

NEW YORK CITY TAX APPEALS TRIBUNAL

-----X		
In the Matter of	:	DECISION
	:	
PATRICK MCCAULEY	:	TAT (E) 20-8 (RP)
	:	
Petitioner	:	
	:	
-----X		

Patrick McCauley (Petitioner) filed an exception to an Order and Determination of an Administrative Law Judge (ALJ) dated March 2, 2022 (ALJ Determination), that granted the motion of the Commissioner of Finance of the City of New York (Respondent) for summary determination (Summary Determination Motion), denied Petitioner’s Petition and sustained a Notice of Determination issued by the New York City Department of Finance (Notice) asserting New York City Real Property Transfer Taxes (RPTT) with respect to a transfer of real property (Property) as further described below.<sup>1</sup>

The Commissioner of Finance of the City of New York (Respondent) was represented by Kevin Harkins, Esq., Senior Counsel, New York City Law Department. Petitioner was represented by Christopher P. Nalley, Esq. The parties submitted affidavits and accompanying exhibits in connection with Respondent’s Motion, on which the ALJ’s factual findings were based.

---

<sup>1</sup> Except as otherwise noted, the ALJ’s Findings of Fact, although paraphrased and amplified herein, generally are adopted for purposes of this Decision. Certain Findings of Fact not necessary to this Decision have not been restated and can be found in the ALJ Determination.

The Property is located in the borough of Staten Island at two separate street and postal addresses, 625 and 627 Metropolitan Avenue. We modify the ALJ’s factual findings to clarify that, according to the New York City Department of Buildings (DOB), the Property consists of two buildings, each a semi-detached two-family house.<sup>2</sup> The ALJ found that “the Property was used as two separate two-family dwellings, and not a single four-family dwelling.” And that each two-family dwelling had two rental apartments.<sup>3</sup>

Both two-family houses, however, are on a single tax lot, Block 254, Lot 61. The New York City Department of Finance (DOF) classifies the Property under the New York City Real Property Tax Law (RPTL) in Tax Class 2A, as one building containing 4 residential units.<sup>4</sup> Tax Class 2A is defined as, “primarily residential property with four to six units”.<sup>5</sup> There is no indication that Petitioner filed an Application for Correction challenging the Property’s classification under the RPTL as a 2A property with the City Tax Commission.

We further modify the ALJ’s factual findings to add that, under a sub-caption “Department of Finance Building Classification,” the DOB explains: “**Please Note:** The Department of Finance’s building classification information shows a building’s tax status, which may not be the same as the legal use of the structure. [Emphasis in

---

<sup>2</sup> Combined Affirmation of Christopher P. Nally in Opposition and Memorandum of Law, Exhibit A.

<sup>3</sup> We, thus, modified the ALJ’s language in Finding of Fact #4, “[e]ach dwelling was used as a rental apartment.”

<sup>4</sup> Affirmation of Christopher J. Long in Support of the Commissioner’s Motion for Summary Determination, Exhibit E, Notice of Property Values dated January 15, 2016, January 15, 2017, and January 15, 2018, at page 2.

<sup>5</sup> *Id.*, at page 1.

original.] *To determine the legal use of a structure, research the records of the Department of Buildings.*” (Emphasis added.)

Based on the foregoing, DOB, not DOF, determines the legal use of the Property. We, therefore, find that the legal use of the Property was two buildings, as described by DOB, not one, as described by DOF, that each building was a two-family house, and that DOF’s Tax Classification as a Class 2A building with four families does not affect the legal use of the Property as two two-family houses.

On June 30, 2017, Petitioner filed a RPTT return reporting that the Property was transferred on June 21, 2017 to 625-627 Metropolitan LLC, signed by Catherine Murray as Grantee/Purchaser, for a consideration of \$903,000. In its Summary Determination Motion, Respondent, however, argued, and the ALJ found, that the Property was transferred on May 17, 2017, and that the June 21, 2017, transfer date reported by Petitioner was incorrect. We disagree, and amend the ALJ’s finding to the correct transfer date, June 21, 2017, as reported by Petitioner.

Respondent’s source for the May 17, 2017, transfer date is the “Deed dated May 17, 2017 and annexed hereto as Exhibit ‘B’”.<sup>6</sup> The document referenced in Exhibit B, however, is not the Deed but the Contract of Sale, dated May 7, 2017. No deed was included in the documents submitted by either party in connection with the Motion for Summary Determination. In his brief, Petitioner addresses the omission of the Deed, dated June 21, 2017, and requests that we take judicial notice of it on the Richmond

---

<sup>6</sup> Affirmation of Christopher J. Long in Support of the Commissioner’s Motion for Summary Determination, ¶ 5.

County Clerk's website,<sup>7</sup> which we do here.<sup>8</sup> Our amended finding of the transfer date agrees with DOF's Notice, which shows a Transfer Date of June 21, 2017.<sup>9</sup>

We further amend the ALJ's factual findings to include reference to "Rider Attached to and Forming Part of Contract of Sale".<sup>10</sup> In ¶ 2, under the caption "Certificate of Occupancy," the "Seller represents that the premises sold hereunder is a legal two two (2) family dwellings." The paragraph goes on to state that, "on or before the Closing Date, the Seller will deliver to the Purchaser, either, a Certificate of Occupancy, or an affidavit to the effect that to the best of Seller's knowledge and belief, the premises were erected prior to January 1, 1938 and that the Seller has made no alterations or additions subsequent to such date requiring a permit or a Certificate of Occupancy from [DOB]".

In lieu of a Certificate of Occupancy, Petitioner provided a "Letter of No Objection" from the DOB for each of the two buildings on 625 Metropolitan Avenue and 627 Metropolitan Avenue, each of which was marked "Approved" for use as a "2-Family Residential Building". The section of the letter marked "Comments" further describes each building as "Semi-Detached 2-Family".<sup>11</sup>

---

<sup>7</sup> Resp. Br., p. 4: "This deed has been recorded on the Richmond County Clerk's website, which the Tribunal may take judicial notice of as the deed is information contained within a government website and is functionally identical to the City's Automated City Register Information System ("ACRIC") [citations omitted].

<sup>8</sup> See, New York Evidence Rule 2.01 [Judicial Notice of Facts].

<sup>9</sup> *Id.*, Exhibit A.

<sup>10</sup> *Id.*, Exhibit B, at p. 15-16

<sup>11</sup> Combined Affirmation of Christopher P. Nally in Opposition and Memorandum of Law, Exhibit A, last two pages.

We further amend the ALJ's factual findings to include reference to ¶ 12 of the above Rider,<sup>12</sup> where the Seller represents that an "approved and operational" smoke detector has been, or shall be, installed on the premises by the Seller prior to the closing.

We further amend the ALJ's factual findings to include reference to "Affidavit of Compliance with Smoke Detector Requirement for One- and Two-Family Dwellings".<sup>13</sup>

We emphasize the language at the bottom of this form, executed by the parties:

"New York City Real Property Transfer Tax Returns filed on or after February 6th, 1990, *with respect to the conveyance of a one- or two-family dwelling*, or a cooperative apartment or a condominium unit in a one- or two-family dwelling, *will not be accepted for filing unless accompanied by this affidavit.*" (Emphasis added.)

The smoke detector affidavit required for one- or two-family dwellings, described above, was recorded by the Office of the City Register, together with the other closing documents.<sup>14</sup>

The RPTT Return, signed by both Petitioner/Grantor, and the Purchaser/Grantee, with respect to the June 21, 2017 transfer of the Property<sup>15</sup> reported, under the caption "Type of Property," a transfer of "1-3 family house" by checking box a.<sup>16</sup> On Schedule 2 of the RPPT Return, the tax was calculated on a consideration of \$903,000 [the sales price under the Contract of Sale], at the tax rate of 1.425%.

---

<sup>12</sup> *Id.*, Exhibit B, at p. 15-20.

<sup>13</sup> *Id.*, Exhibit B, at p. T1-c.

<sup>14</sup> *Id.*, Exhibit B, at p. T1-b.

<sup>15</sup> *Id.*, Exhibit B, at Pp. T2-T11.

<sup>16</sup> *Id.*, at p. T3.

On June 21, 2017, DOF issued the Notice, asserting additional RPTT due of \$12,867.75, plus applicable penalties and interest. DOF calculated the RPTT at the tax rate of 2.625%. The second page of the Notice explained that the additional tax was based on DOF classifying the Property “as a four-family residential property with four units which is subject to a higher tax rate schedule.” Because the consideration for the transfer, \$903,000, was greater than \$500,000, and DOF classified the Property as a four-family residential property with four units, DOF imposed the higher tax rate of 2.625%.

The ALJ Determination granted Respondent’s Motion for Summary Determination, denied the Petition, and sustained the Notice. Although the ALJ found that (1) the Property covered two separate street and postal addresses, (2) that according to DOB “each street address has a semi-detached two-family residential dwelling, and (3) that “the Property was used as two separate two-family dwellings and not a single four family dwelling,” the ALJ concluded that “[t]he Property did not have one, two, or three family dwellings [eligible for the, lower, 1.425% RPTT rate] but two-two-family dwellings, which totaled four family dwellings.”<sup>17</sup>

The ALJ reasoned that “the question is whether conveying a single property that contains two two-family dwellings [the two two-family dwellings were on a single tax lot] is a transfer of more than three family dwellings.”<sup>18</sup> The ALJ Determination answered this question “in the affirmative” by disregarding the separateness of each two-

---

<sup>17</sup> ALJ Determination, p. 8.

<sup>18</sup> ALJ Determination, p. 9.

family house in his findings of fact and adding together the number of apartments in the two houses: “two plus two equal four.”<sup>19</sup> In reaching his conclusion, the ALJ appears to have given significant weight to DOF’s tax classification for purposes of the RPTL, rather than the RPTT before us in this matter.<sup>20</sup> The ALJ, however, in reviewing the applicable statute setting the RPTT rate on the conveyance at issue here, Administrative Code § 11-2102.a(9), nevertheless, concluded that “[t]his section makes no reference to a property’s tax classification under the RPTL in setting various RPTT rates.”<sup>21</sup>

Ultimately, the ALJ Determination turned not on the Property’s use as two separate two-family houses, but on the fact that both two-family houses are situated on a single tax lot. “Petitioner relies upon the undisputed facts among the parties but claims that a hearing is necessary to determine how he used the Property. This argument must be rejected *because his use has no bearing on the fact that on the transfer date, the Property was a single tax lot that had four family dwellings upon it.*” (Emphasis added.)

On Exception, Petitioner argues that, although the ALJ correctly found that the Property consisted of, and was legally used as, two-separate two-family houses, the ALJ, nevertheless, erroneously treated the houses as a single four-family house subject to the higher tax RPTT rate.<sup>22</sup> Petitioner requests that Respondent’s Motion for Summary

---

<sup>19</sup> ALJ Determination, p. 10.

<sup>20</sup> ALJ Determination, p. 9, n. 2: “To the extent that Petitioner requests reclassification of the Property, [Petitioner] correctly noted that this Tribunal cannot grant such relief because *real property tax classification issues are beyond its limited subject matter jurisdiction.*” (Emphasis added.)

<sup>21</sup> ALJ Determination, at p. 8.

<sup>22</sup> Pet. Br., at pp. 1-5.

Determination be denied, that summary determination be granted in favor of Petitioner,<sup>23</sup> and that the Petition be granted [cancelling the Notice].

Respondent argues “[i]t is undisputed that the Property consisted of a single building containing two, two-family homes.”<sup>24</sup> In opposing Respondent’s motion, however, Petitioner provided DOB’s records establishing its “legal use” and showing the number of “Buildings on Lot” as consisting of two buildings, not one.<sup>25</sup> Respondent, nevertheless, argues that two legally separate two-family houses situated on a single tax lot must be treated as a single four-family house.

Respondent’s principal argument is that DOF classified the Property under the RPTL as a Class 2A, as one building with four residential units, and that Petitioner cannot challenge DOF’s classification of the Property under the RPTL by Petitioning this Tribunal under the RPTT.<sup>26</sup> Respondent, thus, argues that Petitioner’s “exclusive remedy” to challenge its RPTL classification is by an Article 7 proceeding.<sup>27</sup>

For the following reasons we reverse the ALJ Determination, grant summary determination in favor of Petitioner, grant Petitioner’s Exception and cancel the Notice.

---

<sup>23</sup> Pet. Br., at pp. 4-5.

<sup>24</sup> Resp. Br., at p. 4.

<sup>25</sup> Combined Affirmation of Christopher P. Nally in Opposition and Memorandum of Law, Exhibit A, first page.

<sup>26</sup> Resp. Br., pp. 6-8.

<sup>27</sup> *Id.*, at p. 8.



Administrative Code §11-2102.a imposes the RPTT “on each deed at the time of delivery by a grantor to a grantee” when the consideration for the real property exceeds \$25,000. The applicable tax rate is governed by Administrative Code §11-2102.a(9):

[W]ith respect to conveyances made on or after August first, nineteen hundred eighty-nine . . . the tax shall be at the following rates:

(i) at the rate of one percent of the consideration for conveyances of one, two, or three-family houses and individual residential condominium units where the consideration is five hundred thousand dollars or less, and at the rate of one and four hundred twenty-five thousandths of one percent of the consideration for such conveyances where the consideration is more than five hundred thousand dollars, and

(ii) at the rate of one and four hundred twenty-five thousandths of one percent of the consideration with respect to all other conveyances where the consideration is five hundred thousand dollars or less, and at the rate of two and six hundred twenty-five thousandths of one percent where the consideration for such conveyances is more than five hundred thousand dollars.

The ALJ found that the Property consisted of two two-family dwellings.<sup>28</sup> The ALJ used the term “dwelling” interchangeably with the term “house,” the correct term used in the above statute. Similarly, the ALJ used “one, two, or three family dwellings” interchangeably with “one, two, or three-family houses” when referring to the applicable tax rate under Administrative Code §11-2102.a(9).<sup>29</sup> Nevertheless, the parties adopted the ALJ’s finding of two two-family houses, which is undisputed.<sup>30</sup>

---

<sup>28</sup> ALJ Determination, p. 2, Finding of Fact #4.

<sup>29</sup> ALJ Determination, at Pp. 7-8.

<sup>30</sup> Rep. Br., p. 3; Pet. Br., p. 2.

Based on the DOB classification of the Property as containing two buildings, the DOB's issuance of Letters of No Objection that the legal use of the Property was as two separate two-family houses, the fact that Petitioner represented the Property as such in the Contract of Sale and even included an "Affidavit of Compliance with Smoke Detector Requirement for One- and Two-Family Dwellings" that was required to be filed with the RPTT return in order for it to be filed with the Office of the City Register, we are compelled to conclude that the Property conveyed on the transfer date consisted of "one, two or three-family houses," for a consideration exceeding \$500,000, and taxable at the lower rate of 1.425 percent. Administrative Code §11-2102.a(9).

We also agree with the ALJ that Administrative Code §11-2102.a(9) "makes no reference to a property's tax classification under the RPTL in setting various RPTT rates."<sup>31</sup> It is, therefore, irrelevant to our determination of the proper tax rate applicable under the RPTT how DOF classified the Property under the RPTL. The DOB makes clear that it, and not the DOF, determines the legal use of the Property which DOB determined to be two separate two-family buildings, not one four family building.

Based upon the ALJ's finding that the Property consisted of two two-family houses, the lower 1.425% percent rate applicable to conveyances of "one, two, or three-family houses" under Administrative Code §11-2102.a(9) applied to the transfer of the Property. It is irrelevant to the RPTT that both buildings were on the same tax lot. The phrase "tax lot" appears nowhere in Administrative Code §11-2102.a(9).

---

<sup>31</sup> ALJ Determination, p. 8.

The ALJ's crucial finding that the transfer was of two separate two-family houses leaves no material issues of fact for which a hearing is necessary and, therefore, we need not remand this case for further proceedings. We, therefore, conclude that the applicable rate on the transfer of the Property was the lower rate of 1.425 percent.

Accordingly, we grant summary determination in favor of Petitioner, reverse the ALJ Determination, cancel the Notice and grant Petitioner's Exception.<sup>32</sup>

Dated: February 14, 2023

New York, NY

\_\_\_\_\_/s/\_\_\_\_\_  
\_\_\_\_\_

Frances J. Henn  
President and Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
\_\_\_\_\_

Robert J. Firestone  
Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
\_\_\_\_\_

Neil Schaier  
Commissioner

---

<sup>32</sup> We have considered all the other arguments of the parties and find them unpersuasive.