SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. F. DANA WINSLOW,

Justice

TRIAL/IAS, PART 6
NASSAU COUNTY

SHARI SEIDEL, RISE KAUFMAN, HARVEY KAUFMAN, MARC FRIES and RACHEL FRIES,

Plaintiffs,

-against-

MOTION SEQ. NO.: 001
MOTION DATE:10/8/09

THE BOARD OF ASSESSORS and THE ASSESSMENT REVIEW COMMISSION OF THE COUNTY OF NASSAU,

INDEX NO.: 12873/09

Defendants.

The following papers having been read on motion (numbered 1-3):

Notice of Motion.....1
Affirmation in Opposition.....2
Reply Affirmation.....3

Relief Requested:

The Petitioners have brought the within proceeding pursuant to Article 78 of the CPLR, for an order and judgment annulling, vacating and setting aside the decision of the hearing officer, which denied their respective applications brought pursuant to Article 7 of the Real Property Tax Law and remanding the matter for a trial *de novo* before a different hearing officer, with a direction to value the Petitioners' properties in the condition as they actually existed on the taxable status date of January 2, 2007.

Factual and Procedural Background:

The Petitioners are the owners of single family, owner occupied residences within the County of Nassau. Petitioner, Shari Seidel, is the owner of property located at 525 Green Place, Woodmere, New York; Petitioners, Harvey and Rise

Kaufman, are the owners of property located at 537 Green Place, Woodmere, New York, and; Petitioners, Marc and Rachel Fries, are the owners of property located at 920 Green Place, Woodmere, New York (*see* Verified Petition at Exh. B).

Hearing:

On February 24, 2009, a small claims assessment review hearing was conducted with respect to the petitioners' respective properties by Hearing Officer, Rod Kovel, Esq. (*id.* at ¶6; *see also* Exh. A). At said hearing, Petitioner Seidel provided an affidavit averring that on the "taxable status date of January 2, 2007, the Property was a cape home consisting of 2,765 square feet of living area. This affidavit went on to provide that while the "home was remodeled during the course of 2007, work was not started until well-after the taxable status date." (*id.* at Exh. C). Petitioner Seidel additionally provided a copy of the building permit indicating that same was issued on February 22, 2007, as well as comparable sales relative to the property as it existed on the taxable status date (*id.*).

Petitioners, Rise and Harvey Kaufman, provided an affidavit stating that "on the taxable status date of January 2, 2007, the Property was a ranch home consisting of the original 1,963 square feet of living area." The affidavit additionally provides that "Although during the course of 2007 the house was being renovated, work was not started on the home until the end of February 2007"(*id.* at Exh. D). Petitioners additionally annexed a copy of the building permit, which was issued on February 5, 2007, as well as comparable sales relative to the property as it existed on the taxable status date (*id.*).

Petitioners, Marc and Rachel Fries, proffered an affidavit, which stated that on "January 2, 2007, the Property was a ranch home consisting of 2,246 square feet of living area." (*id.* at Exh. E). Said affidavit further provided that "Remodeling work only commenced on the property in late December 2006, and

as of January 2, 2007, the only work that had been performed was the removal of a portion of the roof" (*id.*). The Petitioners further averred that while the subject property remained in livable condition, "on the tax status date, it was in poor condition." (*id.*). In addition to the foregoing, these Petitioners provided comparable sales relative to the property as it existed on the taxable status date (*id.*).

In the three decisions issued, the hearing officer denied relief to all of the Petitioners herein (*see* Verified Petition at Exh. A). With respect to Petitioner Seidel, Hearing Officer Kovel stated that the "Plaintiff has not provided comparables that bear on the January 2, 2007 house as recognized by the Defendant, and thus has no relevant evidence in the record" (*see* Verified Petition at Exh. A). As to Petitioners, Rise and Harvey Kaufman, Mr. Kovel rendered a decision which similarly stated "Plaintiff has not provided comparables that bear on the January 2, 2007 house as recognized by the Defendants, and thus offered no relevant evidence." (*id.*). Finally, with respect to petitioners Marc and Rachel Fries, Hearing Officer Kovel stated that "Plaintiff has not provided comparables that bear on the January 2, 2007 house that is recognized by Defendant, and thus has no evidence in the record." (*id.*).

In commencing the within proceeding the Petitioners collectively argue that the decisions of the hearing officer were arbitrary and capricious inasmuch as Mr. Kovel disregarded the evidence produced by the respective Petitioners and rather relied solely upon comparables offered by the County, which were not reflective of the condition of the properties as of the taxable status date of January 2, 2007 (*see* Verified Petition at ¶¶17,21; *see also* Reply Affirmation at ¶4).

The Court of Appeals has held that "Arbitrary action is without sound basis in reason and is generally taken without regard to the facts" and that the proper inquiry is whether the administrative decision in issue was supported by a rational

basis (*Pell v Board of Educ. of Union Free School Dsit. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 NY2d 222 [1974] at 231). Within the particular context of reviewing a determination rendered in connection to a small claims assessment review, the Court's function is strictly circumscribed to ascertaining whether such determination was predicated upon a rational basis (*Matter of Gershon v Nassau County Assessment Review Commission*, 29 AD3d 909 [2d Dept 2006]; *Matter of Barbera v Assessor of Town of Pelham*, 278 AD2d 412 [2d Dept 2000]; *Matter of McNamara v Board of Assessors of Town of Smithtown,* 272 AD2d 617 [2d Dept 2000]).

In the instant matter, and as noted above, Hearing Officer Kovel determined that the Petitioners did not provide comparables relevant to the January 2, 2007 properties with respect to how such properties were recognized by the County and accordingly concluded that the respective Petitioners did not place any probative evidence into the record.

"Property is to be assessed for tax purposes according to its condition on the taxable status date, without regard to future potentialities or possibilities and may not be assessed on the basis of some use contemplated in the future" (*Matter of Addis Co. v Srogi*, 79 AD2d 856 [4th Dept 1980]; *Matter of Adirondack Mountain Reserve v Board of Assessors of the Town of North Hudson, Essex County, New York*, 99 AD2d 600 [3d Dept 1984]; *Northville Industries Corp. v Board of Assessors of Town of Riverhead,* 143 AD2d 135[2d Dept 1988]; *Ross v Town of Santa Clara*, 266 AD2d 678 [3d Dept 1999]).

Here, according to the Assessment Review Commission, the "Decision of the Hearing Officer", as well as the "Notice of Tentative Assessed Value for 2008/2009" issued by the Nassau County Department of Assessment, the tax status date relevant to the subject properties is January 2, 2007 (*see* Verified Petition at Exhs. B, F,G,H). In the instant matter, while the record demonstrates

that the Petitioners proffered evidence as to the respective properties for the recognized tax status date of January 2, 2007, the evidence provided by the County was in the form of "comparables sales", which the County concedes, reflected the values of the properties "as of January 2, 2008" (*see* Verified Answer at ¶4).

Thus, the Court finds that the evidence produced by the County, which admittedly did not reflect the tax status date of January 2, 2007, and upon which the hearing officer relied in denying relief to all of the Petitioners herein, did not provide a sound or rational basis for the determination rendered (*Pell v Board of Educ. of Union Free School Dsit. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 NY2d 222 [1974], *supra*; *see also In the Matter of 125 Bar Corp. v State Liquor Authority*, 24 NY2d 174 [196] at 178).

Based upon the foregoing, judgment is hereby awarded to the Petitioners, and the decision of Hearing Officer Kovel is hereby vacated and the within matters are remanded for a trial *de novo* to be held before a different hearing officer and in accordance with the controlling appellate authority requiring that the Petitioners properties be valued as of the relevant tax status date of January 2, 2007 (*Northville Industries Corp. v Board of Assessors of Town of Riverhead,* 143 AD2d 135[2d Dept 1988], *supra*).

All application not specifically addressed herein are **denied.**

This constitutes the Order of the Court.

Dated: December 24, 2010

ENTER:

J.S.C.