SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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In the Matter of the Application of

Kathleen Costigan, Patrick Kelly, Diane Kelly, Megan Corrao, Merle Paul-Barton, Michael Horn, Jennifer Sullivan, Matthew Maione, Alexandra Maione, Babgen Galstian, Helene Galstian, James Willis, George Papazicos, Kaliope Papazcios, Joseph Perini, Cathleen Perini, Eugene Drum, Eugenia Drum, John Clifford, Jin Lee, Susan Lee, Lilian Cassis, Paul Cassis, Virginia Demille-Raffa, Michael Sutton, Patricia Sutton, Joseph Holtzman & Adrienne Holtzman,

IAS Part 7
Index No. 610725/2020
Mot. Seq. No. 003

Petitioners,

-against-

DECISION AND ORDER

THE ASSESSOR OF THE VILLAGE OF GARDEN CITY AND THE BOARD OF ASSESSMENT REVIEW OF THE VILLAGE OF GARDEN CITY,

Respondents.

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LEONARD D. STEINMAN, J.

The following submissions, in addition to any memoranda of law and statements of facts submitted by the parties, have been reviewed in preparing this Decision and Order:

Petitioners' Notice of Motion & Exhibit.....1
Respondents' Affirmation in Opposition & Exhibits.....2
Petitioners' Reply.....3
Petitioner's 9/21/22 Letter & Attachments.....4
Respondent's 9/22/22 Reply Letter.....5

On May 22, 2020, a SCAR Hearing Officer rejected petitioners' challenge to the Residential Assessment Rate (RAR) utilized by the Village of Garden City to assess petitioners' single-family homes for the 2019/20 tax year. Petitioners had argued that the

RAR, which was set by New York State's Office of Real Property Tax Services (ORPTS) and utilized by the Village for all homes within its jurisdiction, was inflated. Petitioners brought this Article 78 proceeding to overturn the Hearing Officer's determination, which this court dismissed pursuant to a decision and order dated September 27, 2021 (the "decision"). Petitioners now move, pursuant to CPLR 2221(d) to reargue this court's decision. For the reasons set forth below, the motion is granted and, upon reargument, the petition is granted and these matters are remanded to a hearing officer for new hearings.

Pursuant to CPLR 2221(d), a motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion but shall not include any matters of fact not offered on the prior motion." CPLR 2221(d)(2). A motion to reargue is addressed to "the sound discretion of the court which decided the prior motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law, or for some reason mistakenly arrived at its earlier decision." *Beverage Marketing USA, Inc. v. South Beverage Co., Inc.* 58 A.D.3d 657 (2d Dept. 2009); CPLR 2221. But a motion for leave to reargue "is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented." *Mazinov v. Rella*, 79 A.D.3d 979, 980 (2d Dept. 2010), *quoting McGill v. Goldman*, 261 A.D.2d 593, 594 (2d Dept. 1999); *see also Ahmed v. Pannone*, 116 A.D.3d 802 (2d Dept. 2014).

In its decision, this court agreed with the hearing officer and the respondents that petitioners lacked standing to challenge the RAR in their SCAR proceedings. It was mistaken. *Cf. Fair Assessment Committee, LLC v. New York State Office of Real Property Services*, 65 A.D.3d 1143 (2d Dept. 2009).

To successfully challenge the equality of an assessment in a SCAR hearing, a petitioner must establish (i) the full market value of his or her property and (ii) the appropriate percentage of value to be used to determine the correct assessment. *Pace v. Assessor of Town of Islip*, 252 A.D.2d 88, 90 (2d Dept. 1998). "In a Small Claims Assessment Review proceeding challenging inequality of assessment, 'the homeowner is required to prove that his or her property is assessed at a higher percentage of full market

value than either (1) the average of all other property on the assessment roll or (2) the average of residential property on the assessment roll'." *Sofia v. Assessor of Town of Eastchester*, 294 A.D.2d 509 (2d Dept. 2002), *quoting Pace*, 252 A.D.2d at 90. An analysis of the applicable statutes and case law—including *Fair Assessment*—reveals that nothing in the law limits a petitioner's proof of the appropriate percentage of value solely to the RAR promulgated by ORPTS. Because effectively that is what the hearing officer did here, petitioners are entitled to new hearings.

The applicable statute concerning SCAR hearing procedures is RPTL §732 which provides in relevant part:

> The petitioner shall not be bound by statutory provisions or rules of practice, procedure, pleading or evidence. ... The hearing officer shall consider the best evidence presented in each particular case. Such evidence may include, *but shall not be limited to*, the most recent equalization rate established for such assessing unit, the residential assessment ratio promulgated by the commissioner pursuant to section seven hundred thirty-eight of this title, the uniform percentage of value stated on the latest tax bill, and the assessment of comparable residential properties within the same assessing unit.

RPTL §732(2) (emphasis added). As stated by the court in *Pace*, a SCAR claimant may adduce proof of the appropriate percentage of value in various forms, including the applicable equalization rate, the RAR, the assessor's statement of percentage or the assessments of comparable residential properties. *Pace*, 252 A.D.2d at 90. And as held in *Meola v. Assessor of Town of Colonie*, 207 A.D.2d 593, 594 (3d Dept. 1994), a SCARS hearing officer is not compelled to accept the RAR as the appropriate percentage of value.

The issue before this court has also been addressed at least twice before by trial courts, both of which concluded that a SCARS hearing officer can consider evidence offered to impeach an RAR. *See Macias v. Levinson*, 2/28/07 Decision of Hon. F. Dana Winslow, Nassau Co. Index No. 017744/06; *Agosh v. Cicero Bd. of Assessment Review*, 150 Misc.2d

756 (Sup.Ct. Onondaga Co. 1991). *See also Katz v. Assessor of Village of Southampton*, 131 Misc.2d 552 (Sup.Ct. Suffolk Co. 1986)(allowing Town to introduce evidence apart from RAR of proper ratio of assessed value to fair value); Lee and LeForestier, *Review and Reduction of Real Property Assessments in New York*, §9.05 at 447-48 (1988); New York State Dept. of Taxation and Finance booklet "Contesting Your Assessment in New York State," Publication 1114 (02/2012)("To establish the level of assessment [at a SCARS hearing] ... you may wish to generate your own estimate of your community's level of assessment ....").

The question before this court is whether *Fair Assessment* effectively changed the law and limited the proof otherwise made available to a SCARS petitioner by RPTL §732(2). The court in *Fair Assessment* held that a taxpayer has no standing to bring an Article 78 proceeding to generally challenge the determination of an RAR by ORPTS. That decision was based on a statutory interpretation of RPTL §1218, which provides that an Article 78 proceeding to challenge a state equalization rate may be brought by a county, city, town or village for which the rate(s) were established. The court reasoned that because taxpayers have no standing to challenge an equalization rate (they are not a county, city, town or village for which the rate was established), taxpayers have no Article 78 standing to challenge a class ratio or subset of the equalization rate. *Fair Assessment*, at 1144.

RPTL §1218 has no bearing on SCAR proceedings or the evidence that may be introduced in such proceedings. And since a taxpayer cannot directly challenge an RAR in an Article 78 proceeding, it cannot be presumed or concluded that the legislature also intended to definitively foreclose any opportunity for a taxpayer to establish that his or her assessment is unequal precisely because the RAR utilized is incorrect. This conclusion is buttressed by the Second Department's decision in *Leone v. Board of Assessors*, 100 A.D.3d 635 (2d Dept. 2012), in which the court directed the trial court to consider on its merits petitioners' challenge to a hearing officer's determination that they could not challenge an RAR and introduce evidence as to the proper ratio.

Finally, the hearing officer's alternative rationale for his decision rejecting petitioners' evidence was that even if they had standing it would be unfair to other taxpayers

if the hearing officer were to use any assessment ratio other than the RAR. Of course, this rationale necessarily results in the automatic rejection of petitioners' assessment ratio evidence, to the same impermissible effect.

For all of the reasons set forth above, the petition is granted upon reargument and these matters are remanded to a hearing officer for new hearings.[1]

Any relief requested not specifically addressed herein is denied.

This constitutes the Decision and Order of the court.

Dated: September 29, 2022
Mineola, New York

ENTER:

LEONARD D. STEINMAN, J.S.C
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[1] This court has not analyzed and does not opine upon the submissions made by petitioners in their SCAR hearings concerning the appropriate ratio to be used. That is for the hearing officer(s) to determine in the first instance.