

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

572.1

CA 11-02058

PRESENT: SCUDDER, P.J., CENTRA, LINDLEY, SCONIERS, AND MARTOCHE, JJ.

IN THE MATTER OF FFT SENIOR COMMUNITIES, INC.,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

TOWN OF CANANDAIGUA, BOARD OF ASSESSMENT REVIEW
FOR TOWN OF CANANDAIGUA AND COUNTY OF ONTARIO,
RESPONDENTS-APPELLANTS.

HISCOCK & BARCLAY, LLP, ROCHESTER (JAMES S. GROSSMAN OF COUNSEL), FOR
RESPONDENTS-APPELLANTS.

BIERSDORF & ASSOCIATES, P.A., MINNEAPOLIS, MINNESOTA (DAN BIERSDORF OF
COUNSEL), FOR PETITIONER-RESPONDENT.

Appeal from an order of the Supreme Court, Ontario County
(Kenneth R. Fisher, J.), entered December 20, 2010 in a proceeding
pursuant to RPTL article 7. The order reduced the tax assessments for
petitioner for the years 2006-2007, 2007-2008, and 2008-2009.

It is hereby ORDERED that the order so appealed from is
unanimously affirmed without costs.

Memorandum: Respondents appeal from an order in which Supreme
Court reduced the tax assessments of petitioner for the tax years
2006-2007, 2007-2008, and 2008-2009. Both respondents and petitioner
presented expert testimony regarding the highest and best use of the
property. We note that, in this bench trial, although our authority
is as broad as that of the trial court (*see Don Vito v State of New
York*, 182 AD2d 1070, 1071), we nevertheless will not disturb the
decision of the fact-finding court on appeal unless it is obvious that
the court's conclusions could not have been reached under any fair
interpretation of the evidence (*see Farace v State of New York*, 266
AD2d 870, 870). We conclude that the court properly applied the
principles enunciated in *Matter of Miriam Osborn Mem. Home Assn. v
Assessor of City of Rye* (80 AD3d 118) with respect to the entrance
fees charged by petitioner and that, under the circumstances, there is
no reason to disturb the court's determination with respect to the
assessment reductions.

Entered: June 8, 2012

Frances E. Cafarell
Clerk of the Court