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Attorney: Taxpayers who have been over assessed: How to challenge their assessment successfully

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Generally speaking, a tax certiorari proceeding is the legal process by which a real property tax assessment is reviewed. Every case is started the same way; a grievance is filed against the taxing municipality, and the complaint is reviewed by a board of assessment review. If the assessment is not reduced, or not reduced to the satisfaction of the taxpayer, the taxpayer may then take their dispute to the courts for judicial review of the board of assessment review's decision. The judicial review proceedings are brought under Article 7 of the Real Property Tax Law.

Every year, tens of thousands of grievances are filed and thousands of disputes find their way into the court system for judicial review. The Court of Appeals recently weighed in on this issue in Matter of Board of Mgrs. of French Oaks Condominium v Town of Amherst, (2014 NY Slip Op 2971).

The respondent, a residential condominium, was assessed by the appellant town at a value of $5.176 million for the 2009 - 2010 tax year. The respondent challenged the assessment as excessive**. Subsequent to filing the challenge for 2009 - 2010 the respondent also challenged the assessment for 2010-2011 on the same grounds. The parties stipulated to allow a referee to determine the 2009 -2010 challenge and the result would apply to both actions.

In support of its action the board submitted an appraisal report that valued the property at $4.265 million, the town submitted an appraisal value of $5.080 million. After a hearing the referee determined the assessment should have been $4.353 million. The Supreme Court ordered the town to amend its rent rolls and return any overpayments to the board.

The town appealed and the appellate division affirmed with two justices dissenting. The town appealed to the Court of Appeals as of right.

Before getting into the specifics of this case, the Court of Appeals set the ground rules for all RPTL article 7 reviews. "In an RPTL article 7 tax certiorari proceeding, "a rebuttable presumption of validity attached to the valuation of property made by the taxing authority."" A taxpayer has the "initial burden of coming forward with substantial evidence that the property was overvalued by the assessor." In an RPTL article 7 hearing the taxpayer must "demonstrate the existence of a valid and credible dispute regarding valuation." If a taxpayer is able to meet this burden, the presumption in favor of the taxing authority disappears and the entire record must be weighed to determine whether the property has been overvalued. If the taxpayer is unable to meet this burden the taxing authority has no obligation to prove the correctness of its valuation.

In this case, the court determined that the condominium did not meet its initial burden to demonstrate that the property was over assessed, and so ruled against the condominium. The court determined that the condominium did not meet its burden because the condominium's appraisal "did not furnish essential information" and "failed to disclose the factual underpinnings and sources that justifies the appraiser's calculations." The appraisal has to detail the "facts, figures and calculations supporting the appraiser's conclusions" Failure to do so denies opposing counsel the opportunity to effectively prepare for cross-examination." The condominium's appraiser failed to provide sufficient documentation for his assumptions and admitted that many relevant figures were based on his "personal exposure." Any figures used in an appraisal must be "provable" at trial and not based upon personal knowledge. What the court did do, however, was set up a blueprint for taxpayers who have been over assessed to challenge their assessment successfully.

**There are four grounds upon which a tax payer can challenge an assessment. 1 - The assessment is excessive. 2 - The property is assessed at a higher percentage of its full market value than other properties of the same class. 3 - The property was unlawfully assessed, for example it is outside the boundaries of the taxing authority. 4 - The property is misclassified.

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