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SHORT FORM ORDER
SUPREME COURT OF THE STATE OF NEW YORK
Present: Hon. F. Dana Winslow,
Justice.

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In the matter of the application of

HARRY BRIFFEL, et. al,.

Petitioners,

–against–

COUNTY OF NASSAU, BOARD OF ASSESSORS OF NASSAU COUNTY, AND NASSAU COUNTY ASSESSMENT REVIEW COMMISSION,

Respondents.

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IAS /TRIAL PART 16

Index No. 3418/2003

Motion Date: 10/31/03

Seq. # 001,002,003

The following papers having been read on the motions: [numbered 1-11]

Notice of Petition and Affirmation in Support.. 1
Verified Answer and Affirmative Statement of Facts.. 2
Respondent's Memorandum of Law.. 3
Affirmation of Glen Borin, Esq. in support of Answer............................... 4
Notice of Amended Petition... 5
Amended Verified Answer.. 6

Notice of Motion for Partial Summary Judgment.. 7
Memorandum of Law in Support of Motion.. 8

Notice of Cross Motion to Dismiss the Amended Petition...................................... 9
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And arguments presented on December 4, 2003..

This petition and motion for summary judgment are brought by the owners of forty six Class I parcels located in Nassau County who are aggrieved as a result of the implementation of the Nassau County Property Tax Reassessment Program mandated by

the consent decree in the case of Coleman v. Nassau County, Index No. 30380/1997.

The Coleman decree required that property taxes for all Class I properties in Nassau County be based on appraisals of those properties at "full market value." This market-value-based approach represented a major departure from an antiquated system under which residential property appraisals bore little or no relationship to market realities. For those owners whose properties had been historically under-valued, this new approach resulted in the appraised values of their properties being increased, and in some cases, substantially. However, a principal goal of the Reassessment Program was to correct the problem of under-valuation which was alleged, in Coleman, to be having a discriminatory impact upon property owners in lower income areas. Because "high-end" properties were being appraised below market value, it was argued, "middle" and "low-end" property owners were being forced to bear an unfair proportion of the total tax burden. In the course of negotiating the Coleman consent decree, the competing equities inherent in this mass re-appraisal effort were carefully considered and weighed by Representatives of the plaintiffs, the County of Nassau, The People of the State of New York, and the People of the United States. The possibility of phasing in appraisal increases to full market value was considered and discussed at length by these parties but that strategy was ultimately rejected so that an inequitable situation could be expeditiously remedied in a manner that would assure that the overassessed no longer paid a portion of their tax bill for the underassessed.. The signatories to the decree ultimately agreed, with the court's approval, that justice and fairness warranted the adoption and immediate implementation of a reassessment process that required all properties within the County to be appraised at full market value. This requirement, it was recognized, would inevitably result in substantially increased appraisals for a few, as a necessary consequence of achieving a more equitable appraisal process for all.

The parties to the Coleman decree expected that the interests of those property owners whose assessments might be increased to an excessive degree, as a consequence of re-appraisal to full market value, would be protected by **RPTL section 1805(1)**.That statute limits the increase of property tax "assessments" on Class I properties to 6% per annum, and not more than 20% over any five year period. The consent decree contemplated that some properties would, in fact, fall within the protection of **RPTL 1805 (1)** as a result of the reappraisal project, and that RPTL 1805 (a) would be applied to those properties as required by law. However, since such application of the statutory cap would permit some properties to continue to be under-assessed, the decree obligated the County to keep the percentage of RPTL-1805-protected properties to a minimum (.5%). This obligation did not alter the fundamental requirement that *all* properties be appraised at full market value, but it did provide flexibility for the County to exercise it's statutory power as a "special assessing unit" to reduce the percentage which the County applies to

"full market value" of all properties in order to arrive at "assessed value." Assessed value, in the parlance and practice of the County, both before and since the Coleman decree, meant a percentage (called "fractional assessment" or "equalization rate") of full market value.

The fifty-six parcel owners in this proceeding, together with over 13,400 others in related proceedings also pending before this court, argue that they come within the protection of **RPTL 1805(1)** because the appraisals of their properties were increased more than 6% in order to bring them to "full market value." However, the statute expressly places limits on "assessment" increases, without reference to "appraisals." Petitioners argue that "appraisal" and "assessment" are synonymous, such that an increase of more than 6% per annum in the appraisal violates the statute's cap on assessment increases. The County continues to maintain that "assessment" means a percentage of "appraised value" and that the statute expressly places a cap only on the "assessment," not the "appraisal" from which the assessment is derived. The seminal issue for the court's determination on the petition, the petitioner's motion for summary judgment, and the County's cross motion to dismiss is whether or not **RPTL 1805(1)** operates to place a cap on appraised values, thus requiring appraisals at "full market value" to be phased-in.

The court has considered the County's procedural arguments: that this proceeding should have been brought as an Article 7 proceeding, that this proceeding is premature, and that summary judgment is not an available remedy. Here, the petitioners are not challenging the County's appraisals of full market value or the assessments as such, but only the County's application of **RPTL 1805(1)** to those values. A proceeding under Article 78 is, therefore, available. *See*, **LIU v. Board of Assessors**, 105 AD2d 747. Nor is this proceeding premature. The review process required factual determinations that would not have affected the Board's interpretation of the RPTL or the outcome of the dispositive legal issue presented in this proceeding. *Contrast*, **Levy v. Huntington Hospital**, 45 AD2d 848. In any event, the review process is now complete and petitioners have not demonstrated any changes in their appraisals that would effect the outcome of this proceeding. Finally, while the summary judgment motion may be redundant insofar as it seeks the same relief as does the petition, the motion is not prohibited by statute and, in fact, the additional memoranda of law generated by the motion have been helpful to the court in making its determination. Having determined that the procedural objections and defenses are without merit, the court now turns to the substantive issue at hand; the meaning of "assessment" in **RPTL 1805(1).**

RPTL section 102(2) defines the word "Assessment" as "a determination made by assessors of the *valuation* of real property." However, the word "valuation" is not defined in the statute. The question remains: does the term "valuation" refer to appraised value or

assessed value? Petitioners argue that "valuation" means "appraised value" based on the Court of Appeals decision in **Matter of New York State Dormitory Authority v. Board of Trustees of Hyde Park Fire and Water District**, 86 NY2d 72, in which "assessment" under **RPTL section 102(2)** was stated to mean "an estimate of property value upon which a tax is ultimately based." *Id.* 78. In that case, however, the Court was called upon to construe the meaning of the word "assessment" within the context of the Public Authorities Law and, in so doing, determined that the RPTL was not applicable. The Court's definition of the meaning of "assessment" under the **RPTL 102** did not contemplate what the meaning of assessment would be in the case of jurisdictions in which assessments are based on a fraction of full value. The Court of Appeals had no reason to consider whether or not "assessment" means "appraised market value" where, as here, the "value upon which a tax is ultimately based," in practice, is not full market value, but something less. The Court of Appeals recognized the distinction between "appraisal" and "assessment" when it explained in **41 Kew Gardens Road Associates v. Tyburski**, 70 NY2d 325, 329, that "special assessing units," such as Nassau County and New York City, "calculate real property taxes by determining the full value of each parcel, fixing the ratio of full value to assessed value for each class, and, finally applying a uniform tax rate for each class of property to the assessed value producing the tax due...[T]he accurate determination of the full value of the property to be taxed is the starting point for the assessor's calculations."

Petitioners correctly state that the function of the court is to construe statutes in accordance with the plain language of the statute and, to the extent that language is not clear, in accordance with the legislative history. **Weingarten v. Board of Trustees of the NYC Teachers' Retirement System**, 98 NY2d 575. However, statutes *in pari materia* must be construed together as elements of a single statutory scheme so as to ensure consistency in their application and conformity with the legislature's overall intent. **McKinney's Statutes section 221(a) and (b); Khela v. Neiger**, 85 NY2d 333, 336-37. **RPTL Section 1805(1)** provides; "The assessor of any special assessing unit shall not increase the assessment of any individual parcel classified in class one in any one year, as measured from the assessment on the previous year's assessment roll, by more than 6 percent..." A consideration of **RPTL section 1805(1)** together with related statutes reveals that "assessment" and "appraisal" are two distinct concepts in the statutory scheme. For example, **RPTL section 922**, the *Property Taxpayer's Bill of Rights* (as amended 1997) requires disclosure on every tax bill of the "full value of the parcel," the applicable uniform percentage of value, and "the total assessed value of the parcel." Once again, a distinction is drawn between appraised market value (the starting point) and "assessed value"(the final value taxed). Likewise, **RPTL 502**, pertaining to the form of the assessment roll, requires inclusion of both the "total assessed valuation" and the "full value of the parcel." In the light of these statutes, the legislatively intended meaning of

"assessment" as "fractional assessment, and not "full market value" becomes clear.

Petitioner mistakenly contends that manipulation of the fractional assessment was a contrivance of the parties in Coleman designed to frustrate the purposes of **RPTL 1805(1).** In fact, special assessing units have had an absolute statutory right to fix the fractional assessment, without legislative approval, since 1981, when **RPTL 306** (requiring assessments at full market valuation) was repealed and **RPTL 305** (enabling fractional assessments) was enacted. Fractional assessments are permitted so long as they are uniformly applied. The legislative history and the administrative history of New York City and Nassau County as "special assessing units," suggests that a principal – if not the sole – purpose of utilizing fractional assessments is to enable these units to capture greater full market value increases than **RPTL 1805(1)** would permit if properties were assessed at 100% of full market value. New York City has adjusted its fractional assessment ratio (equalization rate) downward several times, from 28% in 1981 to 8% in 1991, precisely in order to avoid the "caps" imposed by **RPTL 1805(1)** and maintain an up-to-date, market-value-based property tax roll. (See affidavit of Glenn Borin of June 3, 2003). Nassau County is now doing the same. Contrary to the contention of Petitioners, the Assessor, not the legislative body, possesses the authority to determine the uniform percentage of value to be applied in order to arrive at the "assessment." **7 Op.Counsel State Board of Equalization and Assessment, No. 96.**

In this case, the Nassau County Assessor's reduction of the fractional assessment or "equalization rate" from 2.11% in 2002 to 1% for the new 2003 market-value-based tax roll was not only within its statutory right and authority, but was done with the approval of the *New York State Office of Real Property Services [ORPS]*, the agency that oversees property valuations in New York State. Not insignificantly, the ORPS publication "Fair Assessments – A Guide for Property Owners (www.orps.state.ny.us/pamphlet/fairassessments.htm) also makes clear that "assessment" and "appraisal" are two different concepts. That publication informs the taxpayers that it is only where "assessments are maintained at a uniform percentage of 100, [that] your assessment is market value....If your community is assessing at a fractional percentage of market value, your assessment should be based upon the percentage being used throughout the community." This court is required to give the ORPS construction of the term "assessment" serious deference. *See,* **Matter of Gruber v. New York City Department of Personnel**, 89 NY2d 25.

Based upon relevant pronouncements of the Court of Appeals, basic principles of statutory construction, legislative and administrative history, and the construction given the term "assessment" by ORPS, this court concludes that in the case of "special assessing units" authorized to utilize fractional assessments, "assessment" means "fractional

assessment," and not "full market value" or "appraisal," for purposes of applying **RPTL 1805(1).** This section places a cap on "assessments" and "assessments" only, by its express terms and legislative intent.

Petitioners correctly point out that **RPTL 1805(1)** was enacted to offer protection to taxpayers from precipitous and excessive real property tax assessments. The statute defines the meaning of "excessive" by virtue of its 6% and 20% caps on increases in "assessments," measured form the previous years' assessment rolls. Beyond these protections, nothing in **RPTL 1805(1)** requires the phasing in of appraisals at full market value. The Coleman-mandated shift to a "full market value" system of appraisal will inevitably result in increased appraisals, assessments and taxes for some people whose appraisals and assessments were historically undervalued, in order to achieve a tax roll that is fair and equitable, including the parties in this action, all present at the December 4, 2003 conference stated that the full market value or the market value of the Class I Nassau taxpayers was as fair and accurate as is capable of a mass appraisal, some using adjectives such as excellent and superb to describe the result. If the fair market value determination is fair then nothing in the legislative history or language of **RPTL 1805(1)** can be construed to sanction the continuation of a pre-existent inequity.

Accordingly, the petition and petitioner's motion for summary judgment are **denied**, and the cross motion for an order dismissing the petition is **granted**.

This constitutes the order of the court.

Dated: December 9, 2003

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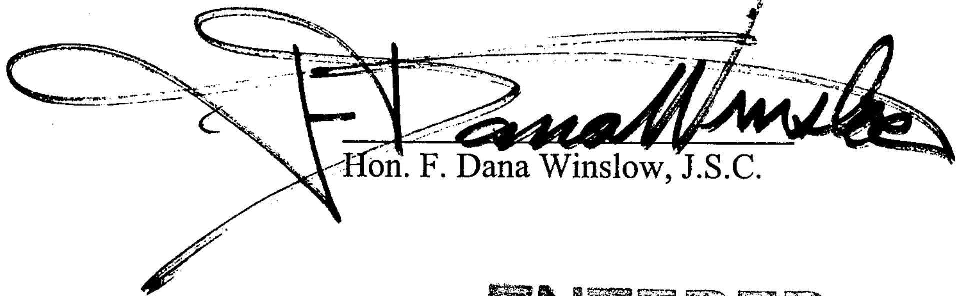

Hon. F. Dana Winslow, J.S.C.

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