

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

P R E S E N T: HON. BRUCE E. TOLBERT, J. S. C.

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SCARSDALE COMMITTEE FOR FAIR
ASSESSMENTS,

Petitioner,

-against-

NANETTE ALBANESE, TAX ASSESSOR OF
THE TOWN/VILLAGE OF SCARSDALE;
TOWN/VILLAGE OF SCARSDALE;
THE TOWN/VILLAGE MAYOR AND BOARD
OF TRUSTEES

Respondents,

Decision and Order
Index # 50542/17

For Review Pursuant to Article 78 of the
Civil Practice Law and Rules

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The following documents numbered 1-99 were read on Petitioner's
Article 78 Proceeding and Respondents' Motion to Dismiss et.al. :

DOCUMENTS NUMBERED

Verified Petition Pursuant to CPLR Article 78 and Exhibits	1	-	52
Respondents' Motion to Dismiss, Affirmation and Exhibits	53	-	62
Respondents' Memorandum of Law			63
Petitioner's Memorandum of Law in Opposition, Affidavit and Exhibits	64	-	66
Reply Affirmation, Affidavit and Exhibit	67	-	69
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Motion to Intervene and Exhibits	71	-	92
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At the core of this case is the Town and Village of Scarsdale a desirable suburban community in Westchester County, New York located in close proximity to Manhattan. The bit of history and background is pertinent to the instant legal issues being sought for determination. In 2011, the Board of Trustees directed the Village Manager and the Assessor to prepare a request for proposals to conduct a revaluation of all properties located in Scarsdale. After the solicitation, two bidders remained of which Tyler Technologies was chosen. For this mass appraisal Scarsdale further decided to hire J.F. Ryan Associates Inc., as the project monitor.

Commencing in 2012, approximately 42 years after the last assessment, Town and Village wide of Scarsdale sought for the implementation for the June 1, 2014 tentative roll. Immediately after the publication of the tentative assessment roll, substantial criticism came, which alleged that the tax burden was shifted to the wealthier or more substantial properties situated in the most desirable neighborhoods of Scarsdale.

Thereafter, Scarsdale officials then decided to undertake an update to the assessment roll in 2016. Because of the prior significant data collection for the 2014 revaluation, the need for a full scale revaluation was not required. When the selection was down to two prospects, in light of the prior revaluation and the complaints that festered, the municipality chose differently. For the next revaluation Scarsdale decided not to go with Tyler Technologies, but instead hired J.F. Ryan who as monitor of the 2014 appraisal seemed like a logical and sound choice.

After the publication of the 2016 assessment roll, again criticism came. One of the arguments was to go back to the 2014 assessment roll. With this bold argument, Scarsdale looked to the New York State Office of Real Property Tax Service (ORPTS) for an opinion on this specific "roll back". The opinion of ORPTS was read into the record at a public meeting. The opinion in pertinent part indicates that Scarsdale has no authority to set aside a newly completed and filed assessment roll based on a revaluation and substitute "back" to a prior assessment roll. Specifically one resident urged the that the Board seek special legislation from the State Legislature and Governor to invalidate the revaluation. The Board declined this proposed political remedy, and this individual did in fact facilitate the commencement of underlying Article 78 Petition. It should be noted that said individual did in fact file an individual case pursuant to Real Property Tax Law, Article 5 and was granted a reduction to her property taxes/

The Article 78 Petition, filed by Petitioner which identifies itself as a "committee", requests varied relief, but that which serves to lower the real property taxes of many Scarsdale residents. The committee is made up of approximately 150 disgruntled property owners in Scarsdale. Other property owners sought intervention in the action and there was a consent to have them intervene. Those Intervenor do not align with the arguments of the Article 78 proponents. A Stipulation was in fact entered allowing the Intervenor to be heard in this action. The Petitioner largely complains of the revaluation process and its methodology. However, what they are essentially seeking is a rollback, forcing Scarsdale to use the first revaluation.

Somewhat confusing is this Petition to this Court which sits as the specialized Tax Certiorari Part. In this role, this Court has seen thousands of cases where real estate taxes are being challenged on a property by property basis, pursuant to Real Property Tax Law Article 7. Article 78 Petitions are used relatively frequently in matters of selective reassessment, which clearly is not the case here. The Petitioner filed a petition pursuant to Article 78 seeking a Judgment against the Town and Village of Scarsdale and related Respondents.

In response the Respondents ("Municipality") filed a Motion to Dismiss. The Municipality asserts a very strong defense of the Action brought by Petitioner and sets forth a comprehensive analysis of these proceedings, whereby urging this Court's dismissal of the Article 78 Petition.

The motion to Dismiss, filed pursuant to Civil Practice Law and Rules Section 3211(a)(4) and (a)(7) and (10), outlines the reasons for which the dismissal of this Article 78 Proceeding should be granted.

The most glaring issue to this Court, as to the basis for dismissal is standing, or lack thereof. Pursuant to General Municipal Law Section 51, as a claim that seeks to prevent purported harm to the public, there is in fact a requirement as to who can plead. Clearly stated it is a person or corporation who is a taxpayer. However, this formed committee, the Scarsdale Committee for Fair Assessments, is not a property owner in its own right, nor is it an incorporated entity. Pursuant to the statute, the movant under this statute must be a taxpayer who is liable to pay taxes, and such is not the case. It is a group of like minded people who allege harm based upon an unfair assessment and the unfair requirement to pay higher real estate property taxes. As a committee they do not have standing by which to plead. Moreover, when one moves under General Municipal Law Section 51 there is a requirement for the posting of a bond, of which none was effectuated. Such failure in and of itself can enable this Court to grant the dismissal of the Article 78 as a matter of Law.

Another valid basis for dismissal is that the movant in this Article 78 proceeding entirely failed to name the School District and the County of Westchester as parties to the proceeding. Clearly, any tax revenue that would be refunded would need to be cleared by and paid with funds from these entities, who were not noticed. See, Haddad v. City of Albany, 6 A.D. 3d 1018(3rd Dept. 2004). This failure, invalidates this action. In matters brought pursuant to Article 7 RPTL proceedings for Tax Certiorari these parties must be noticed by any action that is filed, and it is a fatal flaw of the action if not done.

Additionally, this Article 78 petition in and of itself fails to state a cause of action for which relief can be granted. Wanting something and having a legal preface to obtain such, clearly is not one in the same. That premise is not only stressed while one is studying in preparation of becoming an attorney, but it is a pillar by which lawyers must practice their craft. When parties bring Article 7 RPTL proceedings for Tax Certiorari, they come to this Court with data, documentation, preliminary appraisals and trial appraisals. In this Article 78, Petitioner's concept that something isn't "fair" is not enough. The idea that "we liked the first one better" is also not enough. There is a lack of substance and empirical data by what is presented by the movant in this matter. Clearly, there is a need of sound theory and objective data which is necessary to overcome the presumption regarding the validity of the challenged assessment. See, Abele v. Dimitriadis, 53 A.D. 3d 969 (3rd Dept. 2008). A vague argument is made challenging the revaluation protocol by failing to re-inspect all of the properties in the municipality for the purpose of setting forth a proposition that is baseless. Moreover, the blanket claim that the 2016 revaluation was deficient is in and of itself falsely conclusory. Just because the real estate taxes became higher by virtue of the second revaluation, does not mean that the second revaluation in and of itself is invalid.

Another argument made by the municipality in its Motion to Dismiss, is the idea by the movant to "Roll Back" the 2016 Tax Assessment by replacing it with the tax roll of 2015 which would be the tax roll immediately prior to this revaluation, is without any merit. The argument as proposed exists because this Committee thinks this is the remedy. To grant this relief sought by Petitioner would in fact cause severe disorder and confusion in public affairs and additionally is void of public policy. See, Hellerstein v. Town of Islip, 37 N.Y. 2d 1 (1975). Additionally chaos would disrupt by virtue of a roll back, by those who may want to grieve the 2015 assessment and would not be able to file grievances based on strict statutory timeliness deadlines.

This argument is also represented by the Intervenors who moved to intervene, and as noted above subsequently were brought into the case by stipulation. The Intervenors consist of eleven property owners of some of the larger homes in

Scarsdale. However, some of these intervenors in fact saw a raise in their real estate taxes with the 2016 assessment. Moreover, some have sought Article 7 relief as well. Missing from the Petitioner's Article 78, is that some of the Committee members may have sought relief to their taxes under regular Tax Certiorari proceedings and have been granted the relief of lower taxes. Moreover, the Committee as independent real estate tax payors could have all proceeded that way. A Roll Back serves the needs of some and not the whole, clearly against any public policy agenda of any municipality including Scarsdale.

The last attack of the Article 78 Petition is the claim of Equal Protection and that it has been violated by the use of this 2016 revaluation. Again, this Court is perplexed by this. This claim would be valid if there was any form of selective treatment by the municipality. In such a case an injured party must allege that the Petitioner as compared with others similarly situated was in fact selectively treated because of race, religion, intent to punish or intent to injure. This is not an Equal Protection Argument. It was a tax property revaluation that was done to an entire and vast group of property owners within a specific municipality. The argument that the Scarsdale violated the Equal Protection Clause, as claimed by the petitioner, is quite harsh. This argument proposed is squarely placed outside the framework of any rational interpretation of the Constitution. In the context of a Selective Enforcement Claim, the Petitioner, compared with others similarly situated was not selectively treated and such treatment was not based on impermissible considerations like, race, religion, punishment or cause of injury. See, Zahra v. Town of Southold, 48 F. 3d 674 (2d Cir.1995)

Additionally this argument also fails as claim within the context of the New York State Constitution. In Brown v. State of New York, 89 N.Y. 2d 172 (1996) the Court established a narrow remedy against New York for violations of the Equal Protection Clause only when a Party has been unable to allege any other potential claim or cause of action. Obviously as outlined this argument is inapplicable in the case at bar. The equal protection claim supported in the framework of our Federal and State Constitution was not meant to be merely raised nor used flippantly, when other arguments do not work.

What is troubling this Court upon the review of this matter, is that all of the residents of Scarsdale were treated the same in the sense of the revaluation being the method of the assessment of the tax roll. There is neither random nor disparate treatment under this fact pattern. The nature of an Article 78 proceeding under this fact pattern is daunting.

Article 7 of the Real Property Tax Law, governs tax grievances for property

owners. That is the proper channel and venue by which to challenge the assessment and its fairness. Full opportunities are given to litigants to file their own appraisal of the property in question and in addition the use of comparable properties and their assessments come into play. It has been said that Article 7 of the RPTL is in fact the exclusive procedure to review a property assessment, unless otherwise provided by law. See, Niagara Mohawk Power Corp. V. School District of City of Troy (59 N.Y. 2d 262(1983)). When those cases are presented, they are fully assessed by the Court, with a right to a trial on the issues if not addressed in a settlement between the taxpayer and the municipality.

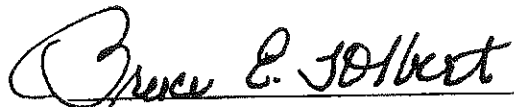
Tax assessments are in fact unique in the law. It is a basic fact that everyone hopes to pay no more their fair share of taxes. These premises are situated in a Municipality that is highly sought after in terms of its desirability for a panoply of reasons. The Article 7 Petitions if brought by individuals, would have clearly and fairly addressed these issues in the forum that it was meant to be addressed in.

Upon full review, this Court finds that there is no basis pursuant to Article 78 to this Court to require the municipality to act in a manner as to the relief sought by the Petitioner.

It is Hereby ORDERED, that Petitioner's Article 78 Petition is denied in its entirety and Respondents' Motion to Dismiss is granted; and it is further

ORDERED, That the foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
January 5, 2018


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