1, Tax Class 4. Petitioner avers that the properties should be classified as Building Class V0, Tax Class 1.

On or about June 12, 2023 the Petitioner submitted a request to DOF seeking the change of tax classification from the erroneous designation as tax class 4 to the proper and lawful tax class 1, for the 2018-22 tax periods on the properties. This request was allegedly made in conformity to the provisions of RPTL §1802 (1)(d), and in accordance with NYC Administrative Code §11-206, and 19 RCNY 53 et seq., known as the "Clerical Error Rule".

On or about August 10, 2023, the Commissioner responded, issuing four decisions on the properties, denying Petitioner's request, and stating in relevant part:

> We have determined that the issues in your application do not warrant a change in your

> prior year/years assessments, as we found comparable properties within your market area for the contested years that were within the market value range of the adjusted square footage values.

The Respondents' primary argument in opposition is that CPLR Article 78 proceedings are not the legally proper method to contest tax assessments, as it asserts RPTL Article 7 is the exclusive remedy for such a review. The Respondents aver that even if it were proper, the statutory authority provided to it by Admin Code §11-206, to correct "clerical errors", and "errors in description" is not broad enough to correct these types of errors.

Real Property Tax Law (RPTL) §1802(1)(d)(i), states that property is classified as tax class one (TC 1), if zoned residential, and falls within the following restriction:

> "(d) all vacant land located within a special assessing unit which is a city (i) other than such land in the borough of Manhattan..."

NYC Administrative Code (Admin Code), §11-206, provides the Commissioner with the discretion to correct, "any assessment or tax which is erroneous due to a clerical error or to an error of description contained in the several books of annual record of assessed valuations or in the assessments-rolls." In order to implement its statutory authority, DOF promulgated its "Clerical Error Rule", 19 RCNY 53 et seq., which includes within its rules, a few examples of correctable scenarios.

Generally, challenges to tax assessments made by the Department of Finance are made in a tax certiorari proceeding pursuant to RPTL Article 7, (see RPTL §706; see Kahal Bnei Emunim & Talmud Torah Bnei Simon Israel v Town of Fallsburg, 78 N.Y.2d 194 [1991]). However, contrary to the Respondents' assertions, it is not the exclusive remedy for a taxpayer seeking relief. RPTL § 700 provides that, "a proceeding to review an assessment of real property shall be brought as provided in this article unless otherwise provided by law." An aggrieved taxpayer need look no further than Admin Code §11-206, for another lawful method, albeit limited to "clerical errors"or "errors in description", authorizing the Commissioner of Finance to exercise its discretion to correct them. DOF's own rules, (see 19 RCNY 53 et seq.), provide for a six year look back period within which the Commissioner may act to make this specific type of correction. The Appellate Division, Second Department's ruling in Better World clearly held that an Article 78 proceeding may be brought to seek judicial relief from the Commissioner's arbitrary and capricious exercise of such statutory authority (see NYC Admin Code §11-206; The Better World Real Estate Group, 122 A.D.3d 27 [2d Dept. 2014]).

In an Article 78 proceeding involving a decision made by an administrative agency without a hearing, the scope of the court's review is limited to a determination as to whether the agency used improper procedure, error in law, or was an arbitrary and capricious decision (see Kripalani v State Div. Of Housing & Community Renewal, 126 A.D.3d 904 [2d Dept. 2015]). An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts (see Matter of Pell v. Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 N.Y.2d 222 [1974].)

Here, it is undisputed that the properties were zoned residential, "R6B," with commercial overlay, "C2-3" and is located outside of Manhattan. The Notices of Property Valuation, which are official records kept by the DOF, were mailed to the properties owner/taxpayer to advise of the tax status of their properties in each given taxable period. Each stated that the properties were "vacant land." This conclusion is a result of the work that DOF's appraisers do each year to ascertain the accurate descriptions and classifications of properties in the City of New York for tax purposes.

Despite Respondents' contentions, it is abundantly clear that vacant properties that are zoned residential, including those zoned residential with commercial overlays, by law, are to be taxed as TC 1 properties (see Shore Development Partners v Board of Assessors of County of Nassau, 112 A.D.3d 724 [2d Dept. 2013]; see also Shore Development Partners v Board of Assessors of County of Nassau, 82 A.D.3d 988 [2d Dept. 2011]; see also Matter of 3061-63 Third Ave. LLC v. Soliman, 223 A.D.3d 548 [1st Dept. 2024]). The following is a partial listing of courts of coordinate jurisdiction ruling that such property(ies) must be classified and taxed as a TC 1 property, (see 9313 Rockaway Beach, LLC v Niblack, 79 Misc3d 1211(A), [Sup Ct, Queens Cty, J. Catapano-Fox 2023]; Richmond SI Owner LLC v Soliman, 75 Misc 3d 1211 (A), [Sup Ct, Richmond Cty, J. Ozzi 2023; Seetharam Adimoolam, et al., v Niblack, et al., [Sup Ct, Richmond Cty J. Marrazzo 2022]; 1543 E NY Ave LLC v Soliman, et al., [Sup Ct, Kings Cty J. Rothenberg, 2022]; Jomaniam LLC v Niblack, et al., [Sup Ct, Richmond Cty J. Porzio 2022]; MLK LY LLC v The Commissioner of Finance of the City of New York, et al., 2022 NY Slip Op. 33386(U), [Sup Ct, Kings Cty J. Rothenberg 2022]); 17 Grand Ave. Corp. v. Niblack, 2023 N.Y. Misc. LEXIS 5718 [Sup Ct, Queens Cty K. Kerrigan 2023]; 64-11 Qb Owner Llc v. Niblack, 2023 NYLJ LEXIS 2632 [Sup Ct Queens Cty K. Kerrigan 2023])

Every case cited above was decided in an Article 78 proceeding seeking relief from the DOF's determination that Administrative Code §11-206 did not permit correction because the "errors" referred to within the statute were to be narrowly interpreted. In The Better World case, the Appellate Division, Second Department found that since the Administrative Code does not define the terms "clerical error" or "error of description," courts should construe them, "as to give effect to the plain meaning of the words used", and should not defer to Finance's interpretation (see The Better World, 122 A.D.3d at 35). Therefore, succinctly stated, despite DOF's own findings of fact, that the properties are zoned residential, are vacant land, and are located outside Manhattan, it erroneously designated the properties as TC 4, instead of TC 1 as required by RPTL §1802 (1)(d)(i), and Administrative Code §11-206 permits correction by the Commissioner for such errors.

Respondents' Counsel's claim that it is an "interpretation" issue, is without merit. RPTL §1802 (1)(d)(i) is very clear that vacant land, zoned residential, located outside of Manhattan, as these properties are, by law, must be classified as TC1. Legal precedent on the appellate level, as cited herein, and the numerous cases of coordinate jurisdiction cited have unanimously found that such property is to be classified TC1, and have ordered DOF to reclassify those properties accordingly.

In light of the foregoing, the Commissioner's denial of Petitioner's request to correct the erroneous tax class designation from TC 4 to TC 1, pursuant to Admin Code §11-206 and its own rules under 19 RCNY 53 et seq., was arbitrary and capricious, and not in accordance with the law.

Therefore, it is ordered that the Article 78 petition is granted. It is further ordered that the DOF's final determinations dated August 12, 2023 are vacated, and it is further ordered that the designated tax class for the subject properties shall be corrected from TC 4 to TC 1 for the contested tax periods. The matter is remanded to the Department of Finance for recalculation of the taxes levied on the properties for the Fiscal Years 2018 through 2022.

It is troubling that despite ruling after ruling, DOF has been causing aggrieved taxpayers to litigate, rather than properly exercise its discretion afforded by statute to correct these errors. It is not in the interests of the taxpayers of the City of New York, nor of the court system to expend valuable resources unnecessarily. It is to be noted, that the State of New York entrusts the City of New York to utilize DOF to assess and to collect real property taxes for both the City and the State. As such, DOF is arguably acting as an agency of the state. CPLR Article 86, also known as, "New York State Equal Access to Justice Act," provides for the court's consideration of attorney's fees applications, so as to even the playing field for aggrieved parties who have waged a successful battle against a state agency or agent of the state. This Court will entertain attorney's fee applications accordingly.

Serve a copy of this order with notice of entry upon all parties without undue delay.

Dated: June 24, 2024

KEVIN J. KERRIGAN, J.S.C.

FILED
6/27/2024 TA
COUNTY CLERK
QUEENS COUNTY