

**Matter of C & F Second Ave., LLC v Comptroller of
the City of N.Y.**

2019 NY Slip Op 33804(U)

December 19, 2019

Supreme Court, Kings County

Docket Number: 401621/12

Judge: Michael L. Pesce

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At an IAS Term, Part 74T 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 19th day of December, 2019.

PRESENT:

HON. MICHAEL L. PESCE,
Justice.

-----X

IN THE MATTER OF
C & F SECOND AVENUE, LLC,

Petitioner,

- against -

THE COMPTROLLER OF THE CITY OF NEW
YORK AND THE COMMISSIONER OF FINANCE
OF THE CITY OF NEW YORK,

Index No. 401621/12
405892/13
405181/14
404699/15
400243/16
402533/17

Respondents.

-----X

The following e-filed papers read herein:

	<u>Papers Numbered</u>
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed_____	1, 4, 6-12 13-16
Opposing Affidavits (Affirmations)_____	29-32
Reply Affidavits (Affirmations)_____	34
Memoranda of Law_____	28 17

Upon the foregoing papers, in these RPTL article 7 tax certiorari proceedings,¹ petitioner C&F Second Avenue, LLC (petitioner) moves, under motion sequence number one, for an order: (1) consolidating all of the petitions filed against respondent the

¹The full set of motion and cross motion papers is e-filed under index number 401621/12.

Commissioner of Finance of the City of New York (respondent)² under index numbers 401621/12, 405892/13, 405181/14, 404699/15, 400243/16, and 402533/17 under one caption and index number 401621/12, pursuant to CPLR 602 and RPTL 710; (2) granting partial summary judgment finding that the New York City Department of Finance (the DOF) has erroneously applied RPTL 467-h; (3) directing that the 2013/14 tax year³ abatement, pursuant to RPTL 467-h, be set at \$69,439.52; (4) granting partial summary judgment finding that the DOF has erroneously applied RPTL 1805-a; (3) directing the taxable assessed value (AV) for the 2013/14 tax year be set at \$3,809,091; (4) directing that the taxable AV for the 2014/15 tax year be set at \$6,913,237; and (5) directing that the taxable AV for the 2015/16 tax year be set at \$8,312,670;⁴ and (6) directing the Commissioner of Finance of the City of New York to refund and return to it any overpayment of taxes paid, together with statutory interest. Respondent cross-moves, under motion sequence number two, for an order,

²The Comptroller of the City of New York (the Comptroller) was mistakenly named by petitioner as a respondent in this proceeding. Petitioner, in an email dated September 4, 2019, consented to the dismissal of its claims against the Comptroller.

³Respondent points out that this was actually an abatement for the 2014/15 tax year.

⁴Petitioner, in its original notice of motion, sought an order directing that the taxable assessed value for the 2013/14 tax year be set at \$4,076,121 and that the taxable assessed value for the 2014/15 tax year be set at \$7,180,267. After respondent, in its opposition papers, pointed out a major mathematical error in petitioner's calculations, petitioner, in its opposition to respondent's cross motion, made a recalculation, and altered the amount requested by it (Doc #27). As petitioner asserts, there is no prejudice to respondent since respondent was aware of the mathematical error, and the dispute is, in any event, about the methodology used, as opposed to the correctness of the arithmetic. Thus, the court will consider petitioner's corrected calculations.

pursuant to CPLR 3212, awarding summary judgment to it as a matter of law, and denying petitioner's motion for partial summary judgment in its entirety.

Facts and Procedural Background

Petitioner is the owner of certain real property, which is identified on the New York City tax map as Borough of Brooklyn, Block 990, Lot 69 and commonly known as 58 Second Avenue, Brooklyn, New York (the property). The property consists of a parcel of land approximately 252,575 square feet, which is improved with a two-story brick commercial building with approximately 354,020 square feet of factory space and 15,980 square feet of office space located on the corner of 9th Street and 2nd Avenue and abutting the Gowanus Canal in the Gowanus neighborhood of Brooklyn. The property is a tax class 4⁵ property.

On October 29, 2012, Superstorm Sandy (Sandy) hit New York City (the City), causing substantial coastal flooding and damage to low lying areas. The property was damaged by Sandy. The City implemented short-term and long-term steps to provide relief to property owners affected by Sandy. The City provided a rebate to qualified properties in the 2012/13 tax year, pursuant to RPTL 467-g. The City also provided a one-time across-the-board reduction to market value of property areas hard hit by Sandy, i.e., a 15% reduction to properties in class 1 and class 2 and a 10% reduction to properties in class 4. In the 2013/14 tax year, an overall 10% neighborhood reduction was applied to the property,

⁵The City's "Definitions of Property Assessment Terms" (Doc #29) defines tax class 4 property as "[a]ll commercial and industrial properties, such as office, retail, factory buildings and all other properties not included in tax classes 1, 2 or 3."

which lowered its market value assessment from \$19,669,000 to \$15,910,750. The City then adopted RPTL 467-h, which provided a one-time property tax abatement for property owners who were impacted by Sandy. Petitioner received a RPTL 467-h tax abatement for the property in the 2014/15 tax year⁶ in the amount of \$67,093. Petitioner asserts that this was incorrectly calculated and should have been \$69,439.52.

The City also adopted RPTL 1805-a to address the changes to property value caused by damage from Sandy and the efforts by property owners to rebuild and repair the property damage. As explained by respondent, the purpose of this legislation was to ensure that property owners would not suffer undue property tax consequences because of Sandy and would not be in a worse place with respect to property taxes than they would have been if Sandy had not occurred. Therefore, RPTL 1805-a addressed the assessment of real property damaged by Sandy and the application of physical changes to real property resulting from Sandy.

Pursuant to RPTL 1805-a, the treatment of physical increase and decrease remain subject to the provisions of RPTL 1805, with additional limitations on the application of physical increases resulting from efforts to rebuild after Sandy. Specifically, pursuant to RPTL 1805-a (4) (a), the value of the physical increase is limited to the value of a physical decrease caused by Sandy. Furthermore, under RPTL 1805-a (4) (a), any increase in assessed value in excess of the amount equivalent to the physical decrease is subject to the limitations

⁶As noted above, petitioner incorrectly asserts that this was for the 2013/14 tax year.

in RPTL 1805, depending on the class of the property. Finally, RPTL 1805-a (4) (a) provides that in any given year from 2015 through 2020, the AV of the affected property cannot exceed what it would have been in these years “but for any physical decreases or physical increases reflected in the [AVs] on the assessments rolls completed from [2013 to 2020].”

Pursuant to RPTL 1805-a and based on a Property Damage Report Form submitted by petitioner and an inspection of the property, the DOF assessed a physical decrease in the amount of \$1,704,713 for the property in the 2013/14 tax year. The DOF determined the value of the physical decrease based on internal methodology, and applied it to the base AV in the 2013/14 tax year, as well as to the historical transitional AVs that were being phased-in. As a result, the DOF’s transitional AV in the 2013/14 tax year was \$4,430,077. This was also the 2013/14 taxable AV for the property.

Pursuant to RPTL 1805-a, in the 2014/15 tax year, based on inspections indicating that all repairs on the property were completed, the sum of \$1,704,713 (equivalent to the value of the damage in the previous year) was added back to the transitional AV of the property. As a result, the DOF’s transitional AV for the property for the 2014/15 tax year was \$7,258,922, which was also the taxable AV for that year.

Petitioner claims that the methodology used by the DOF violates RPTL 1805-a and was erroneously used to arrive at inflated assessments. Petitioner challenged the DOF’s assessments for the 2012/13 through 2017/18 tax years by filing applications for corrected assessments with the Tax Commission, but the Tax Commission confirmed the assessments.

Consequently, petitioner filed RPTL article 7 proceedings for the 2012/13 through 2017/18 tax years, alleging that the assessments on the property are illegal and unlawful and seeking the correction of its assessments.

On January 30, 2019, petitioner filed its instant motion. On September 5, 2019, respondent filed its instant cross motion.

Discussion

Consolidation

Petitioner seeks to consolidate, under one caption and one index number, namely, index number 401621/12, the six tax certiorari proceedings which it has filed for review of the property's assessments for the tax years 2012/13 through 2017/18. Petitioner asserts that all of its six petitions are proceedings brought to review the tax assessments for the property and allege the same questions of law and fact. Petitioner notes the longstanding practice by courts of favoring the consolidation of RPTL article 7 proceedings for different tax years.

Respondent opposes the consolidation of these proceedings. Respondent argues that consolidation is unnecessary because petitioner's concerns can be addressed without consolidation. Respondent notes that the court has the discretion to grant or deny consolidation.

Respondent also argues that consolidation is potentially prejudicial to it because its ability to seek dismissal or further discovery with regard to any particular proceeding may be foreclosed once the proceedings are consolidated. Respondent does not point to any

particular discovery that it might need in another proceeding or what different basis of dismissal it might assert in these virtually identical proceedings. Respondent also claims that the parties' conduct relating to one or more discrete tax years may be inadvertently attributed to other tax years. However, respondent has stated no logical reason why this hypothetical error would occur, given that consolidating proceedings for multiple tax years is a common and accepted practice in tax certiorari proceedings.

CPLR 602 (a) provides that “[w]hen actions involving a common question of law or fact are pending before a court, the court, upon motion . . . may order the actions consolidated.” Furthermore, RPTL 710 provides that “[a] justice before whom separate petitions to review assessments of real property are pending may on his [or her] own motion consolidate or order to be tried together two or more proceedings where the same grounds of review are asserted and a common question of law or fact is presented.” Thus, “[w]here ‘the same grounds of review are asserted and a common question of law or fact is presented,’ the trial court may consolidate proceedings in its discretion” (*Matter of Long Is. Indus. Group v Board of Assessors*, 72 AD3d 1090, 1091 [2d Dept 2010], quoting RPTL 710; *see also* CPLR 602 [a]).

In these six tax certiorari proceedings filed by petitioner, petitioner challenges the assessed values for the same property, and the same grounds of review are asserted. The only differences in these six proceedings are the different tax years for which they were filed. Thus, the questions of law and fact raised by these proceedings are the same, and respondent

will not be prejudiced by these matters being consolidated. Moreover, a consolidation of these proceedings furthers the interest of judicial economy.

The consolidation of these proceedings would serve to prevent unnecessary costs and delay to both the court and the parties. Respondent has failed to demonstrate that it will be prejudiced by these proceedings being consolidated in one proceeding. Consequently, inasmuch as there are common questions of law and fact, an order consolidating these six proceedings under index number 401621/12 (the first of petitioner's proceedings) is warranted (*see* RPTL 710).

Partial Summary Judgment

RPTL 467-h

As set forth by Carmela Quintos, the Assistant Commissioner for Property Valuation and Mapping, for the DOF, pursuant to RPTL 467-h (4) (b), the property was eligible for an abatement of real property tax in the 2014/15 tax year. In order to determine the amount of the abatement due to the property, the DOF utilized the method of calculation outlined by RPTL 467-h (4) (b).

In the first step of this calculation, it was determined that the increase in building AV from tax year 2013/14 to tax year 2014/2015 was \$1,704,712. In the second step of this calculation, the DOF multiplied \$1,704,712 by 0.6187395 - the result of dividing \$4,430,075 (2013/14 transitional AV) by \$7,159,838 (the 2013/14 actual AV) - to arrive at \$1,054,772.60. Then, the DOF subtracted the result in step 2 from the result in step 1 to

arrive at \$649,939.40. The last step of RPTL 467-h (4) (b) directs the DOF to multiply the result of the previous step “by the real property tax rate that is applicable to the property for the fiscal year beginning on the first of July, two thousand fourteen.” In that step, the DOF applied the 2013/14 tax rate of 10.323%. Petitioner contends that the 2014/15 tax rate of 10.684% was the correct one to apply. Petitioner’s calculation, using the 2014/15 tax rate of 10.684%, resulted in a \$69,439.52 abatement, whereas the DOF’s calculation, using the 2013/14 tax rate of 10.323%, resulted in a \$67,093 abatement.

Respondent, in its opposition papers, has acknowledged that petitioner was correct in its calculation of the property tax abatement pursuant to RPTL 467-h, and that the DOF had applied the wrong tax rate when calculating this abatement. Respondent further states that the DOF, upon review, has now determined that it applied the incorrect tax rate and has agreed to credit petitioner with an additional abatement of \$2,346.52. Respondent asserts that it is in the process of applying an additional abatement to the property to correct this error. Therefore, inasmuch as respondent has conceded that this property abatement of \$67,093 was incorrectly calculated and should be set at \$69,439.52, this branch of petitioner’s motion must be granted.

RPTL 1805-a

The statutory interpretation of RPTL 1805-a (which, as noted above, is the Sandy legislation) and its proper implementation is at issue in this proceeding. As relevant here,

RPTL 1805-a (j) and (k) provide definitions of “physical decrease” and “physical increase,” respectively, as follows:

“(j) ‘Physical decrease’ means the decrease in assessed value from the assessed value on the preceding assessment roll as a result of destruction of property caused by the severe storm that occurred on the twenty-ninth and thirtieth of October, [2012], such decrease to which subdivision five of section eighteen hundred five of this article applies.

“(k) ‘Physical increase’ means the increase in assessed value from the assessed value on the preceding assessment roll as a result of an addition to or improvement of existing real property as provided in [RPTL 1805 (5)], for the purpose of reconstruction or repair in connection with the damage caused by the severe storm that occurred on the twenty-ninth and thirtieth of October, [2012], such increase to which [RPTL 1805 (5)] applies subject to the provisions of this section.”

RPTL 1805-a (m) defines “transitional assessed value” as “the transition assessment calculated pursuant to [RPTL 1805 (3)], and which is not reduced by any exemption from real property taxes.”

RPTL 1805-a (3) provides as follows:

“Affected real property. For purposes of this section, ‘affected real property’ means any tax lot that contained, on the applicable taxable status date, class one, class two or class four real property as such class of real property is defined in [RPTL 1802 (1)], as to which:

“(a) the [DOF] reduced the assessed value attributable to improvements on the property for the assessment roll completed in [2013] from the assessed value attributable to improvements on the property for the assessment roll completed in [2012] as a result of damage caused by the severe

storm that occurred on the twenty-ninth and thirtieth of October, [2012]; and

“(b) the [DOF] increased the assessed value attributable to improvements on the property by means of a physical increase for an assessment roll completed from [2014] through [2020].”

RPTL 1805-a (4) (a) and (b) provide as follows:

“Limitation on increases of assessed value. Notwithstanding [RPTL 1805 (5)] and any other provision to the contrary, increases in the assessed value of affected real property shall be limited in the manner specified in this subdivision.

“(a) . . . for affected real property for which the assessed values on the assessment rolls completed in [2014] and [2015] do not reflect a physical increase, the amount of the aggregate physical increase shall not exceed the amount of the physical decrease reflected in the assessed value on the assessment roll completed in [2013]. Any increase in assessed value from the preceding year in excess of the physical increase reflected in the current assessed value, such physical increase limited as provided in the preceding sentence, shall be subject to the limitations on increases provided in [RPTL 1805 (1) (2) and (3)]. In no event shall the assessed value of the affected real property appearing on an assessment roll completed for any given year from [2015] to [2020] exceed what the assessed value would have been that year but for any physical decreases or physical increases reflected in the assessed values on the assessment rolls completed from [2013] to [2020].

“(b) For affected real property for which the assessed value on the assessment roll completed in [2014] or two [2015] reflects a physical increase, the assessed value as it appeared on the assessment roll completed in [2015] shall be recalculated as if the limitation in paragraph (a) of this subdivision had been in effect for the assessment rolls completed in [2014] and [2015]. The recalculation of the assessed value that appeared on the assessment roll completed in [2015] shall not affect the amount of taxes that were due and payable for the fiscal year beginning

on the [July 1, 2014]. The assessed value on the assessment rolls completed for each of the years from [2016] to [2020] shall be subject to the limitation on increases provided in paragraph (a) of this subdivision. Notwithstanding section fifteen hundred twelve of the charter of the city of New York and any other provision to the contrary, the commissioner of finance is authorized to correct as provided in this paragraph the assessed value of affected real property appearing on the assessment roll completed in [2015]. Such correction shall be made no later than ninety days after the effective date of a local law adopted in accordance with this section.”

RPTL 1805 is entitled “Limitation on increases of assessed value of individual parcels.” RPTL 1805 (3) provides the limitation on increases of assessed value for properties classified in class 4, in relevant part, as follows:

“If the assessment appearing on an assessment roll . . . is greater than the assessment appearing on the previous year's assessment roll the assessor shall determine a transition assessment for such parcel for the first assessment roll on which such greater assessment appears and for each of the succeeding four assessment rolls by computing the difference between such greater assessment and the assessment appearing on such previous year's assessment roll and adding the following percentages of such difference to the assessment appearing on such previous year's assessment roll: in the first year, twenty percent; in the second year, forty percent; in the third year, sixty percent; in the fourth year, eighty percent; and in the fifth year, one hundred percent . . .”

Since an increase in assessment must be phased-in over five years, multiple transitional values may be applied to the parcel in any given tax year which may influence the parcel's actual AV and transitional AV (*see* RPTL 1805 [3]). The DOF is required to

use the lower of the actual AV or the transitional AV as the basis for the property's tax bill
(see *id.*).

RPTL 1805 (5) provides, in pertinent part, as follows:

“Nothing in this section shall prevent placing on the assessment roll new property, additions to or improvements of existing property or formerly exempt property or the full or partial removal from the roll of property by reason of fire, demolition, destruction or new exemption and such increase or decrease in value shall not be included in the computation of the limitations prescribed by this section . . .”

Pursuant to RPTL 1805 (3), increases in AVs of class 4 properties resulting from changes in market conditions are phased-in over a five-year period at 20% of the change each year. However, pursuant to RPTL 1805 (5), when the change in AV is due to physical increases or physical decreases, the corresponding change in AV will not be phased-in, but, instead, the full value of the change is added in the year in which it applies. In other words, the portion of the increase attributable to the physical changes may be entered immediately, while the portion of the increase attributable to the equalization changes must be phased-in over a five-year period (see *Matter of Meadowbrook Plaza Assoc. v Board of Assessors*, 174 AD2d 744, 745 [2d Dept 1991]).

The DOF employs formulaic methodology to calculate and implement a physical decrease, which is referred to as a “demolition.” As explained by respondent, first, physical decrease is attributable only to the preexisting building on the property, not the land portion of the property, because the portion of the property that is affected by a demolition is the

structure on the land. Based on the extent of the demolition, the DOF determines the percentage of the building that is affected. The percent of the physical decrease is determined based on the percentage of the existing building that remains after the demolition. The decrease in AV due to a demolition is then apportioned among the base and transitional AV of the prior five years' building AVs (not total AVs).

The formula used by the DOF to phase-in the demolition is $(1 - [\text{physical decrease}/\text{prior year actual building AV}])$. This formula represents the percent of the remaining building that is used to decrease the base and prior year's changes by the same percent. In a case of a physical increase, the full value of the increase is applied to the current year's transitional AV. Respondent maintains that the DOF follows the limitations set forth in RPTL 1805 to apply changes in assessment from year to year, and with respect to properties that were affected by Sandy, the DOF additionally follows RPTL 1805-a to apply changes in AV resulting from Sandy.

Respondent sets forth that with respect to the property, in the 2013/14 and 2014/15 tax years, the DOF, in its assessments of the property, implemented a physical decrease due to storm damage and a physical increase based on rehabilitation of the damage. Pursuant to RPTL 1805 and 1805-a, in the 2013/14 and 2014/15 tax years, the DOF completed its assessment of the property and implemented a physical decrease due to damage to the property caused by Sandy and a physical increase based on the rehabilitation of the damage after the storm.

As discussed above, in the 2013/14 tax year, the DOF assessed a physical decrease in the amount of \$1,704,713 for the property. Based on the DOF's calculation method, the ratio used to phase in the physical decrease of \$1,704,713 is .706655 (derived from $1 - [\$1,704,713 / \$5,811,300]$). This ratio was applied to the base AV and the historical building AVs that were being phased-in.

Upon applying this ratio, adding the building transitional value of \$2,812,166 and land transitional value of \$1,617,911 yields a total transitional AV of \$4,430,077 for the 2013/14 tax year. The transitional AV of \$4,430,077, which reflects the implementation of the physical decrease in 2013/14, was also the taxable AV of the property for that tax year.

In the 2014/15 tax year, the sum of \$1,704,713 (equivalent to the prior year's demolition value) was added back in full in the transitional AV. The 2014/15 calculation of the DOF's transitional AV resulted in the transitional AV of \$7,258,922. The DOF determined that the transitional AV of \$7,258,922, which includes the physical increase, was also the taxable AV for the property for that tax year.

Petitioner challenges the DOF's transitional AVs in 2013/14 and 2014/15, arguing that the DOF did not calculate them pursuant to RPTL 1805-a. Both petitioner and respondent agree that a decrease of \$1,704,713 should apply in the 2013/14 the tax year and that an equivalent amount should be added, by way of a physical increase, in the 2014/15 tax year. However, petitioner and respondent utilized different methodologies to calculate

and implement the physical changes to the years affected, thereby reaching different assessed values in these years.

Contrary to petitioner's contentions, with respect to the issue of the implementation of the physical increase and decrease to the property, the DOF did not violate RPTL 1805 and 1805-a when it calculated the physical decrease in the tax years at issue. Petitioner argues that the DOF improperly "phased-in" the physical decrease in violation of RPTL 1805. However, the implementation of the physical decrease is not phased-in forward to future assessments (in the same way that transitional values are phased-in), but, rather, it is a retroactive proportional reduction of the equalization values that are being phased-in. When a physical decrease occurs, the value of the preexisting structure on the property is reduced by a certain portion, depending on the extent of the damage. The DOF determines the portion of the damage and translates it to a percentage reduction of value. That percentage reduction in value is then attributed retroactively to the historical equalization values that are being phased-in. That is, in order to account for the current damage to the preexisting structure, the percentage of damage is proportionally attributed backwards five years to reduce the equalization values that are being phased-in.

Petitioner argues that the formulaic methodology used by respondent is erroneous. Petitioner contends that there should be a one-time, full reduction in the year in which the decrease occurs. This is in contrast to the DOF's method of implementing a percentage reduction in the year in which the decrease occurs, and proportionally decreasing the

historical five-year equalization values that are being phased-in by the percentage decrease in value of the preexisting structure.

The rationale for the DOF's adjustment in this manner is that the values that are being phased-in, which were previously based on the full value of the preexisting structure, must be adjusted to address the loss in value to that structure. As respondent points out, the process of determining the percentage reduction in value and the proportional implementation of the reduction is highly technical and formulaic. Petitioner's calculation,⁷ on the other hand, is overly simplistic and fails to account for the various elements that the DOF includes in its formulaic calculation. Petitioner's transitional values do not reflect the ratio of the demolition decrease in building AV in the historical transitional building AVs that were being phased-in.

Respondent notes that the DOF's formulaic process has been used to determine all physical assessment decreases for over 40 years, and that the physical decreases for properties damaged by Sandy were implemented in the same manner as all other properties that have had physical decreases. "Interpretation of a statute by the agency charged with its enforcement is, as a general matter, given great weight and judicial deference so long as the interpretation is neither irrational, unreasonable nor inconsistent with the governing statute" (*Matter of Moran Towing & Transp. Co. v New York State Tax Commn.*, 72 NY2d 166, 173 [1988]; see also *Matter of Wegmans Food Mkts., Inc. v Tax Appeals Trib. of the State of*

⁷There was also a calculation error in petitioner's original table 4 and table 5. Petitioner acknowledged this, and submitted an amended table 4 and an amended table 5 (Doc #27).

N.Y., 33 NY3d 587, 594 [2019]). The DOF's formulaic process is rational and is not inconsistent with carrying out the legislative intent of RPTL 1805-a, which (as discussed above) was to address the application of physical changes to real property resulting from Sandy.

Thus, the court rejects petitioner's arguments and finds that the DOF did not erroneously apply RPTL 1805 or 1805-a, and that the assessments at issue were proper with respect to the calculations of the physical changes of the property caused by Sandy. Consequently, petitioner's motion, insofar as it seeks partial summary judgment, must be denied, and respondent's cross motion for summary judgment on the issue of its proper application of RPTL 1805-a must be granted⁸ (*see* CPLR 3212 [b]).

Conclusion

Accordingly, petitioner's motion: (1) is granted insofar as it seeks an order consolidating all of the petitions filed under index numbers 401621/12, 405892/12, 405181/14, 404699/15, 400243/16, and 402533/17, under one caption and index number 401621/12, pursuant to CPLR 602 and RPTL 710; (2) is granted insofar as it seeks an order directing that it was entitled to a \$69,439,52 tax abatement pursuant to RPTL 467-h and since it only received a \$67,093 tax abatement pursuant to RPTL 467-h, it is entitled to an

⁸Petitioner states that respondent's cross motion should not result in the dismissal of its petitions in their entirety since only the question of the erroneous application of RPTL 1805-a is at issue in its motion and respondent's cross motion at this time. Petitioner asserts that upon the denial of its motion, it will still have viable claims of overassessment, which include questions of fact relating to the income, expense and capitalization ratios used by the DOF to arrive at the market value of the property.

additional abatement of \$2,346.52; and (3) is denied in its entirety insofar as it seeks partial summary judgment with respect to its claim that the DOF erroneously applied RPTL 1805-a, that its AVs should be changed, and that it should receive refunds of claimed overpayments. Respondent's motion for summary judgment on the issue of its proper application of RPTL 1805-a is granted.

This constitutes the decision and order of the court.

E N T E R,



J. S. C.

KINGS COUNTY CLERK
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