

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

**FILED AND  
ENTERED ON  
DATE**  

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**ROCKLAND  
COUNTY CLERK**

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ORANGE AND ROCKLAND UTILITIES, INC.,

Petitioner,

SOUTHERN ENERGY BOWLINE, LLC.,  
MIRANT NEW YORK, INC.,  
MIRANT BOWLINE, LLC,

Intervenor-Petitioners,

**-Against-**

**DECISION & ORDER**

THE ASSESSOR OF THE TOWN OF HAVERSTRAW  
THE BOARD OF REVIEW OF THE TOWN OF  
HAVERSTRAW and THE TOWN OF HAVERSTRAW

Index Nos: 4133-95  
0346-96  
4424-97  
4639-98  
4238-99  
4358-00  
4694-01  
5120-02  
5278-03

Respondents,

COUNTY OF ROCKLAND and NORTH ROCKLAND  
CENTRAL SCHOOL DISTRICT,

Intervenors-Respondents.

For a Review of Tax Assessments Under Article 7  
of the Real Property Tax Law.

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DICKERSON, J.

**MOTION TO AMEND PETITIONS TO CONFORM TO APPRAISAL VALUES**

The Petitioners, Southern Energy Bowline, LLC, Mirant New York Inc. and Mirant Bowline [ " Mirant " ], have made a motion pursuant to C.P.L.R. § 3025(C) " to amend its petitions [ for the years 1995 through 2003 ] to conform them to the proof of the fair market value opined by ( Mirant's ) appraiser at trial "1. The Respondents oppose this motion in all respects2.

**Mirant's Full Value**

Mirant's R.P.T.L. Article 7 Petitions [ " the Petitions " ] claim the following full values for the Bowline Generation Station3 [ " Bowline Station " ];

1995 Full Value of	<b>\$409,115,435</b>
1996 Full Value of	<b>\$420,116,095</b>
1997 Full Value of	<b>\$321,733,445</b>
1998 Full Value of	<b>\$224,471,245</b>
1999 Full Value of	<b>\$156,995,675</b>
2000 Full Value of	<b>\$771,026,464</b>
2001 Full Value of	<b>\$191,723,256</b>
2002 Full Value of	<b>\$205,333,333</b>
2003 Full Value of	<b>\$180,340,000</b>

**Mirant's Appraiser's Fair Market Value**

At trial Mirant's appraiser<sup>4</sup> concluded that the fair market value for the Bowline Station was as follows;

1995 Fair Market Value of	<b>\$100,515,006</b>
1996 Fair Market Value of	<b>\$172,581,253</b>
1997 Fair Market Value of	<b>\$134,742,583</b>
1998 Fair Market Value of	<b>\$150,000,000</b>
1999 Fair Market Value of	<b>\$125,000,000</b>
2000 Fair Market Value of	<b>\$175,000,000</b>
2001 Fair Market Value of	<b>\$150,000,000</b>
2002 Fair Market Value of	<b>\$200,000,000</b>
2003 Fair Market Value of	<b>\$200,000,000</b>

**Respondent Town's Equalized Full Value**

The equalized full value figures<sup>5</sup> of the Respondent Town of Haverstraw are as follows;

1995 Equalized Full Value of	<b>\$668,930,519</b>
1996 Equalized Full Value of	<b>\$670,055,458</b>
1997 Equalized Full Value of	<b>\$638,041,073</b>

1998 Equalized Full Value of **\$689,037,594**  
1999 Equalized Full Value of **\$713,475,779**  
2000 Equalized Full Value of **\$881,173,077**  
2001 Equalized Full Value of **\$959,044,186**  
2002 Equalized Full Value of **\$1,039,625,468**  
2003 Equalized Full Value of **\$1,029,685,393**

**Respondents' Appraiser's Fair Market Value**

At trial Respondents' appraiser concluded that the fair market value<sup>6</sup> for the Bowline Station was as follows;

1995 Fair Market Value of **\$664,000,000**  
1996 Fair Market Value of **\$671,000,000**  
1997 Fair Market Value of **\$626,000,000**  
1998 Fair Market Value of **\$486,000,000**  
1999 Fair Market Value of **\$572,000,000**  
2000 Fair Market Value of **\$341,000,000**  
2001 Fair Market Value of **\$531,000,000**  
2002 Fair Market Value of **\$411,000,000**  
2003 Fair Market Value of **\$454,000,000**

### The Relief Sought

Stated, simply, Mirant wishes to amend its Petitions to change the full value figures to its appraiser's fair market value figures or, in the alternative, to change its 2000 Petition's full value figure of \$771,026,464 to Respondents' appraiser's fair market value figure of \$341,000,000. For the reasons set forth below Mirant's motion is denied in all respects with the exception of permitting an amendment to its 2000 Petition changing the full value figure of \$771,026,464 to Respondents' appraiser's fair market value figure of \$341,000,000.

### The Rule: R.P.T.L. § 720(1)(b)

The rule which this Court must follow is that " an assessment may not be ordered reduced to an amount less than that requested by the petitioner in a petition ". This rule was well settled in the common law [ see e.g., People ex. Rel. Interstate Land Holding Co. v. Purdy, 206 App. Div. 606 ( 1<sup>st</sup> Dept. 1923 ), aff'd 236 N.Y. 609 ( 1923 ); Matter of Wright v. Commissioner of Assessment & Taxation of City of Albany, 242 App. Div. 886, 887 ( 3d Dept. 1934 ); Matter of Pollak v. Board of Assessors of County of Nassau, 62 A.D. 2d 1019 ( 2d Dept. 1978 ), lv dismissed 45 N.Y. 2d 872 ( 1978 ); Matter of Singer Co. v. Tax Assessor of Village of Pleasantville, 86 Misc. 2d 631 ( West. Sup. 1976 ), aff'd 56 A.D. 2d 655 ( 2d Dept. 1977 )] before the Court of Appeals' decision

in W.T. Grant Company v. Srogi<sup>7</sup>, 52 N.Y. 2d 496, 512-514, 420 N.E. 2d 953, 438 N.Y.S. 2d 761 ( 1981 ) and is still the rule, *albeit* pursuant to statute [ R.P.T.L. § 720(1)(b) ( " If the court determines that the assessment being reviewed is excessive or unequal, it shall order a reassessment of the real property of the petitioner...provided, however, that except in cities with a population of one million or more an assessment may not be reduced to an amount less than that requested by the petitioner in a petition..." )] and subsequent court decisions interpreting that statute [ see e.g., Matter of Radisson Community Association, Inc. v. Long, 3 A.D. 3d 135, 137-140, 768 N.Y.S. 2d 532 ( 4<sup>th</sup> Dept. 2003 )( " If the court determines that the assessment is excessive, ' it shall order a revised assessment of the real property...' In cities with a population of less than one million, as in this case, however, the assessment ' may not be ordered reduced to an amount less than that requested by the petitioner in a petition or any amended petition '...we conclude that the court properly denied the motions because petitioner improperly sought to amend the petitions to request a greater reduction in the assessed parcels than that requested before the Board " ); Matter of North Country Housing v. Village of Potsdam, 298 A.D. 2d 667, 669, 748 N.Y.S. 2d 428 ( 3d Dept. 2002 )( " although we agree...that, in areas outside New York City, RPTL 720(1)(b) prohibits tax reductions beyond those requested in the petitions " )].

The Meaning, Scope & Legislative History of R.P.T.L. § 720(1)(b)

Mirant asserts that the " reduction limitations " in R.P.T.L. § 720(1)(b) apply " solely to New York City ", prevents the determination of true value [ " In these proceedings, the whole subject matter is to determine value " <sup>8</sup> ] and, in any event, such reduction limitations violate R.P.T.L. § 305(2) and Article XVI, § 2 of the New York State Constitution and is, hence, unconstitutional<sup>9</sup>. Notwithstanding Mirant's musings on punctuation, the strategic placement of commas and whether or not legislators are good grammarians<sup>10</sup> it is clear that the " reduction limitations " in R.P.T.L. § 720(1)(b) apply throughout New York State " except in cities with a population of one million or more ". To the extent there is any ambiguity [ " At best, the statute is ambiguous " <sup>11</sup> ] the legislative history clarifies the meaning and scope of R.P.T.L. § 720(1)(b) [ see e.g., Executive Memorandum dated November 8, 1995<sup>12</sup> ( " The bill will also ensure that a court does not reduce an assessment below the amount requested by the aggrieved taxpayer " ), Assemblyman Richard L. Brodsky, New York State Assembly Memorandum In Support Of Legislation<sup>13</sup> ( " **TITLE OF THE BILL**: An Act to amend the Real Property Tax Law, in relation to the judicial review of assessments...**PURPOSE OR GENERAL IDEA**: To revise and establish certain procedural restrictions of judicial proceedings to review assessments outside the City of New York. **SUMMARY OF SPECIFIC PROVISIONS**: The following provisions apply only to property located outside the City of New York:...**EXISTING LAW**:...With

respect to relief available in a tax certiorari proceeding, the Court of Appeals has found that a court has the power to order greater relief than that requested in the petition ( W.T. Grant....)...**JUSTIFICATION**:...With respect to restricting the court's power to grant relief, the rule in New York for many years was that no relief could be granted beyond that requested in the petition. However, in W.T. Grant...The Court of Appeals overturned this rule. This can work a particular hardship on an assessing unit, which has notice from the petitioner that it may have to make a refund based on the relief requested in the petition, allocates its resources and prepares its defenses accordingly. Only to later find out that the court grants greater relief than that originally requested. Small claims assessment review hearing officers may not grant greater relief than that requested in a small claims petition...and it seems appropriate to place a similar restriction on relief in Article 7 proceedings where petitioners are usually represented by counsel " ), Letter of Senator Joseph R. Holland dated June 27, 1995<sup>14</sup> ( " I agreed to exempt New York City from the bill " ), Letter from Stanley J. Jones, New York State Office of Real Property Services dated June 26, 1995<sup>15</sup> ( " Bill section three would amend RPTL, section 720(1)(b) to provide that in Article 7 cases in New York City, a court may not order a reduction in assessment greater than that requested by the petitioner. This would overrule the decision in W.T. Grant...wherein the Court of Appeals overturned precedent that had stood for a century. As you know, the State Board has urged that that...

decision be overturned for several years; however, there is no justification in limiting this measure to New York City. Many other assessing units have been or may be placed in a precarious financial position when a case in which they believed they had only a limited exposure to potential refund suddenly results in a court order directing a much larger refund " )].

Indeed, the legislative history demonstrates that R.P.T.L. § 720(1)(b) was meant to and did overrule W.T. Grant, supra [ Matter of Radisson, supra, at 3 A.D. 3d 140 ( " Moreover, the legislative history of the amendment of section 720(1)(b) supports the contrary conclusion to that asserted by petitioner. The legislative intent behind the amendment was to overrule W.T. Grant Co and restrict the relief available to property owners in order to allow a taxing authority to ' allocate[ ] its resources and prepare[ ] its defense accordingly...Therefore, both *Wright* and *Purdy*, which likewise restrict the relief available to property owners, would remain good law " )].

#### **Respondent's Admission Reduces Mirant's 2000 Full Value**

Applying R.P.T.L. § 720(1)(b) Mirant is bound by the full values in its Petitions with, however, one exception. The Respondents' appraiser concluded a fair market value for the Bowline Station for the year 2000 of \$341,000,000. The Respondents are bound by their admission against interest and the 2000 Petition is reduced from \$771,026,464 to

\$341,000,000 [ See e.g., Matter of Norton Company v. City of Watervliet, 3 A.D. 3d 760, 762, 772 N.Y.S. 2d 720 ( 3d Dept. 2004 )( " the assessments for its Watervliet parcel must be reduced to reflect the lower valuation found by respondents' own appraiser " ); Matter of Ulster Business Complex, LLC v. Town of Ulster, 293 A.D. 2d 936, 941, 740 N.Y.S. 2d 718 ( 3d Dept. 2002 )( " Based upon the appraisal reports by ( Respondent's appraiser ) each of the aforementioned parcels is overvalued and the corresponding assessments should be reduced accordingly " ); Matter of Arsenal Housing Associates v. City of Watertown, 298 A.D. 2d 830, 747 N.Y.S. 2d 814 ( 4<sup>th</sup> Dept. 2002 )( " The court was required to consider the entire record and should have determined that respondents' appraisal, ' received in evidence, constituted [ an ] admission[ ] against interest by respondents that the assessment[ ] [ was ] excessive to the extent that [ it ] exceeded [ that ] appraisal [ ]'" ); Matter of South Slope Holding Corp. v. Comstock, 280 A.D. 2d 883, 885, 721 N.Y.S. 2d 171 ( 4<sup>th</sup> Dept. 2001 ) ( " respondents' appraisals, received in evidence, constituted admissions against interest by respondents that the assessments were excessive to the extent that they exceeded those appraisals " ); Matter of Boyce-Canandaigua, Inc. v. City of Canandaigua, 289 A.D. 2d 971, 738 N.Y.S. 2d 904 ( 4<sup>th</sup> Dept. 2001 )( " the appraisals submitted by respondent constituted admissions against interest that the assessments were excessive to the extent they exceeded those appraisals " )].

## Prejudice To Municipal Taxing Authorities

Mirant's Bowline Station is one of the largest taxpayers<sup>16</sup> in the Town of Haverstraw and, at the very least, in 1998 and 1999 there was considerable uncertainty regarding the amounts in " Petitioners' grievances and petitions "<sup>17</sup>.

R.P.T.L. § 720(1)(b) was enacted, in part, to reduce the uncertainty [ See e.g., W.T. Grant, supra, at 52 N.Y. 2d 519-522 ( J. Gabrielli, Dissenting in part ( " Of even greater concern in this case is the impact that the majority's holding will have upon the ability of municipal governments to make intelligent budgetary decisions. In order to determine how much money they may appropriate or spend in any given year for essential services and debt service, municipalities must be able to estimate with a fair degree of accuracy the amount of revenue that they will be able to raise through the system of local real property taxation...The extent of revenue loss resulting from such challenges, however, has always been limited by the amount of the tax reductions claimed by the taxpayers in their certiorari petitions...Under the rule announced by the majority today, however, the pleadings are no longer controlling. As a consequence, municipalities will be left in doubt about the extent of their potential liability for tax refunds until all of the assessment challenges have been finally resolved by the last appellate court " )] and potential for prejudice to taxing authorities created by W.T. Grant, supra [ See e.g., Matter of

Radisson, supra, at 3 A.D. 3d 140 ( " The legislative intent behind the amendment was to overrule W.T. Grant Co and restrict the relief available to property owners in order to allow a taxing authority to ' allocate[] its resources and prepare[] its defense accordingly..." ); Memorandum In Support Of Legislation<sup>18</sup> ( " This can work a particular hardship on an assessing unit, which has notice from the petitioner that it may have to make a refund based on the relief requested in the petition, allocates its resources and prepares its defenses accordingly. Only to later find out that the court grants greater relief than that originally requested " ); Letter from Stanley J. Jones, New York State Office of Real Property Services dated June 26, 1995<sup>19</sup> ( " Many other assessing units have been or may be placed in a precarious financial position when a case in which they believed they had only a limited exposure to potential refund suddenly results in a court order directing a much larger refund " )].

### **Petitioner's Challenge**

Mirant claims that the " reduction limitations " in R.P.T.L. § 720(1)(b) violate the New York State Constitution, Article XVI, §2 and R.P.T.L. § 305(2). Mirant contends that " By RPTL §720(1)(b), the New York State Legislature sought to limit the Court of Appeals' ruling in W. T. Grant Co. v. Srogi, supra. Such intended limitation contravenes the New York State Constitution and RPTL §305 " <sup>20</sup>.

The New York State Constitution, Article XVI, §2 provides in pertinent part that " The legislature shall provide for the supervision, review and equalization of assessments for the purposes of taxation. Assessments shall in no case exceed full value ". RPTL §305(2) provides in pertinent part that " All real property in each assessing unit shall be assessed at a uniform percentage of value ( fractional assessment )...".

Mirant asserts that the issue before the court is " whether R.P.T.L. §720(1)(b) violates a constitutional requirement that assessments cannot exceed full value "<sup>21</sup>. Mirant insists that, pursuant to W. T. Grant Co., supra, both " (1) the constitutional imperative of Article XVI, §2 and (2) the statutory prescription of RPTL §305 ", mandate that " the assessor must base the assessment on the subject properties' full value "<sup>22</sup>. Therefore, Mirant claims that R.P.T.L. §720(1)(b) " violates a constitutional requirement that assessments cannot exceed full value"<sup>23</sup> ".

### **The Presumption of Constitutionality**

It is the law in New York State that when a statute is challenged, " not only is the legislation presumed to be constitutional, but it is also presumed that the Legislature investigated and found the existence of a situation which warranted remedial action " [ See e.g., Mallinckrodt Medical, Inc. v. Assessor of the Town of Argyle, 292 A.D.2d

721, 723, 740 N.Y.S.2d 467 ( 3d Dept. 2002 ); Montgomery v. Daniels, 38 N.Y.2d 41, 54, 378 N.Y.S.2d 1 (1975)]. " Proof of unconstitutionality beyond a reasonable doubt must be submitted to rebut the presumption of constitutionality which attaches to legislative enactments " .

[ Mallinckrodt Medical, Inc., *supra*, at 292 A.D.2d 723; See also: Maresca v. Cuomo, 64 N.Y.2d 242, 250, 485 N.Y.S.2d 724 (1984)].

### **Mirant Failed To Meet Burden Of Proof**

Mirant's evidence is insufficient to meet the heavy burden of proof of unconstitutionality beyond a reasonable doubt. Mirant states that " pursuant to RPTL §720(1)(b), a Court's ultimate determination of value may be greater than the properties' actual full or market value, based on the fact that Petitioners' claimed value in its petition was greater than the property's actual market value. That is, the statutory limitation on the reduction of value would lead to a valuation ( i.e., assessment ) that is in excess of the real properties' full value. That result is contrary to the New York State Constitution "<sup>24</sup>.

### **Conclusion**

Upon a review of all the papers submitted, including the Petitions for the various years at issue, this Court concludes that Petitioners did not provide any credible evidence in support of their allegations

that R.P.T.L. § 720(1)(b) would lead to an assessment that is in excess of the real properties' full values. Therefore, they failed to establish, beyond a reasonable doubt, that the statute, R.P.T.L. § 720(1)(b), is unconstitutional as applied in this instance.

Accordingly, the Petitioners' motion is denied in all respects with the exception of permitting an amendment to their 2000 Petition changing the full value figure of \$771,026,464 to Respondents' appraiser's fair market value figure of \$341,000,000.

This constitutes the Decision and Order of this Court.

White Plains, N.Y.  
May 2, 2005

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HON. THOMAS A. DICKERSON  
SUPREME COURT JUSTICE

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## ENDNOTES

1. Petitioner's Memorandum of Law dated February 14, 2005 [ " P. Memo " ] at p. 1. See also Affirmation of Mark D. Lansing dated February 14, 2005 [ " Lansing Aff. " ], Affirmation of James J. Barriere dated February 8, 2005 [ " Barriere Aff. " ] and Petitioner's Reply Memorandum of Law dated April 7, 2005 [ " P. Reply Memo " ]

2. Affidavit of Jonathan P. Nye sworn to March 13, 2004 [ " Nye Aff. I " ] and Respondents' Memorandum of Law In Opposition dated March 13, 2005 [ " R. Memo " ].

3. P. Memo. at p. 2.

4. P. Memo. at p. 1.

5. P. Reply Memo. at p. 9.

6. P. Reply Memo. at p. 9.

7. Although the Court of Appeals in W.T. Grant Company v. Srogi, 52 N.Y. 2d 496, 513-514, 420 N.E. 2d 953, 438 N.Y.S. 2d 761 ( 1981 ) held " that where the evidence establishes a value lower than that alleged in the petition, a court can reform the petition to conform with the proof and order the appropriate reduction " it also sought to limit the significance of its holding as discussed in FN2 ( " Nor do we suggest that in tax review proceeding the values alleged in the petition are meaningless or that relief is to be granted regardless of the prejudice suffered by the respondent taxing authority " ).

8. P. Reply Memo. at p. 10. Establishing value has been described as " an area fraught with uncertainty " and " There is no guaranteed method for arriving at an accurate valuation figure, and the most that can be expected from our judicial system is a fair approximation based upon an objective effort to reconcile... the parties' conflicting claims " [ W.T. Grant, supra, at 52 N.Y. 2d 520 ]. Indeed, in the instant matter the parties have relied upon some analytical techniques such as the income approach through application of a discounted cash flow analysis [ DCF ] [ See The Appraisal of Real Estate, Appraisal Institute, 12<sup>th</sup> Edition, 2001, pp. 569-593; Valuing Machinery and Equipment, American Society of Appraisers, 2000, pp. 179-183 ] which has been rejected by, at least, one court [ See e.g., Matter of Erie Boulevard Hydropower LP v. Town of Ephratah, 9 A.D. 3d 540, 544,

779 N.Y.S. 2d 634 ( 3d Dept. 2004 )( " Inasmuch as the record supports Supreme Court's finding that petitioner's DCF analysis was based on unreliable price forecasts and overstated operating expenses, it was appropriate for the court to reject it and elect to use the RCNLD method " ).

9. P. Memo. at pp. 4-7.

10. P. Memo. at pp. 7-12.

11. P. Memo. at p. 12.

12. Nye Aff. at Ex. C at p. 5.

13. Nye Aff. at Ex. C. at pp. 6-8.

14. Nye Aff. at Ex. C at pp. 9-10.

15. Nye Aff. at pp. 19-23.

16. See W.T. Grant, supra, at 52 N.Y. 2d 521-522 ( " While this uncertainty may not be of serious import in cases involving individual taxpayers with small land holdings, it could well pose a severe problem when a single large corporate landowner which controls a substantial portion of the tax base challenges its assessment " ).

17. See R. Memo. at pp. 4-6 ( " A review of these transcripts... will demonstrate that even the property owner's representatives were unsure as to what valuation methodology might be applicable to the properties, and in what time frame. Those representatives were similarly unable to provide a firm basis for the relief requested in their grievances, other than to suggest that they needed to be conservative knowing that they would be unable to request different amounts in the future " ) and Nye Aff. at Exs. A ( pp. 12-13, 23-24, 28-30 ) & B ( p. 54 ).

18. Nye Aff. at Ex. C. at p. 8.

19. Nye Aff. at pp. 19-23.

20. P. Memo. at pp. 5-6.

21. P. Reply Memo. at p. 5.

22. P. Reply Memo at pp. 5-6.

23. P. Reply Memo. at p. 5.

24. P. Memo. at p. 6.