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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MARTIN SHULMAN J.S.C. PART 1 TX
Justice

Index Number : 200070/2009
THE OAKWOOD CONDOMINIUM
vs
THE TAX COMMISSION
Sequence Number : 001
PARTIAL SUMMARY JUDGMENT

INDEX NO. 200070/09
MOTION DATE
MOTION SEQ. NO. 001
MOTION CAL. NO.

The following papers, numbered 1 to 3 were read on this motion to/for

	PAPERS NUMBERED
Notice of Motion/ ~~Order to Show Cause~~ — Affidavits — Exhibits A-G	1
Notice of Cross-Motion and Answering Affidavits — Exhibits 1-2	2
Replying Affidavits — Exhibits A-G	3

Cross-Motion: [X] Yes [ ] No

Upon the foregoing papers, it is ordered that this motion and cross-motion are decided in accordance with the attached decision and order.

FILED
MAY 14 2012
NEW YORK
COUNTY CLERK'S OFFICE

Dated: May 9, 2012

MARTIN SHULMAN J.S.C.
J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check one: [ ] FINAL DISPOSITION [ ] NON-FINAL DISPOSITION

Check if appropriate: [ ] DO NOT POST [ ] REFERENCE

[ ] SUBMIT ORDER/JUDG. [ ] SETTLE ORDER /JUDG.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 1

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In the Matter of

Index No. 200070/2009

THE OAKWOOD CONDOMINIUM,

Petitioner,

Decision & Order

-against-

THE TAX COMMISSION OF THE CITY OF NEW YORK and THE COMMISSIONER OF FINANCE OF THE CITY OF NEW YORK,

Respondents.

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SHULMAN, J.:

Petitioner moves for partial summary judgment in this consolidated Real Property Tax Law ("RPTL") Article 7 proceeding,[1] specifically seeking an order directing respondents to reclassify its real property as Tax Class 2C for tax year 2009/2010 and to correct the assessed valuations for all condominium units in the subject property for tax years 2009/2010 through and including 2011/2012. Petitioner requests this relief to reflect RPTL §1805(2)'s limits for increases to a property's assessed valuation ("AV"), arguing that 1999/2000 is the base tax year for the purpose of calculating the correct AV for the tax years in question. Petitioner further seeks an order directing respondents to refund excess taxes paid by each unit owner for these three (3) tax years (2009/2010

[1] Petitioner filed three separate petitions for tax years 2009/2010 (Index No. 200070/09), 2010/2011 (Index No. 200060/10) and 2011/2012 (Index No. 200125/11).

through and including 2011/2012) in accordance with petitioner's proposed method of calculation.[2]

The heart of this controversy is petitioner's claim that respondents have misclassified the subject property beginning in tax year 1993/94, resulting in excessive assessments commencing with tax year 2000/2001. Respondents do not oppose the branch of petitioner's motion to reclassify the subject property from Tax Class 2 to Tax Class 2C for tax year 2009/2010 and have already designated the property as such for tax years 2010/2011 and 2011/2012. Accordingly, this portion of petitioner's motion is granted without opposition.

This court's determination of the remaining portions of petitioner's motion pertaining to the subject property's AV for tax years 2009/2010 through 2011/2012 requires interpretation and analysis of RPTL §1805(2). RPTL §1805(2) provides that assessments for Class 2 properties having less than eleven residential units shall not increase by more than 8% in any one year or 30% in any five year period, as follows:

> The assessment roll of a special assessing unit wholly contained within a city shall identify those parcels classified in class two which have fewer than eleven residential units. The assessor of any such special assessing unit shall not increase the assessment of any parcel so identified in any one year, as measured from the actual assessment on the previous year's assessment roll, by more than eight percent and shall not increase such assessment by more than thirty percent in any five-year period. The first such five-year period shall be measured from the individual assessment appearing on the assessment roll completed in nineteen hundred eighty-one provided that, if such parcel would not have been subject to the provisions of this subdivision in nineteen hundred eighty-one had this

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[2] The affidavit of Loic Lamoureux submitted in support of petitioner's motion contains a comprehensive chart detailing the property's AV for tax years 1990/1991 through 2011/2012, including the percentage of all increases and petitioner's proposed recalculation to reflect RPTL §1805(2)'s limitations on increases.

> subdivision then been in effect, the first such five-year period shall be measured from the first year after nineteen hundred eighty-one in which this subdivision applied to such parcel or would have applied to such parcel had this subdivision been in effect in such year.

When RPTL §1805(2) was initially enacted in 1984, the benefits of its limitation on tax assessments were available only to residential properties with fewer than seven residential units, which the New York City Department of Finance ("DOF") designated as Class 2A. Cooperatively owned properties and condominiums were not included. An amendment in 1986 extended the benefit to residential properties having less than eleven units (designated as Class 2B), but again specifically excluded condominiums and co-ops.

In 1992, a further amendment extended RPTL §1805(2)'s limits on tax assessments to co-ops and condominiums. Properties subject to this provision were designated as Class 2C. The effective date of the 1992 amendment was January 1, 1993 but the statute provides that the first five year period is to be measured from the first year after 1981 in which RPTL §1805(2) applied or would have applied to the subject property had it been in effect.

In support of this motion, petitioner argues that its property should have been classified as Class 2C as of the 1993/1994 tax year (the statute's effective date) and as a result of the misclassification, it was denied the benefit of RPTL §1805(2)'s limitations on increases in AV. Admittedly, petitioner never challenged this error until it filed protests commencing with tax year 2009/2010. Nonetheless, petitioner argues that RPTL §1805(2) mandates a "rollback" of its property's AV going back to tax year 1999/2000 for the following reasons:

- the first five year period must be measured from tax year 1990/1991[3] because that is the first tax year in which RPTL §1805(2) would have applied had the 1992 amendment then been in effect;

- since the property's AV did not exceed either the 8% or 30% cap until tax year 2000/2001, the base year for calculation purposes is 1999/2000; and

- petitioner emphasizes that it is not seeking refunds for the tax years prior to tax year 2009/2010 that it failed to challenge.

Respondents oppose petitioner's proposed methodology for calculating the property's AV for the three (3) challenged tax years and cross-move for partial summary judgment dismissing petitioner's application for a "rollback" recalculation. Central to respondents' argument is petitioner's failure to timely challenge the subject property's classification until the 2009/10 tax year. As a result, respondents maintain that whatever rollback in taxes and resulting refund may be due to petitioner under RPTL §1805(2) can only date from that period. Respondents emphasize that petitioner's proposed calculation requires recomputation "using a hypothetical assumption that the property was a Tax Class 2C property commencing as of the 1990/91 tax year" and will result in "an impermissible collateral attack on the validity of assessments not at issue in this proceeding." Moretti Aff. at ¶¶ 11, 13.

This court agrees that RPTL §1805(2)'s clear and unambiguous language does not mandate a "rollback" as petitioner urges. That petitioner does not seek a refund of overpayments for tax years 2000/2001 through 2008/2009 is of no moment. There is simply no basis to recalculate the subject property's AV for the 2009/2010 through

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[3] The petitioner condominium was established on October 1, 1990 and at all times has had no more than eight (8) units. See Motion at Exhs. A and B.

2011/2012 tax years by going back to 2000/2001 and applying RPTL §1805(2)'s 8% and 30% caps retroactively. To do so would effectively rewrite history.

The statute's plain language provides that RPTL §1805(2)'s benefits expressly extend to Tax Class 2 properties which have been identified on the tax assessment roll as having fewer than eleven residential units. Petitioner's property was not identified as such on any assessment roll until tax year 2009/2010 and petitioner failed to challenge the classification error prior to 2009/2010. Thus, petitioner is not entitled to claim the statute's benefits for prior unchallenged tax years. That petitioner's property might have qualified to receive RPTL §1805(2)'s benefits in prior years[4] is unavailing since petitioner admittedly did not challenge respondents' failure to identify the subject property as having less than eleven residential units. *See, e.g., Epstein v Tax Commissioner of City of New York* (Kings County Index No. 24024/89, April 16, 1990 [S. Leone, J]); and *Brigandi v Finance Administrator* (Kings County Index No. 28369/90, Nov. 13, 1991 [S. Leone, J], *aff'd* 201 AD2d 646 [1994]), at Exhs. 1 and 2 to Respondents' Memorandum of Law in Support of Cross-Motion for Partial Summary Judgment.

Here, with respect to the 8% yearly cap, the statute expressly provides that it is to be "measured from the actual assessment on the previous year's assessment roll". Thus, in calculating any refund due to petitioner for the 2009/2010 tax year and

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[4] It is undisputed that the subject property, which was established as a condominium in 1990, has never had eleven or more units and has been classified as a Class 2 property since that date.

subsequent tax years, the actual assessment for tax year 2008/2009 is the starting point.

As to the 30% cap on increases in any five year period, *Epstein*, *supra* and *Brigandi, supra*, are distinguishable. In those cases, the property's designations changed from Class 4 to Class 1 (*Brigandi*) or Class 2 (*Epstein*) and as such, those properties were not entitled to any limitation on increases in AV until they were reclassified. That is not the case here, where the subject property has always been designated as Class 2 and has always had fewer than eleven (11) units. In the case at bar, the first year after 1981 in which RPTL §1805(2) would have applied to the subject property had it been in effect is tax year 1990/1991. Thus, the first five year period must be measured from 1990/1991, with subsequent five-year periods commencing in 1995/1996, 2000/2001 and 2005/2006. Here, for the tax years under review, the relevant five year period commences with tax year 2005/2006.

For the foregoing reasons it is hereby

ORDERED that the portion of petitioner's motion seeking an order directing respondents to reclassify the subject property as Tax Class 2C for tax year 2009/2010 is granted on consent; and it is further

ORDERED that the remaining portions of petitioner's motion are granted to the extent that respondents are directed to correct the subject property's assessed valuations for tax years 2009/2010 through 2011/2012 to reflect RPTL §1805(2)'s limitations, which shall be calculated in accordance with this decision, and refund any overpayments to petitioner; and it is further

ORDERED that respondents' cross-motion for summary judgment is denied.

Counsel for the parties are directed to exchange proposed orders implementing this decision's terms, which shall be filed with the Clerk of Part 1 on or before May 25, 2012. The attorneys for the parties are directed to then engage in good faith negotiations for a proposed executory order that will be acceptable to both sides by stipulation. Failing that, this court will then consider the proposed orders submitted by the parties. This matter is calendared for June 19, 2012 at 9:30 a.m. at Part 1, 60 Centre Street, Room 325, New York, New York, for report.

The foregoing is this court's decision and order. Courtesy copies of this decision and order have been provided to counsel for the parties.

Dated: May 9, 2012

Martin Shulman, J.S.C.