

Mehran & Sepideh Manouel v Board of Assessors
2011 NY Slip Op 34171(U)
December 16, 2011
Supreme Court, New York County
Docket Number: 5790/11
Judge: Antonio I. Brandveen
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

S

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN
J. S. C.

MEHRAN & SEPIDEH MANOUEL,

Petitioners,

- against -

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

Respondents..

TRIAL / IAS PART 30
NASSAU COUNTY

Index No. 5790/11

Motion Sequence No. 001, 002

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits	<u>1,2</u>
Answering Affidavits	<u> </u>
Replying Affidavits	<u>3</u>
Briefs: Plaintiff's / Petitioner's	<u> </u>
Defendant's / Respondent's	<u> </u>

The petitioners seek to vacate a December 17, 2010 Small Claims Review Assessment determination, to find they qualify for SCAR jurisdiction under the Real Property Tax Law, to remand the petition for a de novo hearing before another hearing officer and to award costs and disbursements. The petitioners contend the determination was not rationally based. The petitioners claim they are entitled because the petitioner Mehran Manouel's mother resides rent free at the subject property.

The respondents move to dismiss. The respondents point out the Real Property Tax

Law requires owner occupied property to qualify for SCAR, and an exception applies only in narrow circumstances. The respondents assert the petitioners do not fit an exception. The respondents aver income production argument as espoused by the petitioners or the lack of it has no relevance upon SCAR eligibility.

The petitioners reply the respondents fail to provide facts or law. The petitioners reiterate their previous contentions regarding owner occupancy.

This Court carefully considered the parties' papers. The Second Department holds:

“[H]earings 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” (*Matter of Meirowitz v. Board of Assessors*, 53 A.D.3d at 550, 861 N.Y.S.2d 414; *see* RPTL 732 [2]; *Matter of Barbera v. Assessor of Town of Pelham*, 278 A.D.2d 412, 717 N.Y.S.2d 366) *Sass v. Town of Brookhaven*, 73 AD3d 785, 787-788.

The Second Department also holds:

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 it vests the Judicial Hearing Officer with the discretion to consider a wide variety of sources and information in evaluating tax assessments (*see*, RPTL 732[2]; *Matter of McNamara v. Board of Assessors*, 272 A.D.2d 617, 709 N.Y.S.2d 821; *Matter of Sauer v. Board of Assessors*, 194 A.D.2d 542, 598 N.Y.S.2d 557). When the Judicial Hearing Officer's determination is contested, the court's role is limited to ascertaining whether that determination has a rational basis (*see, Matter of McNamara v. Board of Assessors, supra; Matter of Meola v. Assessor of Town of Colonie*, 207 A.D.2d 593, 615 N.Y.S.2d 506) *Barbera v. Assessor of the Town of Pelham*, 278 AD2d 412, 413; *see also McNamara v. Board of Assessors*, 272 AD2d 617.

The hearing officer here found the subject property was not owner occupied, and the

petitioners did not qualify under an exception to the owner occupancy requirement of SCAR. The respondents' show the petitioners provided no evidence the subject property is for sale and no indication the mother's current occupancy is a temporary arrangement. That showing provided a rational basis for the determination that SCAR jurisdiction under the Real Property Tax Law was not warranted. Moreover, the hearing officer rationally applied an actual owner occupancy rather than income production. The determination was not arbitrary and capricious. The Court notes any change in the jurisdictional requirements of SCAR are the province of the New York Legislature.

Accordingly, the respondents' motion is granted. The petition is denied. The determination is confirmed, and the proceeding is dismissed on the merits. This decision shall constitute the judgment and order of the Court.

So ordered.

Dated: **December 16, 2011**

ENTER:

J. S. C.

FINAL DISPOSITION

ENTERED
 DEC 20 2011
 NASSAU COUNTY
 COUNTY CLERK'S OFFICE