Matter of 3803 Realty Assoc., Inc. v Tax Commn. & Dept. of Fin. of City of N.Y.
2015 NY Slip Op 32199(U)
November 17, 2015
Supreme Court, New York County
Docket Number: 403750/2005
Judge: Michael L. Pesce
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ORIGINAL

At an IAS Term, Part 76 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 10th day of November, 2015.

PRESENT:

HON. MICHAEL L. PESCE,
Justice.

----------X

IN THE MATTER OF
3803 REALTY ASSOCIATES, INC.,

Petitioner,

- against -

THE TAX COMMISSION AND THE DEPARTMENT OF FINANCE OF THE CITY OF NEW YORK,

Respondents.

Index Nos. 403750/2005; 403814/2006; 404967/2010; 405679/2011; 405725/2012

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The following papers numbered 1 to read 16 herein:

	Papers Numbered
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Opposing Affidavits (Affirmations)	12
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Upon the foregoing papers, respondents the Tax Commission and the Department of Finance of the City of New York (respondents), move, in limine, under motion sequence number one, for an order, pursuant to CPLR 408, CPLR 3211, and 22 NYCRR 202.60 (g)

(3) and (h), precluding the use of the appraisal of petitioner 3803 Realty Associates, Inc. (petitioner) in the trial of this matter, and thereby dismissing petitioner's RPTL article 7 tax certiorari petitions for failure to submit substantial evidence establishing that the assessments at issue are excessive. Petitioner cross-moves, under motion sequence number two, for an order: (1) permitting the filing of a completed/amended appraisal report by its appraiser, (2) striking and/or precluding respondents' appraisal report, (3) granting summary judgment in its favor on its RPTL article 7 tax certiorari petitions, (4) excusing the filing of the alleged incomplete appraisal by it, and (5) denying the relief requested by respondents in their motion.

BACKGROUND

The subject real property is located at 3802 Fort Hamilton Parkway, in Brooklyn, New York, and identified on the Kings County tax map as Block 5290, Lot 30 (the property). Petitioner has filed RPTL article 7 tax certiorari petitions with respect to the 2005/06, 2006/07, 2010/11, 2011/12, and 2012/13 tax years. In a telephone conference call between the court, Samuel Halberg, Esq., who is petitioner's attorney, and Joseph J. Kroening, Esq., who is respondents' attorney, the court set the appraisal exchange date, pursuant to 22 NYCRR 202.60 (g) (1), as April 20, 2015. On April 13, 2015, at Mr. Kroening's request, with no objection by Mr. Halberg, the court, by telephone conference, granted a 30-day extension, setting the new appraisal exchange date to May 20, 2015. On the morning of May 20, 2015, Mr. Halberg informed Mr. Kroening that there was a computer virus that had

attacked the computer of petitioner's appraiser, James J. Clyde, of James J. Clyde & Associates, which resulted in the deletion of the appraisal from his computer, and that Mr. Clyde was trying to reconstruct it. During a telephone conference with the court, at which the court was informed of this problem, Mr. Halberg requested and was granted a one-week extension, with May 27, 2015 as the new appraisal exchange date. On May 27, 2015, however, Mr. Clyde requested another extension of the exchange date due to this same computer problem, asserting that he needed more time to work on the appraisal in order for it to be up to standard and that he was working exhaustively to complete it. The court granted Mr. Halberg an additional final extension of the exchange date to June 8, 2015 with no further adjournments to be granted. On June 8, 2015, the parties exchanged appraisal reports concerning the property.

Respondents' appraisal report was prepared by John A. Sinacori, MAI, of Raymond A. Vomero Associates, Inc. Petitioner's appraisal report was prepared by Mr. Clyde. Mr. Clyde, on page 3 of his appraisal report, stated that "[a] significant portion of [his] analysis and portions of this report were lost from a computer failure and this portion is supplied to you subject to amendment."

On July 2, 2015, respondents filed their instant motion, and, on July 30, 2015, petitioner filed its instant cross motion.

DISCUSSION

22 NYCRR 202.60, which applies to every tax assessment review proceeding brought pursuant RPTL article 7 in a county within the City of New York, provides, with respect to the exchange and filing of appraisal reports, that the court must direct that appraisal reports be obtained and exchanged and filed by a specified date certain before the date that is scheduled for trial (22 NYCRR 202.60 [g] [1]). The procedure for the exchange and filing of appraisal reports is accomplished by the respective parties by their filing of a copy of all appraisal reports which are intended to be used at the trial with the clerk of the court, who, upon receipt of the appraisal reports, distributes a copy of the filed reports simultaneously to the other parties (22 NYCRR 202.60 [g] [2]).

22 NYCRR 202.60 (g) (3) provides:

> "The appraisal reports shall contain a statement of the method of appraisal relied on and the conclusions as to value reached by the expert, together with the facts, figures and calculations by which the conclusions were reached. If sales, leases or other transactions involving comparable properties are to be relied on, they shall be set forth with sufficient particularity as to permit the transaction to be readily identified, and the report shall contain a clear and concise statement of every fact that a party will seek to prove in relation to those comparable properties. The appraisal reports also shall contain photographs of the property under review and of any comparable property that specifically is relied upon by the appraiser, unless the court otherwise directs."

22 NYCRR 202.60 (h), entitled "Use of appraisal reports at trial," expressly provides as follows:

> "Upon the trial, expert witnesses shall be limited in their proof of appraised value to details set forth in their respective appraisal reports. Any party who fails to serve an appraisal report as required by this section shall be precluded from offering any expert testimony on value; provided, however, upon the application of any party on such notice as the court shall direct, the court may, upon good cause shown, relieve a party of a default in the service of a report, extend the time for exchanging reports, or allow an amended or supplemental report to be served upon such conditions as the court may direct. After the trial of the issues has begun, any such application must be made to the trial judge and shall be entertained only in unusual and extraordinary circumstances."

In support of their motion, respondents argue that Mr. Clyde's appraisal does not adequately disclose the factual underpinnings and sources that justify his opinion so as to substantially comport with the requirements of 22 NYCRR 202.60 (g) (3). They point out that the submission of an appraisal without ascertainable or verifiable data supporting the appraiser's conclusions of value is a violation of 22 NYCRR 202.60 (g) (3). They contend that based upon Mr. Clyde's failure to comply with 22 NYCRR 202.60 (g) (3), the court should strike his appraisal from evidence and preclude its use at the trial of this matter. They further contend that, upon such preclusion of Mr. Clyde's appraisal, petitioner will be unable to present substantial evidence sufficient to sustain its burden of overcoming the presumption of the validity of the tax assessments. They argue that this requires dismissal of petitioner's RPTL article 7 tax certiorari petitions.

It is well established, as respondents contend, that "[i]n an RPTL article 7 tax certiorari proceeding, 'a rebuttable presumption of validity attaches to the valuation of

property made by the taxing authority'" (*Matter of Board of Mgrs. of French Oaks Condominium v Town of Amherst*, 23 NY3d 168, 174 [2014], quoting *Matter of Roth v City of Syracuse*, 21 NY3d 411, 417 [2013]; *see also Matter of FMC Corp. [Peroxygen Chems. Div.] v Unmack*, 92 NY2d 179, 188 [1998]). Therefore, where a taxpayer challenges the accuracy of an assessment, it "bears the initial burden of coming forward with substantial evidence that the property was overvalued by the assessor" (*Matter of Board of Mgrs. of French Oaks Condominium*, 23 NY3d at 174-175). This requires that the taxpayer "demonstrate the existence of a valid and credible dispute regarding valuation" (*Matter of FMC Corp. [Peroxygen Chems. Div.]*, 92 NY2d at 188). "If the taxpayer satisfies this threshold burden, the presumption disappears and the court 'must weigh the entire record, including evidence of claimed deficiencies in the assessment, to determine whether [the] petitioner has established by a preponderance of the evidence that its property has been overvalued'" (*Matter of Board of Mgrs. of French Oaks Condominium*, 23 NY3d at 175, quoting *Matter of FMC Corp. [Peroxygen Chems. Div.]*, 92 NY2d at 188). It is only "where a taxpayer fails to rebut the presumption [that] the municipality's assessor has no obligation to go 'forward with proof of the correctness of [its] valuation,' and the petition is to be dismissed" (*Matter of Board of Mgrs. of French Oaks Condominium*, 23 NY3d at 175, quoting *Matter of FMC Corp. [Peroxygen Chems. Div.]*, 92 NY2d at 187 [internal quotation marks and citation omitted]).

"A taxpayer will most often attempt to meet the substantial evidence requirement by offering a 'detailed, competent appraisal based on standard, accepted appraisal techniques and prepared by a qualified appraiser'" (*Matter of Board of Mgrs. of French Oaks Condominium*, 23 NY3d at 175, quoting *Matter of Niagara Mohawk Power Corp. v Assessor of Town of Geddes*, 92 NY2d 192, 196 [1998]). The function of the appraisal report "is to enable adequate and intelligent preparation of the issues for trial" (*Matter of Town of Guilderland [Pietrosanto]*, 267 AD2d 837, 838 [3d Dept 1999]). The appraisal report lays a foundation for the appraiser's testimony at the trial, and, at the trial, the appraiser is limited in his or her proof of appraised value to the details set forth in his or her appraisal report (*see* 22 NYCRR 202.60 [h]; *Matter of Fistraw-Del Holding Corp. v Assessor for Town of Colonie*, 235 AD2d 660, 663 [3d Dept 1997]). "'A major reason for the rule requiring the disclosure of facts and source materials at the appraisal stage is to allow opposing counsel the opportunity to effectively prepare for cross-examination'" (*Matter of Bialystock & Bloom v Gleason*, 290 AD2d 607, 608 [3d Dept 2002], quoting *Matter of Gullo v Semon*, 265 AD2d 656, 657 [3d Dept 1999]).

Respondents, relying upon *Matter of Board of Mgrs. of French Oaks Condominium* (23 NY3d at 176), contend that petitioner cannot meet the substantial evidence requirement and sustain its burden of proof because it has submitted an appraisal that is incomplete and not in compliance with 22 NYCRR 202.60 (g) (3) or with professional appraisal standards as required by 19 NYCRR 1106.1, which provides that "[e]very appraisal assignment shall

be conducted and communicated in accordance with the . . . provisions and standards set forth in the 2014-2015 edition of the Uniform Standards of Professional Appraisal Practice" (USPAP), including "Standard 2—Real Property Appraisal, Reporting." Specifically, respondents argue that Mr. Clyde's appraisal is uncertified, is a restricted appraisal, and is missing entire sections of analysis, as well as the facts, figures, and calculations relied upon by Mr. Clyde to conclude value. Respondents have submitted the affidavit of their appraiser, John A. Sinacori, who explains the applicable standards and the deficiencies in Mr. Clyde's appraisal report.

Respondents cite to USPAP Standards Rule 2-3, which requires that all appraisals contain a certification signed by the appraiser, declaring, among other things, that the statements of facts contained in the report are true and correct, and that the report was prepared in conformity with the USPAP. They point to the fact that Mr. Clyde's appraisal does not contain such a certification, and assert that his appraisal is unsigned. While it appears that some copies of Mr. Clyde's appraisal were unsigned, the copy e-filed as exhibit A to respondents' motion was signed by Mr. Clyde on page 3. Furthermore, with respect to Mr. Clyde's qualifications as an appraiser, the appraisal report contains Mr. Clyde's Appraiser ID number. Page 72 of Mr. Clyde's appraisal states that this appraisal is subject to USPAP regulations.

Respondents further point to the fact that Mr. Clyde's appraisal, on page six, states that "[t]he report that follows is a restricted appraisal." USPAP Standards Rule 2-2 provides

that a written real property appraisal report must state whether it is an appraisal report or a restricted appraisal report, and the comment to this rule states that a restricted appraisal report may be provided "when the intended users do not include parties other than the client." It has been held that "[p]ursuant to the Uniform Standards for Professional Appraisal Practice, a restricted appraisal report 'is not designed to address the needs of any third-party users,' including, presumably, a judicial tribunal" (*Matter of Bronco Dev. Corp. v Assessor of the Town of Bethlehem*, 26 Misc 3d 1219[A], 2010 NY Slip Op 50173[U], *3 [Sup Ct, Albany County 2010]). Respondents additionally point out that Mr. Clyde's appraisal does not contain a reconciliation of his values, as required by USPAP Standards Rule 1-6, and they note that page 70, entitled "Reconciliation and Conclusion of Value," merely states "deleted portion."

Respondents also note that the appraisal is incomplete because it only contains one approach to valuation of the property and that this is acknowledged on page 6 of Mr. Clyde's appraisal, which states that "[d]ue to the required time limitations and damage to [his] files, this report is incomplete, only representing one approach to value." Mr. Clyde's appraisal further states, on page 37, under "Sales Comparison Approach," that "this portion of the report was deleted," and that "it is essential that this section be restored."

Respondents additionally point to the fact that several other sections of Mr. Clyde's appraisal are missing. Specifically, they note that: page 18, which purports to provide a "New York City Area Analysis," states that "this portion of the report was deleted from the

computer; the entire addendum, beginning at page 73, has been deleted; and page 7 is blank and merely states "pages missing." Respondents contend that these missing sections were required to be contained in the appraisal in order for petitioner to be in compliance with 22 NYCRR 202.60 (g) (3) and to allow them to adequately prepare for cross-examination and for this court to undertake a meaningful review.

While respondents rely upon the New York Court of Appeals' decision in *Matter of Board of Mgrs. of French Oaks Condominium* (23 NY2d at 176), such reliance is misplaced in the context of this pre-trial proceeding. In *Matter of Board of Mgrs. of French Oaks Condominium* (23 NY3d at 172-173), the respondent therein moved to dismiss the petition on the basis that the petitioner therein had failed to meet its initial burden of adducing substantial evidence to rebut the presumption that its tax assessment was valid following a two-day hearing which was conducted before a referee, during which the appraiser of the petitioner therein provided testimony, which merely largely tracked his appraisal report. The appraiser in *Matter of Board of Mgrs. of French Oaks Condominium* (23 NY3d at 172), at no point, sought to amend his appraisal report. Here, however, petitioner has not had an opportunity to present its appraiser's testimony at trial in order to support his appraisal report and meet the substantial evidence requirement. Significantly, it has been held that "'[d]eficiencies in an appraisal report may be cured by the expert's trial testimony'" (*Matter of Gran Dev., LLC v Town of Davenport Bd. of Assessors*, 124 AD3d 1042, 1045 [3d Dept 2015], quoting *Matter of Gibson v Gleason*, 20 AD3d 623, 625 [3d Dept 2005], *lv denied* 5

NY3d 713 [2005]). Moreover, petitioner seeks, by its instant cross motion, prior to trial, to amend its appraisal report pursuant to 22 NYCRR 202.60 (h).

"In RPTL article 7 proceedings, the good cause language [of 22 NYCRR 202.60 (h)] has been liberally construed, since it is well established that where possible matters should be tried on the merits" (*Matter of Moonglo, Inc. v Tax Commn. of City of N.Y.*, 11 Misc 3d 606, 612 [Sup Ct, NY County 2005]; *see also Matter of G.T.I. Co. [Mid-Hudson] v Assessor & Assessment Bd. of Review of City of Kingston*, 88 Misc 2d 806, 809 [Sup Ct, Ulster County 1976]). While 22 NYCRR 202.60 (h) does not itself define "good cause," this is not a situation involving inadvertence or oversight or the mere desire to introduce a new appraisal theory or new evidence (*see Kashou Enters., Inc. v Assessor of the Town of Union, N.Y.*, 26 Misc 3d 1231[A], 2010 NY Slip Op 50337[U], *2 [Sup Ct, Broome County 2010]; *Matter of City of New York*, 23 Misc 3d 1134[A], 2009 NY Slip Op 51102[U], *4 [Sup Ct, Kings County 2009]). Rather, petitioner simply seeks to remedy and correct the omissions caused by the computer problem of its appraiser.

Furthermore, the denial of amendment would result in leaving the appraisal in its present state, with substantial portions deleted due to the computer virus. As such, respondents seek to preclude it for insufficiency. Considerable latitude is afforded to a party when addressing a motion by its adversary to preclude it from filing its appraisal report (*see Matter of Moonglo, Inc.*, 11 Misc 3d at 613). While respondents seek to distinguish cases where a party has defaulted in filing an appraisal report, as opposed to seeking an amendment

of such appraisal report, petitioner should not be in a worse position or penalized because it attempted, through difficult efforts, to submit an appraisal with deletions, rather than simply defaulting and failing to serve or file any appraisal report.

The court, in exercising its discretion to determine whether a party has shown "good cause" for relieving a default, "must consider all of the relevant circumstances," along with the excuse or reason proffered by the party (*Matter of Town of Guilderland [Pietrosanto]*, 244 AD2d 604, 605 [3d Dept 1997]). Indeed, when there is a default or belated filing involving an initial appraisal report, "the obvious and severe hardship that accrues to the offering party as a result of rejection of that report--namely, preclusion of the introduction of any appraisal testimony on value . . . has been deemed [a] sufficient basis for granting the relief sought" (*id.*; [internal quotation marks and citations omitted]; *see also Gustafson v State of New York*, 56 AD2d 695, 696 [3d Dept 1977]; *Matter of G.T.I. Co.*, 88 Misc 2d at 809)). "If an arguably tenable excuse is proffered as well, ample foundation exists for a decision [denying preclusion]" (*Matter of Town of Guilderland [Pietrosanto]*, 244 AD2d at 605-606).

In proffering an excuse to establish good cause shown, petitioner has submitted the affirmation of Lawrence D. Waxman, Esq., an attorney, in which he attests that Mr. Clyde serves as a consultant to his law firm on tax certiorari matters, and that recently, one or more computers assigned to data entry and the appraisal department of his office were infected by a virus. Mr. Waxman states that the network has now been restored to normal service, but,

as a result of the system slowdown and the resulting rescheduling of tax commission cases, Mr. Clyde has often been working 12 to 16 hours a day, sometimes sleeping in the office, in order to resume work on the tax cases.

In addition, Mr. Clyde has submitted a notarized statement, dated July 29, 2015, as well as a sworn, notarized affidavit (although incorrectly titled affirmation), also dated July 29, 2015, in which he states that he suffered the loss of all of his business computers and has not fully recovered from the loss. He explains that client systems were infected by a virus entering through a server through a wireless connection from one of his laptops. He states that he was hired by petitioner to appraise the property, that he kept on losing data from the file due to the virus, that he could not complete the appraisal on time, that he had over 600 cases that were impacted by the same virus, and that he has struggled to recover. He further states that he would be able to finish reconstruction of the appraisal lost when the computers crashed.

As additional support, Lesley Frey, the typist of the appraisal report, has submitted a signed notarized document, entitled "affidavit," dated July 12, 2015, which is also signed by Mr. Clyde, whose signature is also notarized. This notarized document states that the area analysis section of the appraisal report for the property was typed by Lesley Frey, and that while this section was completed, when it was time to print and bind the appraisal report, they were unable to retrieve the document. This notarized document further states that Mr.

Clyde was working on the valuation portion of the report, and that a portion of that analysis was retrieved.

Also, Susan Brewer, the data entry person for Mr. Clyde's appraisal report, has signed a letter dated July 16, 2015, in which she states that she supplies key entry services to Mr. Clyde for his appraisal business. She sets forth that four computers used by her business were "taken down by a computer virus," and that the virus also infected other machines related to Mr. Clyde's business and several of his clients.

Thus, these submissions demonstrate that although all of the material was actually typed into the appraisal report, the virus affecting the office of the firm where the appraiser, Mr. Clyde, works, was struck by a computer virus, causing the loss of the data. The court finds that this destruction as a result of the computer virus constitutes good cause shown to allow an amended or supplemental appraisal report to be served by petitioner in order to fill in the missing data and render a complete report pursuant to 22 NYCRR 202.60 (h).

Respondents argue, however, that the court should not permit petitioner to amend the appraisal because petitioner, in its cross motion, has contended that its appraisal report is sufficient and, therefore, there is no reason to allow amendment of the report. This argument is unavailing. Petitioner's cross motion seeks to amend the appraisal report, and its argument that the appraisal report is sufficient is merely espoused as an alternative position in the event the court does not grant it the relief sought by its cross motion.

Respondents further argue that petitioner should not be allowed to amend the appraisal report because they will be prejudiced. They contend that they would only have a week to review petitioner's amended appraisal report prior to trial. This contention is without merit since they will be afforded adequate time by the court to review it prior to the trial date, which will be rescheduled.

Respondents also contend that 22 NYCRR 202.60 (g) (3) required that the reports be exchanged simultaneously, and that petitioner had an unfair advantage since it was able to examine their appraisal report prior to cross-moving to amend. This contention is devoid of merit since 22 NYCRR 202.60 (h) expressly permits the filing of an amended appraisal report. Thus, the mere fact that petitioner has seen respondents' appraisal prior to filing its amended appraisal does not constitute prejudice. Indeed, under unusual and extraordinary circumstances, 22 NYCRR 202.60 (h) even permits an amendment of an appraisal report after the trial of the issues has begun upon application to the trial judge.

Respondents additionally contend that the factual statements provided by Mr. Clyde and Lesley Frey are not sworn to as being true, and that neither is the letter from Susan Brewer. They argue that they, therefore, should not be considered by the court in addressing petitioner's cross motion. The court rejects this argument. As noted above, Mr. Clyde has supplemented his notarized statement with a sworn affidavit (although labeled as an affirmation). In addition, Mr. Waxman, who is an attorney, has submitted his affirmation, pursuant to CPLR 2106, which supports the factual statements as to the computer problem.

Although the document signed by Lesley Frey, which is labeled "affidavit," does not contain the language, "being duly sworn, deposes and says," it is signed and sworn to before a notary public and contains the jurat and stamp of the notary public, "who, in the absence of a showing to the contrary, is presumed to have acted within his or her jurisdiction and carried out his or her duties as required by law" (*Collins v AA Truck Renting Corp.*, 209 AD2d 363, 363 [1st Dept 1994]). "An affidavit is a statement of facts in writing signed and sworn to before an authorized officer" (*Matter of S.A.B.G.*, 47 Misc 3d 812, 814 [Family Ct, Nassau County 2015]). In any event, Ms. Frey's statement, as well as Susan Brewer's letter, which is unsworn, are merely cumulative of the other evidence submitted by petitioner which support his showing of good cause to amend Mr. Clyde's appraisal report.

Respondents' arguments regarding any deficiencies in Mr. Clyde's appraisal report are more properly addressed to the probative weight to be afforded to his appraisal report by the trier of fact (*see Ehmann v Nassau County Dept. of Assessment*, 2007 NY Slip Op 33143[U] [Sup Ct, NY County 2007]). The court notes that the granting of the amendment of Mr. Clyde's appraisal report will not deprive respondents of the opportunity to highlight any notable shortcomings of Mr. Clyde's appraisal report at trial, and to argue that it should be afforded little weight as a result (*see Kashou Enters., Inc. v Assessor of the Town of Union, N.Y.*, 26 Misc 3d 1231[A], 2010 NY Slip Op 50337[U], *4 [Sup Ct, Broome County 2010]).

"[T]he interests of justice are best served by affording both parties an opportunity to elicit expert testimony as to value" (*Matter of Town of Guilderland [Pietrosanto]*, 244 AD2d at 606; *see also Matter of Moonglo, Inc.*, 11 Misc 3d at 613). If relief pursuant to 22 NYCRR 202.60 (h) were not permitted, "great prejudice would result to [petitioner] in that [it] would be unable to provide any evidence as to value at trial" and be deprived of its day in court" (*Matter of G.T.I. Co. [Mid-Hudson]*, 88 Misc 2d at 809). Respondents have not demonstrated that they will be substantially prejudiced by permitting petitioner to file an amended appraisal report. Rather, permitting the filing of an amended appraisal report will allow both parties to present their evidence as to value at trial.

Petitioner, in its cross motion, also seeks summary judgment striking and precluding respondents' appraisal report and granting it summary judgment in its favor on its RPTL article 7 tax certiorari petitions. In support of its cross motion, petitioner argues that the appraisal report of respondents' appraiser, Mr. Sinacori, lacks any information to verify the income comparables upon which he relied in using the income approach to determine the value of the property. Specifically, petitioner states that Mr. Sinacori simply states, on page 41 of his appraisal report, that "in order to estimate the market rental value of the subject property, a market study was carried out," and that his "research uncovered the comparable rental data illustrated on the following page." Petitioner claims that Mr. Sinacori failed to disclose the source of the data so that it could examine them and validate the data and be prepared to cross-examine him at the trial.

Petitioner's argument is rejected. Page 42 of Mr. Sinacori's appraisal report sets forth the comparable rental properties with sufficient particularity, listing the square feet, lease terms, annual rent, rent per square foot, and additional rent for each of these comparable properties. It thus contains the facts, figures, and calculations by which Mr. Sinacori's conclusions of value were reached, as required by 22 NYCRR 202.60 (g) (3). Mr. Sinacori's appraisal report contains sufficient details necessary to examine the comparable properties used in his conclusions and provides petitioner with ample information supporting those conclusions such that it enables it to adequately prepare for cross-examination (*see Matter of Gran Dev., LLC*, 124 AD3d at 1045; *Matter of Bialystock & Bloom*, 290 AD2d at 609).

Petitioner further argues that Mr. Sinacori's appraisal is deficient because he failed to state that he inspected the comparable properties to determine condition and age, and that he did not photograph the buildings. Contrary to this argument, however, an interior inspection of the comparable properties is not necessary (*see Matter of Aylward v Assessor, City of Buffalo*, 125 AD3d 1344, 1345-1346 [4th Dept 2015], *appeal dismissed* 25 NY3d 1056 [2015]), and Mr. Sinacori's appraisal report, in fact, provided photographs of the comparable properties on pages 43 through 45 in compliance with 22 NYCRR 202.60 (g) (3).

Petitioner also argues that Mr. Sinacori's appraisal is deficient because of the 14 comparable properties listed by him, only two are in the neighborhood of the property, with the rest of the properties being located all over Brooklyn, and only five of these properties were within 20% of the size of the property. These criticisms of Mr, Sinacori's appraisal

report, however, go to the weight of the report, rather than its validity, and do not provide a basis for preclusion of his appraisal or summary judgment (*see Matter of Gran Dev., LLC*, 124 AD3d at 1045). "The valuation of property is largely a question of fact" (*Id.* at 1046; *see also Matter of Consolidated Edison Co. of N.Y., Inc. v City of New York*, 8 NY3d 591, 595-596 [2007]).

Moreover, as discussed above, property valuations by a municipal tax assessor are presumed to be valid (*see Matter of FMC Corp. [Peroxygen Chems. Div.]*, 92 NY2d at 187; *Matter of Niagara Mohawk Power Corp.*, 92 NY2d at 196). Here, petitioner, at this juncture, has failed to proffer substantial evidence to overcome the presumptive validity of the challenged assessments or to eliminate any triable issues of fact with respect to the valuation of the property, and it is, therefore, not entitled to summary judgment (*see Matter of Highbridge Dev. BR, LLC v Assessor of the Town of Niskayuna*, 121 AD3d 1324, 1326 [3d Dept 2014]).

CONCLUSION

Accordingly, respondents' motion is denied insofar as it seeks to preclude petitioner from using its appraisal (which, pursuant to its cross motion is to be amended) at the trial of this matter and to dismiss petitioner's RPTL article 7 tax certiorari petitions. Petitioner's cross motion is granted insofar as it seeks an order permitting it to file a completed/amended appraisal report, and it is denied insofar as it seeks an order striking and/or precluding respondents' appraisal report and granting it summary judgment in its favor on its RPTL

article 7 tax certiorari petitions. Petitioner is directed to exchange and file its amended appraisal report, pursuant to 22 NYCRR 202.60 (g), within 30 days of service upon it of a copy of this decision and order, with notice of entry thereon.

This constitutes the decision and order of the court.

ENTER,

J. S. C.

NOV 10 2015

FILED

NOV 16 2015

KINGS COUNTY CLERK'S OFFICE