SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
Present: **HON. E. LOREN WILLIAMS, J.S.C.**

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In the Matter of the Application for a Review under Article 7 of the Real Property Tax Law of a Tax Assessment by

CEDAR MANOR ACQUISITION LLC,

Petitioner

-against-

THE ASSESSOR AND THE BOARD OF ASSESSMENT REVIEW OF THE TOWN OF OSSINING AND THE TOWN OF OSSINING

COUNTY OF WESTCHESTER, NEW YORK,

Respondents.

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DECISION

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Before this Court om April 26, 2021, April 27, 2021 and April 28, 2021, a trial was held pertaining to the property located at 32 Cedar Lane, located in the Town of Ossining, County of Westchester, State of New York. The trial was based on petitions filed pursuant to Article 7 of the Real Property Tax Law. These petitions challenged the assessment of the subject property for the 2017 through 2020 tax years. The property known as Cedar Manor is a nursing home facility with approximately 153 beds, inclusive of 71 semi-private rooms and 11 private rooms, on a 7.81 parcel of land. Said nursing home facility was built circa 1967 and there was an addition in 1972. The business office is also located at this location.

The current owner known as Cedar Manor Property Acquisition, LLC purchased the subject real property from Cedar Manor Realty LLC, for a purchase price of $23,715,000.00. Said purchase included the real property and the nursing home business enterprise. As part of the conveyance, the New York

Transfer Tax Form , RP- 5217 was filed with the County Clerk. Said form was signed and certified by the Purchaser and indicated that the real property portion of this sale was apportioned in the amount of $18, 800,000.00. The financing on this sale consisted of two pieces, $19,212,000.00 and a second in the amount of $1,500,000.00

Prior to this matter having been assigned to the undersigned, the matter was pending in the Tax Certiorari and Eminent Domain Part before the Honorable Bruce E. Tolbert. A Decision and Order was entered on or about August 20, 2020. Said Decision and Order was based on a Motion for Summary Judgment wherein, the Petitioner sought for a ruling based on a selective reassessment. Noted in that Decision and Order was an analysis of the selective reassessment and the purchase price paid, including the facts involving the RP 5217 and the amount indicated in such. The court denied said motion and Ordered the scheduling of a trial. Said prior Decision and Order is maintained as the Law of the Case, as such was not rejected by the Appellate Division.

Both the Petitioner and the Respondents were represented by trial counsel. All counsel were given the opportunity to submit both Pre-Trial Memorandum and Post- Trial Memorandum, as part of the submissions to the Court for its review.

Petitioner's Argument

Petitioner, which will herein be called "The Manor", contends that their appraiser's (Sterling) report is valid and Respondent's (Beckman) is not, citing among other things, the competing methodologies of the appraisers. Moreover, Petitioner claims that reliance by the Respondent, which will herein be called "Ossining", on the recent sale of the subject property is in fact wrong. Each appraiser employed income capitalization as the main method of appraising the subject property, claiming that such methodology would be correct based on the property is a nursing home in Westchester County New York.

Sterling used multifamily housing rents and Medicaid capital reimbursements to value Cedar Manor, however, he did not use the recent sale of the subject property. Beckman used the subject property's sale from 2017, and statistical data from investor market surveys illustrated in a CBRE presentation. In addition, Beckman concentrates on rent component numbers as well as utilizing the cost analysis approach as a check, despite not being a contractor.

The Manor also argues that while the recent sale of the subject property was an arms-length transaction, the numbers used were solely for the benefit of the selling party Cedar Manor Inc., (Seller). In addition, the Manor's principal Zev Farkas (Mr. Farkas), a party to the recent sale, did in fact testify that he was overwhelmed by a whirlwind of papers he had to in fact sign, however he claimed that he failed to read them all.

The Manor's position is that Mr. Farkas' agreement to purchase the subject property for $18.8 million dollars cannot be relied on to establish value. The Manor points out that Mr. Farkas is a layman and not a real estate appraiser, nor is he knowledgeable of real estate valuations. "Thus, he had no idea what the real estate portion of the entire nursing home going-concern was worth at the time he signed the form." (Petitioner's Post-Trial Memorandum) The Manor argues their ability to secure a loan, in excess of $18.8 million dollars, does not support Ossining's position on value because the loan was partially secured by personal guarantees. This Court is mindful that although Mr. Farkas is not a real estate appraiser, he was a seasoned businessman who had participated in other real estate transactions in his lifetime.

The Manor argues, that use of the most recent sale is only relevant if "the real estate was purchased as a stand-alone asset, in such case, it is clear that the amount of money exchanged in the transaction was for the sole asset transferred, i.e., real estate.... however....in the case of a multi-asset transaction...the value of the real estate portion of the sale cannot be determined from the amount that

transferred." (Petitioner's Post-Trial Memorandum). Sterling's abject rejection of the sale of the subject property, according to him, was because it included a going-concern making it a "whole package of assets", and therefore abnormal. (R. 154 1-12). In addition, the Manor says Mr. Farkas was contractually obligated to accept the amount allocated to the real estate portion of the recent sale, and the $18.8 million dollars indicated on the RP-5217 cannot be relied on. Moreover, the purchase price for the subject property and going concern was reached before an appraisal was done.

The Manor argues the $18.8-million-dollar figure is based on Seller's, Cushman and Wakefield's (Cushman), what they allege was a flawed appraisal. Pursuant to the contract between Seller and Mr. Farkas, the value of the land was to be determined by a qualified third-party appraiser with "significant experience in appraising real property which neither party or their immediate family have done business with or has contracted to do business within the future." (Sterling's appraisal Pg. 13). Cushman served as the independent third-party appraiser used to establish the value of the real estate portion of the transaction. The Manor's position is that this appraisal must be set aside by the Court, as it does not comply with RPAPL Article 7 proceedings. In addition, the Manor and their appraiser believe the $18.8-million-dollar figure was an effort by Cushman/Seller to "produce a higher realty value" for the benefit of the Seller's ad valorem taxation. Sterling reasoned that "from an accounting perspective, there is an incentive to allocate a larger portion of the total purchase price, (i.e. more than fair market value) to the real property, as site and building improvements are depreciable for income tax purposes, whereas the intangible business assets e.g. goodwill, are not amortized and only reduced if determined to be impaired." (R. 164).

Respondent's Argument

Ossining, argues in their Pre and Post-Trial Memoranda that the Manor has the initial burden of producing substantial evidence that Ossining's assessments are erroneous. In addition, unless and until

that burden is met, the original assessments are deemed valid in the eyes of the law. Ossining contends the threshold is met when Petitioners produce a detailed competent appraisal, based on standard accepted appraisal techniques, and prepared by a qualified appraiser. Ossining also argues that Sterling mistakenly relied upon Mr. Bernard Weinreb, Esq., the attorney hired to litigate the tax assessment for Petitioner, for information regarding the subject property and its recent sale. Ossining points out that Sterling admitted he did not interview the parties associated with the sale of the subject property, including the principal Mr. Farkas, the Seller, or the attorney hired to advised Mr. Farkas during the acquisition of the subject property. However, Sterling conceded that doing so would have been the best practice.

Ossining argues that the law is clear that Petitioner carries the burden of persuasion by a preponderance of the evidence. However, Ossining feels that the burden has not been met because Sterling used market data for multifamily homes instead of information on nursing homes. In addition, that multifamily homes lack the utility and design needed to operate a nursing home. Ossining also points out that Sterling did not use the arms-length sale of the subject property based on an "accounting perspective" for which he had no basis, because he is not an accountant and did not speak with an accountant for this appraisal. Moreover, Ossining argues "this perspective" was disproven by the financial statements of the subject property prepared by the Petitioner's accountants. Ossining demonstrates that when Sterling was confronted with the contradictions between his statement and the financial records of the subject property, he explained "I'm not an accounting expert". (R 170)

Ossining also argues the Manor's failure to value the subject property as a nursing home is a "derogation of Real Property Tax Law subsection 302", because Sterling's report is based in part on rents from studio apartments in the Town of Ossining. In addition, that a recent arms-length-sale is evidence that should be given highest rank with respect to the value of the subject property. Ossining argues the recent sale of the subject property was rejected by Sterling because of a "self-proscribed rule that a sale

price must be based upon an appraisal report that complies with the Uniform Trial Courts rules applicable to tax certiorari proceedings." Further, the fact Sterling tried to explain away the sale as abnormal because it included a going-concern is "absurd" because that would call every sale of a "complex property" where the parties agreed upon a purchase price into question. Ossining points out the parties to the recent sale of the subject property utilized an independent third-party appraisal company, Cushman, that established a purchase price "derived through the use of recognized senior housing appraisal techniques."

Law

"The challenged real property assessments are presumed valid as a matter of law, and the petitioner has the initial burden of rebutting that presumption and producing substantial evidence that a credible dispute exists as to the valuation of the subject property." *Board of Managers of French Oaks Condominium v Town of Amherst*, 23 N.Y.3D 168, 175 (2014); *FMC Corp. v Unmack*, 92 N.Y. 2d. 179 (1998). "Substantial evidence will most often consist of detailed, competent appraisal based on standard, accepted appraisal techniques and prepared by a qualified appraiser." See *Matter of Niagara Mohawk Power Corp v Assessor of the Town of Geddes*, 92N.Y.2d 192,196 (1998). Moreover, *Matter of Niagra*, sets forth that Petitioner's appraisal must be based on "objective data and sound theory."

"The ultimate strength, credibility and persuasiveness are not germane for the threshold inquiry. The Court's inquiry is limited to a determination of whether the documentary and testimonial basis proffered by the Petitioner is based upon sound theory and objective data." *Matter of Niagara Mohawk Power Corp. v Assessor of the Town of Geddes*, 92 N.Y.2d 192, 196(1998)

"As a general rule, the sale of real property in an arm's-length transaction, if recent and not explained as extraordinary, is the best evidence of value for tax assessment purposes because it directly reflects the property's market value and does not require the court to engage in speculation." *Blue Hill*

Plaza v Assessor of Orangetown, 280 A.D. 2d. 544 (2nd Dept. 2001) citing *50540 Realty, Inc v Tax Commission of City of New York*, 136 A.D.2d 699 (2nd Dept. 1988). "The best evidence of value, of course, is a recent sale of the subject property between a seller under no compulsion to sell and a buyer under no compulsion to buy." *Matter of Allied Corp v Town of Camillus*, 80 N.Y.2d 351,356 (1992). A recent sale has been characterized as evidence of the "highest rank" in determining market value." *Rite Aid Corp v Huseby*, 130 A.D.3d 1518 (4th Dept. 2015) *See Matter of F.W. Woolworth Co. v Tax Commission Of City of New York,* 20 N.Y.2d 561, 565(1967). "Petitioner maintains that the $51,000,00 sales price is not indicative of the fair market value of the property since it was an arbitrary figure established as a business convenience"....."We must reject its claim that the $51,000,00 figure does not represent the sales price of the subject property, particularly as it may be reasonably inferred that it is continuing to utilize the $51,000,00 sales price to obtain corporate and income tax advantages." *Matter of Meditrust c/o Conifer Park Inc. (The Mediplex Group Inc.) v Rosalie Fahey, as Assessor of the Town of Grenville*, et al, 226 A.D. 2d 999 (3rd Dept.1996). "The Court further held that the sale of the property in question was an arms length transaction, and that the price paid by the purchaser in this matter was consistent with the value of the property as determined by respondents' expert (subject to market trends)". *Rite Aid Corp v Otis*, 102 A.D. 3d 124(3rd Dept. 2012).

A prior Court opined that "The fatal deficiency identified by the Court in French Oaks was that the appraiser simply relied on his own personal experience without any objective data to support his numbers." *Rite Aid Corp v City of Troy Bd. Of Assessment Review*, 47 Misc. 3d 791,799 (Supreme Court, Rensselaer 2015). "However, these arguments to the ultimate strength and credibility and persuasiveness of the evidence, not the threshold inquiry of whether the documentary and testimonial basis proffered by the Petitioner is based upon sound theory and objective data. The Korpacz Real Estate Survey is considered sound theory and objective data, gives the ballpark evidence Justice Graffeo

alluded to in French Oaks." *Rite Aid Corp v City of Troy Bd. Assessment Review*, 47 Misc. 3d 791,799 (Supreme Court, Rensselaer 2015)

Analysis

The parties agree on very little, but the main points of contention surround the use of secondary source information in an appraisal, relevancy of the recent sale of the subject property, and the use of comparable properties to form the appraisal opinions. Before any of the points of contention can be addressed by this Court, Petitioner must overcome their initial burden of production. "The challenged real property assessments are presumed valid as a matter of law, and the petitioner has the initial burden of rebutting that presumption and producing substantial evidence that a credible dispute exists as to the valuation of the subject property." *Board of Managers of French Oaks Condominium v Town of Amherst*, 23 N.Y.3D 168, 175 (2014) *FMC Corp. v Unmack*, 92 N.Y. 2d. 179 (1998). In this case, while each litigant's appraiser uses the same income capitalization approach to value the property, they use different methods to reach their conclusion. Sterling used Medicaid capital reimbursements to compute the income for the real property for Medicaid patients, and used market rate data for residential apartments in the local area for private pay patients. Beckman relied on Lease Coverage Ratios (LCR) to separate the going concern from the real property value. The challenged assessments and appraisal values are as follows: 2017 $9,336,300 (Assessed), $4,840,000 (Petitioner's), $16,000,000 (Respondent's); 2018 $9,336,300 (Assessed), $4,810,000 (Petitioner's), $16,000,000 (Respondent's); 2019 $9,336,300 (Assessed), $4,880,000 (Petitioner's), $14,900,000 (Respondent's); 2020 $9,336,300 (Assessed), $5,240,000 (Petitioner's), $17,300,000 (Respondent's). The parties are far apart in their assessments; however, it is in fact Petitioner's burden to produce substantial evidence that a "credible dispute exists" as to the value of the subject property.

Sterling has a considerable amount of experience as an appraiser and his appraisal was submitted into evidence during trial. One of the most notable conclusions Sterling came to in in the appraisal was the rejection of the recent sale of the subject property.

However, this Court is mindful of longstanding law in this specialized area of Tax Certiorari. "As a general rule, the sale of real property in an arm's-length transaction, if recent and not explained as extraordinary, is the best evidence of value for tax assessment purposes because it directly reflects the property's market value and does not require the court to engage in speculation." *Blue Hill Plaza v Assessor of Orangetown*, 280 A.D. 2d. 544 (2nd Dept. 2001) citing *50540 Realty, Inc v Tax Com'n of City of New York*, 136 A.D.2d 699 (2nd Dept. 1988). Sterling distinguishes the recent sale of the subject property from an "ordinary sale" by proclaiming the land value was flawed by a "tacit objective".

> Certified Professional Accountants who prepare financial statements for nursing homes in New York State and have involvement in nursing home going-concerns sales, have reported to us that the aggregate purchase price allocations are often flawed with the tacit objective of allocating more than fair market value to the realty component, especially the improvements (as opposed to land which is not depreciable) for certain tax purposes, and our own observations confirm this as well. Notably, the subject sale transaction was not the result of a willing seller and willing buyer agreeing to the purchase price of only the real estate.

Petitioners Exhibit 1(Appraisal), Page 16.

Sterling opined the recent sale of the subject property was not reliable because the price allocated to the land value was a likely tax benefit to Seller and not reflective of the actual value of the property. Sterling is relying on information from accountants, who by his own testimony, he did not interview for this assignment. (R 165). Sterling testified that "from an accounting perspective, there is

an incentive to allocate a larger portion of the total purchase price (i.e. more than fair market value) to the real property as site and building improvements are depreciable for income tax purposes, whereas the intangible business assets (e.g. goodwill) are not amortized and only reduced if determined to be impaired." (R-164). When pressed on his reasoning for his "accounting perspective" in rejecting the recent sale, Sterling admitted that Cedar Manor's financial records conflicted with his testimony and that he was "no accounting expert." (R170). In fact, Cedar Manor's financial records show that it allocated more value to the "goodwill" of the business than to the real property. In addition, it amortized the going-concern over a 10-year period without an indication of impairment. (R. 170). Sterling lacks the accounting expertise, and therefore the basis to draw the conclusion of rejecting the recent sale from an "accounting perspective." In his appraisal Sterling says "Certified Professional Accountants (CPAs).....have reported to us" (Petitioner's Ex. 1 pg 16), indicating he consulted a CPA for this assignment, however, he testified on cross-examination that he did not. Instead, in his testimony Sterling's reasoning for his "accounting perspective" was "based on personal conversations with the CPA's that prepared the nursing home cost reports and their financial statements" (R-165). This is hearsay and unverifiable. Sterling is not providing concrete data from an accountant he consulted for this appraisal, instead he is drawing conclusions based on his own personal experience. Sterling had not talked to an accountant with respect to allocation and valuation....."within the last year or two."(R197). In providing an opinion for which he lacked a basis or expertise, Sterling failed to provide "objective data and sound theory" that could be checked by Ossining and this Court. "The fatal deficiency identified by the Court in French Oaks was that the appraiser simply relied on his own personal experience without any objective data to support his numbers." *Rite Aid Corp v City of Troy Bd. Of Assessment Review*, 47 Misc. 3d 791,799 (Supreme Court, Rensselaer 2015).

The subject facility was sold to Petitioner on April 3, 2017, for $23.7 M, with $18.8 M attributed to the value of the real property, as affirmed by the Petitioner in their RP-5217 form. The Purchaser,

Cedar Manor Property Acquisition LLC, through its principal Zev Farkas, contracted with Seller to allow Cushman and Wakefield (Cushman) to appraise the land and value it for the purchase. Sterling's position is that Cushman's appraisal is not appropriate for valuation because it valued the property solely for the Seller's ad valorem tax benefit. In his testimony, Sterling says he explained in his appraisal "that there are certain tax incentives that can skew these allocated numbers, therefore, it's not a reliable basis for tax certiorari purposes" (R 197). Indicating that Cushman's appraisal was done for the Seller's tax benefit and is therefore unreliable for use in a tax certiorari proceeding. However, there are no facts to support this supposition. Sterling testified that it's best practice to verify a sale with either a party to the transaction or an attorney involved with the sale. (R 160). Sterling did not interview anyone, including the Seller, buyer (Manor), Mr. Farkas, or the attorney who negotiated the transfer Kathleen Carver Chaney, associated with the sale of the subject property. Instead, in preparing his appraisal he only consulted with the attorney hired to litigate the tax assessment after the sale occurred, Mr. Weinreb. (R 164). While Sterling is a witness for Petitioner, his goal in writing an appraisal is to provide the Court with "sound theory and objective data" for which to question Ossining's assessments. Sterling's failure to interview a party to the transaction, and instead source facts from the litigation attorney, calls his position for rejecting the sale into question. Mr. Weinreb's job is to offer the facts in a light most favorable to his client, not to be an objective source of them.

Sterling's subjectivity is exposed during cross examination when he says Cushman's appraisal is not sufficient for tax certiorari purposes because it "does not comply with the uniformed court rules, does not disclose all of the facts, figures and calculations." (R 190,191). Sterling goes on to say "we are required under USPAP to analyze the sale and determine whether any weight or reliance should be placed on the price on the deed.....you have to determine the credibility of the figure, where it came from, whether it's based on sound theory, objective data" (R 192). Sterling is quoting language from caselaw, clearly a legal analysis for which he has no basis. Sterling testified that he is not an attorney (R

192). Even if he was, Sterling is attempting to draw conclusions in his appraisal on the admissibility of trial worthy evidence, a job for this Court.

Sterling also cites the "Intended use" clause included in Cushman's appraisal as a reason to reject it, and therefore the value it attributed to the subject property. The clause says the appraisal should be used for "income and estate tax planning decisions," and for no other purposes. (Petitioner's Ex. 1 pg 14). Sterling says in his appraisal that he was.....

> informed by petitioner's legal counsel that pursuant to 22 NYCRR Subsection 202.59, appraisal reports exchanged and filed in a tax assessment review proceeding in counties outside of City of New York, such as this appraisal report, shall contain "the facts, figures and calculations by which the conclusions were reached. If sales, leases or other transactions involving comparable properties are to be relied on, they shall be set forth with sufficient particularity as to permit the transaction to be readily identified, and the report shall contain clear and concise statement of every fact that a party will seek to prove in relation to those comparable properties."

Sterling's Appraisal page 14.

Sterling testified that he included the language from NYCRR 202.59 in his appraisal "based on his own analysis of the Cushman report", and not at the behest of Mr. Weinreb. (R193). By including this information in his appraisal, Sterling said he was "analyzing whether you should rely on the deed price.....whether it's a credible basis to be used in the appraisal." (R193,194). Sterling testified that he was trying to explain why the $18.8 million figure that Cushman arrived at is "not reliable for tax certiorari purposes."(R-197).

Sterling is correct that Cushman's appraisal should not determine the value of the subject property in this case, however, it's not Cushman's appraisal that determines value, it's the price the

Manor paid in an open market that determines value in this case. "As a general rule, the sale of real property in an arm's-length transaction, if recent and not explained as extraordinary, is the best evidence of value for tax assessment purposes because it directly reflects the property's market value and does not require the court to engage in speculation." *Blue Hill Plaza v Assessor of Orangetown*, 280 A.D. 2d. 544 (2nd Dept. 2001) citing *50540 Realty, Inc v Tax Commission of City of New York*, 136 A.D.2d 699 (2nd Dept. 1988). "Generally, the best evidence of value, if not explained away as abnormal in any fashion, is a recent sales price established in an arm's length transaction" *Meditrust v Fahey*, 226 A.D.2d 999, 1000 (1996), citing *W.t. Grant Co v Srogi*, 52 N.Y. 2d 496, 511, 438 N.Y. 2d 761, 420 N.E. 2d 953.

The sale between the Manor and Seller was an arms-length transaction, there is no testimony in the record or evidence presented at trial that disturbs that fact. In his appraisal, Sterling says the Manor "was legally bound to agree" to Cushman's value of the subject property (Petitioner's Exhibit 1 pg 14). However, the Manor could have rejected the sales price or the appraisal as flawed, because they were not "legally bound" to accept fraudulent numbers. Moreover, the Manor agreed to the appraisal being done by Cushman. Cushman's appraisal set the value attributed to the subject property, purchased in an open market, without coercion, in an arms-length transaction, as $18.8 million dollars. "The best evidence of value, of course, is a recent sale of the subject property between a seller under no compulsion to sell and a buyer under no compulsion to buy." *Matter of Allied Corp v Town of Camillus*, 80 N.Y.2d 351,356 (1992). A recent sale has been characterized as evidence of the "highest rank" in determining market value." *Rite Aid Corp v Huseby*, 130 A.D.3d 1518 (4th Dept. 2015); *See Also, Matter of F.W. Woolworth Co. v Tax Commission of City of New York,* 20 N.Y.2d 561, 565(1967). Sterling's position that the Manor lacked the ability to do anything other than accept that price, falls crucially short of explaining his reasoning in rejecting the sale.

It is important to note that trained professionals such as Beckman and Sterling can reach different conclusions when presented with the same facts. In this case, the difference between those

conclusions is roughly $12,000,000 on average for each of the four years in dispute. Clearly, Beckman's and Sterling's appraisals are not consistent with each other.

However, this Court cannot ignore the price paid by the Manor in an arms-length recent sale ($18.8 million dollars), and Beckman's appraisal (roughly $16 million) are consistent. That consistency acts as an indicator of value in this case. The conclusion reached by Sterling in his appraisal by rejecting the recent sale is inconsistent with the purchase price. On the other hand, Beckman used the recent sale as a comparable in his analysis of the subject property, and his conclusion is consistent with the purchase price of $18.8 million dollars. "The sale of the property in question was an arms-length transaction, and that the price paid by the purchaser in this matter was consistent with the value of the property as determined by respondents' expert (subject to market trends)...Under these circumstances, Supreme Court's decision to credit the appraisal offered by petitioner was against the weight of the evidence." *Rite Aid Corp v Otis*, 102 A.D. 3d 124(3rd Dept. 2012).

Petitioner's initial burden of providing "substantial evidence" to dispute the value of the subject property is not difficult to overcome, but it is necessary for this Court to go beyond a threshold inquiry. "Substantial evidence will most often consist of detailed, competent appraisal based on standard, accepted appraisal techniques and prepared by a qualified appraiser." See *Matter of Niagara Mohawk Power Corp v Assessor of the Town of Geddes*, 92N.Y.2d 192,196 (1998). Petitioner's appraisal must be based on "objective data and sound theory." *Id.* The appraisal provided by Sterling in support of the Manor's challenge to Ossining's assessments does not provide this Court with the information necessary to question Ossining's assessments, specifically, it lacks a credible basis for rejecting the recent sale of the subject property. Sterling's reasoning for rejecting the sale is not based on objective data, but on what he believes to be the correct "accounting perspective", and his belief of what the parties' intent was in reaching a sale price. Sterling also provides a legal opinion in his appraisal as a basis for attacking Cushman's appraisal, again, without the basis for it. Sterling failed to interview any of the parties

associated with the sale or consult an accountant, and he is not an attorney. Essentially, Sterling is asking this Court to ignore the recent sale price as fictitious without any evidence to do so, allowing the Manor to escape a tax burden they willingly agreed to bear.

In the *Matter of Meditrust v Fahey*, 226 A.D. 2d 999 (3rd Dept. 1996) the Court holds, citing a long list of precedent cases that New York Courts have consistently adhered to the position that taxpayers are bound by the manner in which they elect to structure a transaction and may not thereafter restructure it to escape the tax consequences of their election. This Court stands firmly with the precedent held before it, and understands the full complexity of these types of cases.

Based on the foregoing, this Court finds Petitioner has failed to maintain its burden and in addition this Court finds the Petitioner's appraisal uncredible. Therefore, the Manor failed to withstand the Court's threshold inquiry of producing "substantial evidence" to overcome the validity of Ossining's assessments, and their petitions for the years 2017, 2018, 2019, and 2020.

Therefore, it is HEREBY held that all Tax Certiorari Petitions, which are indicated herein by Index Numbers: 65829/17; 66328/18; 65100/19 and 62538/20 are denied and dismissed in their entirety.

The foregoing constitutes the Decision and Order of this Court.

Dated: September 28th, 2021
White Plains, New York

ENTER:

HON. F. LOREN WILLIAMS, J.S.C.