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M E M O R A N D U M

SUPREME COURT : QUEENS COUNTY
IAS PART 23

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Matter of MASPETH 5718
ASSOCIATES, INC.,

INDEX NO. 7776/00

BY: GLOVER, J.

-against-

DATED: JULY 28, 2000

CITY OF NEW YORK, et al.,
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In this Article 78 proceeding, petitioner Maspeth 5718 Associates, Inc. seeks a judgment vacating the decision of respondent New York City Department of Finance ("DOF"), dated March 6, 2000 which denied the request to cancel interest charged for unpaid taxes for the fiscal year 1995/1996, which was imposed in December 1999, after respondents repurchased a tax lien.

Petitioner Maspeth 5718 Associates Inc. (hereinafter "Maspeth") is the fee owner of real property located at 57-18 Flushing Avenue, Flushing, New York. The DOF, in a bill dated May 10, 1996, advised Maspeth that it owed the City of New York \$580,058.54 in real estate taxes for the subject property dating back to 1992. On May 10, 1996 Maspeth submitted transfer credit forms to the DOF, requesting a transfer of tax credits from four other properties in the amount of \$187,343.69. Maspeth also made a payment to the DOF in the amount of \$149,837.17 on May 17, 1996. These credits and payment were made by Maspeth with the intention of reducing its tax liability to an amount that was just one year or less past due, and thereby avoid a sale of the taxes and charges

at a lien sale. Section 11-319 of the Administrative Code of the City of New York provides that in order for a parcel to be eligible for sale in a tax lien sale, it must have tax liens that are more than a year old. The DOF failed to properly credit the subject property with the full amounts tendered by Maspeth prior to the sale of the tax lien. The DOH's error resulted in the City's sale of the tax lien on Maspeth's property on May 21, 1996. The tax lien was purchased by NYCTL 1996-1 Trust (hereinafter "Trust"), a not-for-profit business trust created pursuant to Chapter 38 of Title 12 of the Delaware Code. The DOH mailed Maspeth a Notice of Sold Tax Lien, dated June 25, 1996, stating that the tax liens had been sold to the Trust. This notice further stated that all inquiries should be made to the Trust's loan servicer, J. E. Roberts, Company, Inc. (hereinafter "Roberts"). On June 28, 1996, Roberts, at Maspeth's request, sent Maspeth a spreadsheet showing the total amount sold pursuant to the lien sale as \$480,815.19, which included charges and taxes of \$457,919.23, and a 5% surcharge of \$22,895.96, and a spreadsheet showing the payoff amounts of the lien with accrued interest through August 31, 1996. Maspeth's managing agent, in a letter dated September 5, 1996, informed Roberts that a payment had been made to the City on May 17, 1996 in the sum of \$149,837.17 which had not been properly credited, and that the City would not make any adjustments as it no longer owned the taxes and charges. Roberts, in a letter dated October 16, 1996, informed Maspeth that the City would make the adjustment to Roberts for the May 17, 1996 payment, and revised its figures to

show a reduced payoff figure of \$348,181.97, as of October 16, 1996. Following the receipt of this letter, Maspeth entered into a lengthy correspondence with Roberts and the Trust concerning the open balances, the failure to fully credit the May 1996 payment of \$149,837.17 and the transfer credits, and Maspeth's assertion that the lien sale should not have taken place. In a letter dated May 8, 1997, Roberts stated that even taking into account the payment of "\$133,614.60" made in May 1996, the premises would still have been subject to the tax lien sale. Roberts, in a letter dated May 8, 1997, acknowledged that while Maspeth was not fully credited for the May 1996 payment of \$149,837.17, the property was still subject to a tax lien sale. On July 2, 1997, Roberts sent Maspeth a default notice. On August 6, 1997 Maspeth sent a letter to Roberts which set forth the payments and calculations and demonstrated that the wrong May 1996 payment was credited to the premises by Roberts. Maspeth thereafter contacted all of the entities involved in the lien sale, including Roberts, the Bank of New York and the Trust in an attempt to rectify the errors made concerning the taxes and the charges. The Trust did not make any further adjustments and on April 24, 1998 it commenced a foreclosure action in this court, under the caption of NYCTL 1996-1 Trust v Maspeth 5718 Associates, Inc., index number 9085/98. Following the joinder of issue, the Trust moved for summary judgment and Maspeth cross-moved for discovery, raising the issue of the City's and the Roberts' failure to properly credit the May 1996 transfer credits and payment. These motions were withdrawn on

August 17, 1999 and the parties therein entered into a stipulation of discontinuance. The Trust, Roberts, and the City conceded that the May 1996 payment and credit transfers had not been properly credited, and that had these amounts been properly credited in May 1996, the premises would not have qualified for a tax lien sale. On November 29, 1999 the DOF informed Maspeth that the subject property would be removed from the 1996 tax lien sale on December 1, 1999. The DOF reposted all taxes and charges sold in the 1996 tax lien sale on December 1, 1999. The DOF did not post the correct payment and transfer credits made in May 1996 until December 15, 1999. These corrections established that the principal due was \$211,807.84 in real estate taxes, and \$4,464.45 due in water and sewer charges, totaling \$216,272.29. The DOF also imposed interest charges from the due date of the taxes and charges through December 1999, and included the period from May 21, 1996 through December 1999 when the tax lien was owned by the Trust. Maspeth objected to the imposition of interest for the period that the Trust owned the tax lien. On December 27, 1999 Maspeth paid, under protest, the principal amount of real estate taxes in the sum of \$211,261.39 and also paid the water and sewer charges, with accrued interest in the sum of \$13,675. At the time of payment DOF's Tax Lien Ombudsman stated that no interest adjustment would be made and suggested that Maspeth file a protest with the Office of the Corporation Counsel. On February 1, 2000 Maspeth's counsel wrote a letter to the Office of the Corporation Counsel, protesting the interest charges. The DOF thereafter advised Maspeth that an

appeal from the Ombudsman's decision should be filed with the DOF Office of Legal Affairs. Maspeth filed a letter with the DOF on February 15, 2000, protesting the retroactive levying of interest on charges which the City had bought back from the Trust. Maspeth asserted that had the transfer credits and payment been properly credited in May 1996, it would have known the exact amount owed and could have made arrangements to pay the DOF. It was asserted that once the charges were sold in the tax lien, along with numerous other charges, the charges no longer remained on the books and it had no way of knowing the amount of payment it had to make to pay off any open charges in May 1996. Maspeth asserted that through no fault of its own, it was not able to ascertain the correct figures until December 1999, when the City posted the credits and payment made in May 1996. The DOF Office of Legal Affairs, in a letter dated March 6, 2000, denied Maspeth's request to cancel interest on the accrued real property taxes for the fiscal year 1995/96 on the subject property. The DOF stated that when the sale of the tax lien was reversed, and the credits properly applied, interest was imposed on the first and second half 1995/96 taxes accruing from the date of entry of the taxes. The DOF set forth in part the provisions of subdivision (f) of section 11-224 of the Administrative Code of the City of New York which states that "[i]f any tax on real estate which shall become due and payable at any time on or after July first nineteen hundred seventy-nine shall remain unpaid in whole or in part on the fifteenth day following the day on which same shall become due and payable, [or for

properties not entitled to a grace period, if the tax remains unpaid following the date the tax became due and payable] ... the commissioner of finance shall charge, receive and collect interest upon the amount of such tax or such part thereof remaining unpaid.." The DOF further stated that "[a]s the taxes for the subject periods remained unpaid when due, the law requires that interest accrue from the date such taxes become due and payable. The taxes were properly entered on the records of the property and when Maspeth chose not to make timely payment, interest accrued as required by law." The amount of the interest imposed by the DOH is over \$260,000 and remains open to date.

Petitioner timely commenced the within Article 78 proceeding and seeks a judgment reversing the DOH's decision of March 6, 2000 which denied the request to cancel the interest charges imposed for the period of May 21, 1996 through December 1999. It is asserted that the imposition of interest for this period is arbitrary and capricious, an abuse of discretion and contrary to law. Maspeth asserts that following the tax lien sale on May 21, 1996, the City no longer owned the lien, and as the taxes and charges were incorporated into the lien sale, they no longer remained unpaid and therefore interest could not have accrued. It is further asserted that if not for the City's error, which was not corrected for more than three years, the taxes and charges would not have been sold and Maspeth would have had an opportunity to pay off a known sum of outstanding taxes and charges. Maspeth, however, asserts that once the tax lien sale

took place, the amounts owed for back taxes and charges were removed from the tax rolls so that Maspeth was unable to ascertain the actual amount owed, including interest.

Respondents assert that its decision of March 6, 2000 was neither arbitrary nor capricious, nor an abuse of discretion and that it has a reasonable basis in law. It is asserted that the City is required, under the provisions of section 11-224 of the Administrative Code, to charge interest on late tax payments, and that the rate of interest on a tax lien is established by the provisions of sections 11-322(b) and 11-319(4). It is further asserted that the interest charged does not change after the tax lien is sold to the Trust, and that the lien remains a tax lien which is subject to the statutory rate of interest. The present statutory rate of interest is 18% and is compounded daily. It is asserted that as Maspeth did not pay the taxes for fiscal year 1995-96 until December 27, 1999, more than four years late, interest was properly imposed. The City asserts that the Trust did not pay Maspeth's taxes, but rather bought the right to collect the taxes. Therefore, the tax lien on the 1995/96 open balance remained outstanding until it was paid by Maspeth, and the statutory rate of interest continued to accrue on the unpaid balance regardless of which entity, the City or the Trust, owned the tax lien. The City argues that while the Trust held the tax lien it stood in the same position as the City and had all the rights and remedies that the City had, and the statutory interest continued to accrue while the Trust held the lien. The City thus

argues that the fact that it sold the right to collect the taxes to the Trust and then reclaimed the right to enforce the lien has no bearing on whether interest continued to accrue on the open balance. It is further asserted that Maspeth knew the exact amount of taxes and charges it owed the City for the fiscal year 1995/96, that it knew how much it had to reduce the tax lien to avoid a sale of the tax lien, and that it could have made a timely payment but chose not to, and therefore the imposition of interest was caused solely by Maspeth's failure to make timely payment. It is asserted that even if the City failed to send Maspeth a new tax bill evidencing the open balance, this does not excuse the property owner from paying taxes. Finally, it is asserted that estoppel is not available against a government agency to prevent it from collecting taxes.

It is well settled that the court's power to review an administrative action is limited to whether the determination was warranted in the record, had a reasonable basis in law, and is neither arbitrary nor capricious. (See, Matter of Colton v Berman, 21 NY2d 322.) In the case at bar, the court finds that the respondents' decision of March 6, 2000 which upheld the imposition of interest for the period of May 21, 1996 through December 15, 1999, has a reasonable basis in law and is neither arbitrary and capricious, nor an abuse of discretion. The City's authority to sell tax liens is governed by the provisions of Title 11, Chapter 3, of the Administrative Code of the City of New York. Section 11-319 of the Administrative Code provides that the sale of a tax lien

shall be a sale and not a borrowing. The delinquent tax lien was sold to the Trust and included all taxes, charges and interest that had accrued prior to the sale, as well as the right to collect certain costs, a 5% surcharge, and interest and penalties that accrued after the sale. The Trust, as purchaser of the tax lien, stood in the same position as the City and had all the rights and remedies the City would have had the tax lien not been sold (Administrative Code of the City of New York §11-332.) Thus once the tax lien sale took place on May 21, 1996, only the Trust could seek to collect the delinquent taxes and charges, as well as interest that accrued after the sale. It is undisputed that the City erroneously applied the transfer credits and payment made by Maspeth in May 1996, and that but for this error, the tax lien sale would have never occurred. While Maspeth's ability to properly reduce the amount of their tax liability was frustrated by the City's errors, which were perpetuated by the Trust and Roberts for over three years, Maspeth could have tendered what it believed to be the correct amount owed in back taxes, charges, and interest. Maspeth, in a letter to Roberts, dated August 6, 1997, had calculated the amount it believed it owed on the tax lien. During the period of time that the Trust owned the tax lien, interest continued to accrue at the rate of 18%, compounded daily. Following the sale or transfer of the tax lien by the Trust to the City on December 1, 1999, the City again acquired an interest in the tax lien. The delinquent taxes remained unpaid until December 27, 1999. Inasmuch as Maspeth had failed to pay the taxes due and owing on the

property from the period of May 21, 1996 through December 1999, the DOF was required to charge interest on the unpaid taxes. (See Administrative Code of the City of New York § 11- 224[f].) The statutory language provides that the commissioner of finance "shall charge, receive and collect interest upon the amount of such tax or such part thereof remaining unpaid" and, therefore, the imposition of interest is mandatory in nature. The DOF, in its decision of March 6, 1999, therefore properly upheld the imposition of interest as it lacked the discretion to reduce or excuse the payment of interest.

In view of the foregoing, the court need not reach respondents' remaining arguments.

Accordingly, petitioner's request that respondents' decision of March 6, 2000 be vacated is denied and the petition is dismissed.

Settle judgment.

J.S.C.