

**416 Mgt. LLC v Tax Commn. of N.Y.**

2019 NY Slip Op 30697(U)

March 19, 2019

Supreme Court, New York County

Docket Number: 200013/2013

Judge: Lori S. Sattler

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

-----X  
**416 MANAGEMENT LLC,**

**Petitioner,**

**Index Nos. 200013/2013  
250012/2015**

**-against-**

**DECISION AND ORDER**

**THE TAX COMMISSION OF NEW YORK and  
THE COMMISSIONER OF FINANCE OF THE CITY  
OF NEW YORK,**

**Respondents.**

-----X  
**LORI S. SATTLER, J.S.C.:**

In this tax certiorari proceeding, 416 Management LLC (“Petitioner”) moves for an order allowing it to amend and/or supplement its appraisal pursuant to 22 NYCRR 202.60(h). The Tax Commission of the City of New York and The Commissioner of Finance of the City of New York (“Respondents”) oppose the motion and cross-move to dismiss the 2013/14 and 2015/16 proceedings with prejudice. Respondents further assert that a preclusion order is warranted with respect to Petitioner’s appraisal due to the appraiser’s alleged lack of qualification. Petitioner opposes the cross-motion.

Petitioner owns the property located at 416 Lafayette Street, designated on the City of New York tax map as New York County, Block 545, Lot 46 (the “Property”) which operates as a 41-unit rental building. Petitioner filed and served the applications for the tax assessment review proceedings for 2013/14 and 2015/16 tax years in a timely matter as required by 22 NYCRR 202.60. Petitioner moved this case to the active calendar by filing Audit Income and Expense Reports. Petitioner filed a Request for Judicial Intervention for the 2013/14 tax year in 2015 and for the 2015/16 in 2017. After multiple conferences, the parties entered into a Scheduling Order

dated February 21, 2017, which set the initial appraisal exchange for September 12, 2017. That date was adjourned on three separate occasions by revised Scheduling Orders. The parties exchanged initial appraisals on January 8, 2018. Petitioner contends that at the time of the initial appraisal exchange, both Petitioner and Respondents realized that Petitioner's appraisal did not include the income-capitalization approach to valuing taxable property and only used the sales comparable approach.

The day after the appraisals were exchanged, Petitioner moved for leave to amend its appraisal to correct the taxable status date listed in the initial appraisal. Petitioner argued that there was good cause to amend the initial appraisal because Petitioner's appraiser required gall bladder surgery, which led to errors in his report. The Court designated January 23, 2018 as the deadline for Petitioner's modified appraisal. The modified appraisal was submitted on January 29, 2018. The modified appraisal did not include the income-capitalization valuation method.

In July 2018, Petitioner declared its intention to seek court approval to supplement its modified appraisal to include the income-capitalization approach. Respondents opposed arguing that the modified appraisal should be stricken in its entirety. This motion to amend the modified appraisal followed.

22 NYCRR 202.60(h) provides that the Court may allow the filing of an amended or supplemental report upon good cause shown. Petitioner argues that while the sales comparable approach used in the initial and modified appraisals is probative in a normal real estate transaction, it is inferior to an income-capitalization valuation in a Real Property Tax Law Article 7 proceeding. Petitioner argues that for this reason there is good cause to permit the filing of an amended or supplemented report.

Petitioner's motion to submit a third appraisal is denied for failure to demonstrate good cause. The failure to adopt all possible appraisal theories is not sufficient cause to allow filing of a supplemental report based on an entirely different appraisal methodology, because inadvertence or oversight does not satisfy good cause (*Matter of Consolidated Edison Co. v State Bd. of Equalization & Assessment*, 83 AD2d 355 [3d Dept 1981], *affd* 58 NY2d 710 [1982]).

Respondents' cross-motion to dismiss the proceedings for the tax years 2013/14 and 2015/16 is granted to the limited extent set forth below. Pursuant to RPTL § 718(1):

. . . unless a note of issue is filed . . . within four years from the last date provided by law for the commencement of the proceeding, the proceeding thereon shall be deemed to have been abandoned and an order dismissing the petition shall be entered . . . except where the parties otherwise stipulate or a court or judge otherwise orders on good cause shown within such four-year period.

Petitioner's deadline to file a note of issue for the 2013/14 proceeding was October 25, 2017. To date, Petitioner has not filed a note of issue. Respondents argue that Petitioner's failure to file a note of issue within the requisite four years warrants dismissal. Respondents also argue that the 2015/16 proceeding should be dismissed because Petitioner's failed to comply with the So Ordered Scheduling Order requiring the filing of the note of issue for the two proceedings by September 25, 2017.

The Court of Appeals has held that RPTL § 718 is phrased in mandatory terms and the wording of the statute and its legislative history demonstrate that the four-year rule is to be rigidly applied (*Matter of Waldbaum's #122, Inc. v Board of Assessors*, 58 NY2d 818 [1981]; *Traditional Links, LLC v Board of Assessors of Town of Riverhead*, 128 AD3d 978, 980 [2d Dept 2015]). Petitioner is well beyond the four-year period provided for in the RPTL with respect to the 2013/14 year. Although the time set forth in the scheduling order has expired for the 2015/16 year, the four-year period has not run. Accordingly, the branch of Respondents' cross-motion

seeking to dismiss the 2013/14 proceeding is granted. Petitioner is directed to file the note of issue for the 2015/16 year within thirty (30) days after service of a copy of this Decision and Order with Notice of Entry. If no note of issue is filed within the prescribed time this matter will be deemed dismissed.

That branch of Respondents' motion seeking to dismiss Petitioner's proceeding and preclude Petitioner's modified appraisal on the grounds that the appraiser lacks qualification is denied as premature.

Accordingly, it is hereby;

ORDERED that Petitioner's motion to amend and/or supplement its appraisal is denied; and it is further

ORDERED that 2013/14 proceeding is dismissed; and it is further

ORDERED that Petitioner is directed to file a note of issue for the 2015/16 proceeding within thirty (30) days after service of a copy of this Decision and Order with Notice of Entry.

All matters not decided herein are hereby denied.

This constitutes the Decision and Order of the Court.

Dated: March 19, 2019

Enter:   
LORI S. SATTLER, J.S.C.