SUPREME COURT FOR THE STATE OF NEW YORK
NEW YORK COUNTY

ERNEST ROBINSON and ROSA RODRIGUEZ, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

THE CITY OF NEW YORK and STATE OF NEW YORK,

Defendants.

Case No. 151679/2014
Date Purchased: 2/26/2014

The basis of venue is that this cause of action for declaratory and injunctive relief arose in New York County.

SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on Plaintiffs' attorneys within twenty (20) days after service of this summons, exclusive of the day of service; or within thirty (30) days after completion of service if the service is made in any manner other than by personal delivery within the state; or if service of the summons is made by mail pursuant to CPLR §312-a, you must complete and mail or deliver the acknowledgement of receipt to the undersigned within thirty (30) days from date of receipt and serve an answer within twenty (20) days after the signed acknowledgement is mailed or delivered to the undersigned, and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
February 26, 2014

NEWMAN FERRARA LLP

By: _____

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SUPREME COURT FOR THE STATE OF NEW YORK
NEW YORK COUNTY

ERNEST ROBINSON and ROSA RODRIGUEZ, individually and on behalf of all others similarly situated, Plaintiffs, v. THE CITY OF NEW YORK and STATE OF NEW YORK, Defendants.	Case No. 151679/2014 **VERIFIED CLASS ACTION COMPLAINT**

PRELIMINARY STATEMENT

Plaintiffs Ernest Robinson and Rosa Rodriguez (collectively "Plaintiffs"), by and through their attorneys, Newman Ferrara LLP, bring this class action seeking declaratory and injunctive relief against the hereinafter named Defendants City of New York ("New York City" or "City") and State of New York ("State") and allege upon knowledge, information, and/or belief as follows:

1. This is an action seeking declaratory and injunctive relief under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601, *et seq.*, (the "Fair Housing Act" or "FHA") and 42 U.S.C. §1983 challenging New York City's property tax classification system. As currently applied, the City's property tax classification system perpetuates a "tale of two cities", has a disparate and adverse impact upon the City's African-American and Hispanic residents, and denies such residents their statutorily and constitutionally protected rights to due process and equal protection.

2. In a report issued in July 2013, the Furman Center For Real Estate & Urban Policy of New York University identified the impact of the problem being addressed in this action in clear and dramatic terms:

> *The burden of the undervaluation of co-ops and condos therefore falls on families already struggling to afford housing in New York City. Tenants in Class 2 rentals are also much more likely to be black or Hispanic and to have children than co-op and condo owners, so the burden of undervaluation may threaten the city's ability to attract and retain a diverse range of households.*

Furman Center for Real Estate and Urban Policy, Shifting the Burden: Examining the Undertaxation of Some of the Most Valuable Properties in New York City (2013). Retrieved from http://furmancenter.org/files/FurmanCenter_ShiftingtheBurden.pdf. ("Shifting the Burden") at 7, annexed hereto as Exhibit A.

3. As more fully alleged below, the City and State have adopted certain practices, procedures, regulations and/or legislation with respect to the assessment, classification and taxation of residential real estate properties that have benefited predominantly White residents of the City and has had, and will continue to have, a disparate impact on African-American and Hispanic residents of the City. Such practices and procedures have resulted in the owners of rental properties where African-Americans and Hispanics predominantly reside paying higher taxes than owners of buildings wherein Whites predominantly reside. African-American and Hispanic residents bear the burden of the higher real estate taxes as those amounts are reflected as a portion of their rent. Indeed, approximately 30% of the monthly rent reflects the owner's real estate tax obligation.

4. By this action, Plaintiffs, individually and on behalf of others similarly situated, seek a declaratory judgment declaring that the aforementioned violates the statutory and constitutional rights of the Class of African-American and Hispanic residents of buildings with 11 or more units in the City as secured by the Fair Housing Act, 42 U.S.C. §1983, Article 1, §11

of the New York State Constitution, and the Fourteenth Amendment to the Constitution of the United States.

5. Plaintiffs also seek an Order from this Court mandating that the City and State adopt policies, procedures, regulations and/or legislation that will equalize the tax burdens that are disproportionally borne by African-American and Hispanic residents of buildings with 11 or more units located within the City.

PARTIES

6. Plaintiff Ernest Robinson is an African-American resident of New York City. Plaintiff Robinson resides in an apartment in Bronx County. He brings this action in his individual capacity and on behalf of African-American residents of rental apartments in buildings with 11 or more units in New York City.

7. Plaintiff Rosa Rodriguez is a Hispanic resident of New York City. Plaintiff Rodriguez resides in an apartment in Queens County. She brings this action in her individual capacity and on behalf of Hispanic residents of rental apartments in buildings with 11 or more apartments in New York City.

8. The Defendant New York City is a municipal corporation chartered under the laws of the State of New York. As alleged more fully *infra*, the City, through its departments, agencies, and its legislative body, including, but not limited to, the Department of Finance and the Council for the City have adopted and/or maintained certain practices, policies and procedures relating to the classification and/or assessment of properties within the City for purposes of real estate taxation that have had and will continue to have a disproportionate effect and disparate impact on African-American and Hispanic residents of rental properties with 11 or more units.

9. The Defendant New York State is one of the 50 states of the United States of America. As more fully alleged *infra*, the State, through its legislature, has adopted certain legislation and practices regarding the assessment, classification, and taxation of real estate properties within the State and the City that have had, and will continue to have, a disproportionate effect and disparate impact on African-American and Hispanic residents of rental properties located in the City with 11 or more units.

CLASS ALLEGATIONS

10. Plaintiffs bring this class action pursuant to Article 9 of the New York Civil Practice Law and Rules ("C.P.L.R.") on behalf of the following: (a) African-American residents of rental properties with 11 or more units in the City of New York; and (b) Hispanic residents of rental properties with 11 or more units in the City of New York.

11. The period for which Plaintiffs seek Class relief is February 26, 2011 to the present.

12. The Class is so numerous that joinder of all members is impracticable.

13. The disposition of the claims in a class action will be of benefit to the parties and to the Court.

14. There are questions of law and fact common to the class, including: (1) whether the City and the State have adopted certain practices, procedures, regulations, and/or legislation that have a disparate impact on African-American and Hispanic residents of rental properties with 11 or more units and benefits White residents of other classes of residential properties within the City; (2) whether injunctive relief is an appropriate remedy; and (3) whether declaratory relief is an appropriate remedy.

15. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs are members of the Class and are committed to prosecuting this action. Plaintiffs have retained competent counsel experienced in litigation of this nature.

16. Plaintiffs' claims are typical of the claims of other members of the proposed Class in that they are seeking injunctive relief for the practices, policies, regulations and/or legislation of the City and State as alleged herein; the same claims being asserted on behalf of each individual member of the Class.

17. The City and State have acted or refused to act on grounds that apply generally to the Class, so that final injunctive and declaratory relief is appropriate respecting the Class as a whole.

FACTUAL ALLEGATIONS

The Demographics of Residential Housing in New York City

18. As described by the City in its Property Tax Annual Report for Fiscal Year 2013 ("2013 Property Tax Report"), New York State law divides the City's real property into four classes: "Class One is primarily one-, two-, and three-family homes; Class Two is all other residential properties; Class Three is certain types of property owned by utility companies subject to governmental supervision; and Class Four is all other commercial property." New York City Dept. of Finance, Office of Tax Policy, Annual Report on the New York City Property Tax Fiscal Year 2013 (2013) at i.

19. According to the 2010 United States Census, New York City's demographic breakdown is 33.3% White, 22.8% African-American, 12.6% Asian, and 28.6% Hispanic, with 2.5% being two or more races, some other race, Native Hawaiian, or Native American.

20. According to the American Community Service's Census Records for 2011, Whites and Asians combined make up 62% of the City's homeowners, despite having only 45.6% of the population, while African-Americans and Hispanics make up more than half of the City's population, but only 44% of the City's homeowners.

21. Conversely, only 37.5% of the renting population is White or Asian, while 60% of the renting population is African-American or Hispanic. The difference is especially acute among Hispanics, who are roughly three times as likely to rent as to own.

22. According to the Furman Center's analysis of the characteristics of New York City households by tax class and property type, roughly 61.9% of the households residing in co-ops built before 1974 are White, and 9.9% are Asian, while only 14.6% are African-American, and 12.8% are Hispanic. In Class Two co-ops built after 1974, and all condos, 57.8% of households are White, and 21.2 % are Asian, while only 9.3% are African-American and 10.2% are Hispanic. Shifting the Burden, Exhibit A at 7.

23. In Class Two rental buildings, 38.2% of householders are White, and 9.8% are Asian, while 21.4% are African-American, and 29.5% are Hispanic. Translating those numbers, African-Americans are roughly twice as likely to live in Class Two rental buildings as they are to live in a condominium or co-op, and Hispanics are more than three times as likely to live in a Class Two property than a condo or co-op. *Id.*

24. The household measurements understate the population size of each race within each property class. According the New York City's Housing and Vacancy Survey published in 2011, the mean household size for Whites is 2.14, while the mean household size for non-Puerto Rican Hispanics is 3.39 (2.61 for Puerto Rican Hispanic). The number for African-Americans

and Asians is 2.61 and 3.01, respectively. Dr. Moon Wha Lee, New York City Department of Housing Preservation and Development, Housing New York City 2011 (2013), 108.

25. Most of the City's stock of Class Two rental properties with 11 or more units exists in areas with high concentrations of African-Americans and Hispanics, such as the sub-boroughs of Inwood, Mott Haven, and Jamaica/Hollis.

26. Any property tax policy that affects Class Two rental housing, and specifically Class Two rental housing with 11 or more units, has a disparate impact on African-Americans and Hispanics.

27. As New York City's Rental Guidelines Board ("RGB") has long recognized, a significant portion of property tax charged on rental buildings is passed along to the tenant, and the RGB estimates that roughly 1/3 of a tenant's rent is comprised of property taxes.

28. In its 2006 Report, the City's Independent Budget Office analyzed the effects of a neutral policy that treated all residential property identically. According to the Budget Office, each apartment in large residential buildings would see a tax cut that averaged between $1,237 and $1,854 per apartment per year. These numbers have likely increased in the intervening period as rental costs have increased.

29. The City's property tax system, while outwardly neutral, has a significant and disproportionate effect upon tenants of Class Two large unit rental housing; tenants who are significantly more likely to be African-American or Hispanic than White or Asian. Thus, the City's property tax system violates the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601, *et seq.*

A Tale of Two Cities: The Discriminatory Real Property Tax Scheme

30. The City's 2013 Property Tax Report details that for Fiscal Year 2013, Class One properties had the largest percentage of the City's market value, with 47.77%. Id. at 1. Class Two's market value was roughly half that of Class One's market value at 23.20%. *Id.*

31. Despite having nearly twice the market value of Class Two properties, Class One's share of Citywide revenue was roughly half that of Class Two. For Fiscal Year 2013, Class One paid only 15.5% of the City's Real Property Tax, while Class Two paid 37.0%. *Id.* at 1.

32. An Effective Tax Rate ("ETR") is a composite of the two figures above, and here it allows for comparison across property tax classes. The ETR is calculated by dividing the tax paid upon a piece of property by the market value. New York City's ETR starkly displays the different treatment accorded Class One residential property and Class Two residential property. For Class One, the ETR is 0.74%. For Class Two, the ETR is 3.497%, nearly 5 times that of Class One.

33. The exceedingly favorable treatment accorded to Class One properties under New York City's property tax treatment is offset by exceedingly harsh treatment to other property classes, including the residential properties in Class Two. Exacerbating matters, the primary Class Two tax burdens fall disproportionately onto one type of Class Two housing.

34. Class Two is divided into three distinct property types: condos and co-ops; properties with 11 units or fewer; and rental buildings with 11 or more units. Each of these distinct property types receives different treatment under the City's property tax system.

35. Within Class Two, condos and co-ops receive exceedingly generous treatment, a product of concerted lobbying on behalf of owners who sought similar treatment to that given to

Class One property owners. Through use of property tax abatements, the owners of condos and co-ops in buildings with 11 or more units pay a much lower tax rate.

36. Making matters worse, many Class Two condos and co-ops are systematically undervalued by the City, because the Department of Finance values them by comparing them to rental housing. N.Y. Real Prop. Tax Law § 581(1)(a) (McKinney 2013).

37. For many of the City's condos and co-ops, rental housing of the same age and size is rent controlled or rent stabilized, which leads to significant undervaluation of the City's condos and co-ops. Shifting the Burden, Exhibit A at 2-3.

38. As an example, although the penthouse at 15 Central Park West is listed by the City in its assessment rolls as having a fair market value of $3.957 million; it recently sold for $88 million. Luisa Kroll, Billionaire's Daughter Pays Record Sum for NYC Pad, Forbes, Dec. 19, 2011. Retrieved from http://www.forbes.com/sites/luisakroll/2011/12/19/billionaires-daughter-pays-record-sum-for-nyc-pad/.

39. On the City's assessment rolls, other units at 15 Central Park West are listed as having a market value as low as $135,014.

40. Since market value is one of the primary determinants in the property tax calculation, the burden borne by Class Two properties as a whole is shifted from one set of Class Two properties, condos and co-ops with 11 or more units, to the remaining Class Two properties.

41. Yet, even the remaining Class Two properties are not all identically taxed. The City divides the remaining properties into four types, Class Two-A (buildings with 4-6 units); Class Two-B (buildings with 7-11 units); Class Two-C (condos and co-ops with 2-10 units); and the remaining Class 2 properties, rental residential properties with 11 or more units. N.Y. Real Prop. Tax Law § 581(1)(a) (McKinney 2013).

42. State law limits how much the assessed value of the Class Two-A, Class Two-B, and Class Two-C properties can increase annually, while no such cap exists for the large rental buildings that make up the remainder of the Class Two properties. N.Y. Real Prop. Tax Law § 1803 (McKinney 2013).

43. As the City's Independent Budget Office found in 2006, the assessment caps in Class Two-A, Class Two-B, and Class Two-C, "have prevented the city from fully reflecting all of the market value appreciation that has occurred over the past 25 years." For the large apartment buildings however, "phase-ins smooth out the assessment changes while allowing the city to eventually capture the appreciation in value for those properties." New York City Independent Budget Office, Twenty Five Years After S7000A: How Property Tax Burdens Have Shifted in New York City, (2006) at 16 ("IBO Report").

44. Thus, Class One residential properties are significantly under-taxed in proportion to over-taxed Class Two residential properties, and within Class Two the property tax burden falls disproportionately upon one type of residential property: rental property with 11 or more units.

45. A landlord's property tax is born by his tenants. Currently, New York City's RGB estimates that approximately 30% of a tenant's rental payment is attributable to property tax. New York City Rent Guidelines Board. 2013 Price Index of Operating Costs (2013) at 17.

46. A property tax burden that is so grossly disproportionate in favoring all residential housing, except for rental buildings with 11 or more units, is borne by the tenants in rental buildings with 11 or more units.

47. Most rental buildings with 11 or more units are located in areas with high concentrations of African-American and Hispanic residents, such as the sub-boroughs of

Inwood, Bedford-Stuyvesant, Fordham/University Heights, and Central Harlem. Conversely, those parts of Manhattan with a significant percentage of Class One housing, condos and co-ops, and Class Two-A and Class Two-B housing are predominately in sub-boroughs with high concentrations of White and Asian residents, such as Tottenville/Great Kills, the Upper West Side, the West Village/Soho, and Bayside/Little Neck.

48. New York City's African-American and Hispanic residents are significantly more likely to live in Class Two residential properties with 11 or more units. Conversely, New York City's White and Asian-American residents are more likely to live in the type of housing that receives favorable tax treatment.

49. Thus, while the City's property tax scheme is facially neutral, it has an actual, significant, disproportionate and discriminatory effect upon the City's African-American and Hispanic residents, and therefore violates the Fair Housing Act.

The Codification of Discrimination

50. Until 1975, New York State municipal authorities conducted real property assessments using fractional assessment, which resulted in residential properties being assessed at less than full market value, despite a state law that required that all real property be assessed at full market value.

51. In *Matter of Hellerstein v. Town of Islip*, 37 N.Y.2d 1, 332 N.E.2d 279 (1975), the New York Court of Appeals held that the New York law requiring full value assessments meant exactly what it said, and that full value assessments were required. Aware that its decision would require significant changes to the existing assessment rolls, the Court of Appeals gave Islip (and by extension other municipalities) until the end of 1976 to provide new assessment rolls in compliance with state law.

52. Several years after the decision in *Hellerstein,* the New York Court of Appeals described the effect, "Because of the ubiquity of fractional assessment, our decision in *Hellerstein* reverberated throughout the state. Under a hodgepodge of fractional assessment regimes that had proliferated over the years, localities routinely assessed commercial and industrial property at higher ratios (assessed value over market value) than residential property. But as a result of *Hellerstein,* all real property would be subject to the same effective tax rate, or taxes per dollar of full market value. As reflected in the extensive newspaper coverage of the time, there was widespread fear that, without ameliorative legislative action, *Hellerstein* would force an unwelcome shift of a significant portion of the property tax burden from businesses to homeowners." *O'Shea v. Bd. of Assessors of Nassau Cnty.*, 8 N.Y.3d 249, 253, 864 N.E.2d 1261, 1262 (2007) (internal citations omitted).

53. After several grants of legislative moratoria, the state legislature overrode a gubernatorial veto to pass S7000A. A portion of S7000a, codified as N.Y. Real Prop. Tax Law § 305, specifically allowed for fractional assessments. *Id.* In addition, the legislature established a specific article which governed assessments in New York City and Nassau County; N.Y. Real Prop. Tax Law § 1802. *Id.*

54. As originally passed, §1802 provided for four different property tax classes in New York City, as follows:

a. Class One: One-, two- and three-family residential property;

b. Class Two: All other residential property except for hotels and motels;

c. Class Three: Utility property; and

d. Class Four: All other real property.

55. A further portion of the S7000a provided that the relative property class tax share would remain the same, although the City Council was given discretion to adjust the tax levy share of each class up to 5% annually. *Id.*

Class One Property Taxes

56. In a 2006 report reflecting on the City's property taxes 25 years after the passage of S7000a, the New York City Independent Budget Office wrote "[w]hen S7000A was originally enacted, it was expected that the State's Office of Real Property Services would undertake market value surveys every two years to be used when adjusting the market value shares. The first state survey was scheduled to be ready for 1987, but it was delayed and legislation was passed pushing the deadline back until 1989. The same bill also substituted 1984, rather than 1981 as the base year for the shares. With no market value adjustments made from 1983 through 1989, during which Class 1 values had been growing rapidly, the use of the first survey in 1990 would have resulted in a significant adjustment of class shares, with taxes for Class 1 growing by an estimated 42 percent." IBO Report, 20-22.

57. In response to outcry from Class One property owners, the State Legislature passed legislation setting the base class shares at the 1990 levels. *See* N.Y. Real Prop. Tax Law § 1802. Since no market share adjustment had taken place between 1981 through 1989, §1802 meant that the substantial market value increases in Class One properties in the 1980s (sales prices for a Class 1 house had increased 257% by 1989) were never reflected in the Class One property tax shares. IBO Report, 20-22.

58. Since the 1990 Amendments, the Class One market value has grown faster than the market value for the other classes. Further exacerbating the problem, the State Legislature

has repeatedly lowered the cap on the maximum increase from the statutory 5% to 2% or 2.5%, which in turn spreads the excess to the other three property classes.

59. As a result of the failure to adjust Class One market shares, the effective tax rates for Class One are significantly less than for the other three classes, and, as the chart below demonstrates, are roughly 1/5 of the effective tax rates for Class Two properties.

FY2013 Effective Tax Rates					
	Tax Paid		Market Value		ETR
Class One	$	2,961,400,000.00	$	400,288,200,000.00	0.740%
Class Two	$	6,828,300,000.00	$	195,251,400,000.00	3.497%
Class Three	$	1,416,000,000.00	$	26,102,500,000.00	5.425%
Class Four	$	8,140,500,000.00	$	216,361,100,000.00	3.762%

60. Class One properties make up 47.7% of New York City's overall property value, yet pay only 15.5% of New York City's property tax. Conversely, Class Two properties make up 23.20% of New York City's overall property value, yet pay 37% of New York City's property tax. Thus, the reduced ETR on Class One properties mandates that the City use a disproportionately high ETR on Class Two properties.

Class Two Condos and Co-Ops

61. While Class Two properties bear a disproportionate share of the City's overall residential property tax burden vis-à-vis their market share, the distribution of property taxes within Class Two is also disproportionate, and has the effect of shifting Class Two's tax burden on to only one type of Class Two properties; rental buildings with 11 or more units.

62. In the early to mid-1990s, as the effect of the burden shifting provisions of the S7000A amendments began to be felt, Class Two condominium and co-op owners sought relief from the 1993 Property Tax Reform Commission appointed by Mayor David Dinkins and City Council Speaker Peter Vallone, Sr., and questioned why homeowners should be taxed at a

different rate, depending on whether they owned a house on one hand, or a condo or co-op on the other.

63. In response to pressure from condo and co-op owners, the City Council recommended, and the State Legislature passed, the Cooperative and Condominium Property Tax Abatement Program in 1996, codified at N.Y. Real Prop. Tax Law § 467-a (McKinney). The effect of the Cooperative and Condominium Property Tax Abatement Program was to lower the property taxes on co-ops and condos, bringing them more in line with Class One properties.

64. Making the problem even worse is the manner in which the City establishes the market value of condos and co-ops.

65. N.Y. Real Prop. Tax Law § 581 (McKinney) provides that "[R]eal property owned or leased by a cooperative corporation or on a condominium basis shall be assessed for purposes of this chapter at a sum not exceeding the assessment which would be placed upon such parcel were the parcel not owned or leased by a cooperative corporation or on a condominium basis." *Id.*

66. Put simply, §581 requires that the Department of Finance ("DOF) value Class Two condo and co-op buildings as if they were rental properties. To do so, the Department of Finance identifies properties that are comparable in age, size, location, and number of units.

67. However, the City's identification process is fundamentally flawed, as New York University's Furman Center for Real Estate & Urban Policy found in its Shifting the Burden report. *See* Exhibit A.

68. The Furman Center identified two key problems with the DOF's chosen methodology. First, many condos and co-op buildings are not comparable to any rental properties in the City, such as the luxury condos and co-ops lining Central Park. Second, due to

similar ages, the City often uses rent-regulated buildings to establish the income producing value of condos and co-ops; because rent-regulated buildings produce only a limited amount of income for their owners, the income value determined by DOF is correspondingly lower.

69. As an example, the penthouse at 15 Central Park West was recently sold by former Citigroup Chairman and CEO Sandy Weill to Russian fertilizer billionaire, Dmitry Rybovlev for a total price of $88 million. *See supra* Kroll, Billionaire's Daughter. The full value of the penthouse, as listed in the City's final assessment rolls is $3.957 million. Other units in the 36 story luxury building are taxed at a market value of $135,014.

70. The combined total of the market value of all the co-ops at 60 Broadway in Williamsburg, Brooklyn is listed by DOF as having a fair market value of $12.656 million. 60 Broadway, #10CD is currently listed at Trulia.com as for sale for $6.5 million, more than half the total market value of a building with 131 units. Retrieved from: http://www.trulia.com/property/3140330763-60-Broadway-10CD-Brooklyn-NY-11249.

71. The Furman Center's Shifting the Burden report, which was non-exhaustive, noted 50 further extreme examples of condos and co-ops where the property itself is listed with a full market value that is less than the sales price of one of the building's units. Shifting the Burden, Exhibit A at 4.

Rental Properties with 11 Units or More

72. Class One properties are provided with an assessment cap, which limits how much assessments can be increased, and one of the first significant changes to S7000A was to extend the advantages of an assessment cap to small apartment buildings in Class Two.

73. Currently state law limits how much the assessed value of Class Two buildings of 11 units or less (known as Class Two-A, Class Two-B, and Class Two-C) can be annually

increased, and bars increases of more than 8% annually and more than 30% over five years. IBO Report at 21-22, N.Y. Real Prop. Tax Law § 1805 (McKinney).

74. Unlike their smaller brethren, there are no property tax caps for buildings with 11 or more units; instead assessment changes due to market conditions are phased in over a five year period. As recognized in the Independent Budget Office Report from 2006, "[u]nlike the assessment caps used in Class [One] and Classes [Two-A], [Two-B], and [Two-C], which have prevented the city from fully reflecting all of the market value appreciation that has occurred over the past 25 years, the Class [Two]...phase-ins smooth out the assessment changes while allowing the city to eventually capture the appreciation in value for those properties." *Id.* at 16.

75. For example, from 2003 to 2013 in Williamsburg, Brooklyn, the average sales price of a condo soared from $331,000 to $827,000. Ivan Pereira and Heather Senison, Brooklyn's 10-Year Boom, AM New York, January 7, 2014 at 3. Yet, because of the assessment caps on condos and co-ops, the City will never realize the increased property tax commensurate with the increase in property value.

76. Thus, because the true market value (a portion of the effective tax rate) for Class Two-A, Class Two-B, and Two-C are never realized by the City, while the true market values for Class Two properties of 11 or more units are realized by the City, the effective tax rates for Class Two buildings of 11 or more units are significantly higher than for Class Two-A, Class Two-B, and Class Two-C buildings within Class Two's already disproportionate effective tax rate vis-à-vis Class One.

77. As noted above, the split between Class One and Class Two housing places a disproportionate share of the tax revenue onto Class Two housing. Further, the systematic undervaluation of condos and co-ops shifts, and the assessment caps on Class Two-A, Two-B,

and Two-C housing, disproportionately shifts the already disproportionate Class Two tax burden onto Class Two rental housing containing 11 or more units.

FIRST CLAIM FOR RELIEF
(Violation of 42 U.S.C. §3601, *et seq.)*

78. Plaintiffs re-allege and incorporate by reference the allegations in all previous paragraphs of this Complaint.

79. New York City's actions, practices, and policies, as described herein, have had and continue to have a substantial adverse, disparate impact on African-American and Hispanic households in violation of the Fair Housing Act, 42 U.S.C. §3604(a) and (b). *See Coleman v. Seldin*, 18 Misc.2d 219 (S.Ct. Nassau Co. 1999), annexed hereto as Exhibit B.

80. The actions of Defendants herein in adopting, revising, and implementing New York City's property tax system have caused, and continue to cause, substantial injury to each of the Plaintiffs and the Class they seek to represent.

81. The actions of Defendants herein in adopting, revising, and implementing New York City's property tax system have caused, and continue to cause, substantial injury to the predominately African-American and Hispanic residents of New York City's large unit Class Two rental housing of 11 or more units.

82. The actions, practices, policies and/or procedures of the Defendants herein have encouraged the conversion of large rental properties and the development of condos and coops to the detriment of the African-American and Hispanic residents of rental residential properties.

83. The actions, practices, policies and/or procedures of the Defendants herein have resulted in a diminution in the availability of housing rental units in the City to the detriment of the African-American and Hispanic residents of rental residential properties.

84. The actions, practices, policies and/or procedures of the Defendants are in violation of the duty of the Defendants to affirmatively further fair housing and have resulted in the diminution of the availability of fair housing rental properties.

85. The actions, practices, policies and/or procedures of the Defendants have interfered with the Plaintiffs, and the Class they seek to represent, from enjoying the full benefit of the Fair Housing Act.

86. The actions, practices, policies and/or procedures of the Defendants have had the effect of otherwise making unavailable affordable fair housing apartments in the City.

87. In light of the foregoing, the City and State have violated the Fair Housing Act and appropriate injunctive and declaratory relief is appropriate.

SECOND CLAIM FOR RELIEF
(Violation of the Fourteenth Amendment to the United States Constitution)

88. Plaintiffs re-allege and incorporate by reference the allegations in all previous paragraphs of this Complaint.

89. As a result of the actions, practices, policies and/or procedures of the Defendants herein the Plaintiffs, and the Class they seek to represent, have been deprived of property without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

90. As a resulted of the aforementioned, Plaintiffs and the Class they seek to represent have been denied equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution.

91. As a result of the foregoing, Plaintiffs and the Class they seek to represent are entitled to injunctive and declaratory relief under 42 U.S.C. §1983.

THIRD CAUSE OF ACTION
(Violation of Article 1, §11 of the New York State Constitution)

92. Plaintiffs re-allege and incorporate by reference the allegations in all previous paragraphs of this Complaint.

93. As a result of the actions, practices, policies and procedures of the Defendants, Plaintiffs, and the Class they seek to represent, have been subjected to discrimination because of their race and/or color in their civil rights and have been denied equal protection of the laws.

94. Accordingly, Plaintiffs, and the Class they seek to represent, are entitled to appropriate declaratory and injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court enter judgment against Defendants:

A. Declaring that the City has violated the Plaintiffs' rights under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3601, *et seq.* and 42 U.S.C.§1983;

B. Declaring that N.Y. Real Prop. Tax Law § 1801, *et seq.*, as applied, violates Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3601, *et seq.* and 42 U.S.C. §1983;

C. Declaring that the State and City have violated the rights of Plaintiffs, and the Class they seek to represent, as secured by the New York State Constitution;

D. Ordering the City and State to establish a property tax code for New York City without a significantly adverse or disproportionate impact on African-American or Hispanic residents;

E. Ordering the City to pay Plaintiffs' reasonable expert and attorney's fees and costs; and

F. Granting such other and further relief as this Court deems just and proper.

DATED: New York, New York
February 26, 2014

NEWMAN FERRARA LLP

By: _____

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Counsel for Plaintiffs

ATTORNEY VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

RANDOLPH M. MCLAUGHLIN, being duly sworn, deposes and says:

I am a member of the law firm of Newman Ferrara LLP, counsel for Plaintiffs in this action. I have read the foregoing Complaint, and state that the document is true to my own knowledge, except as to matters therein stated on information or belief, and as to those matters I believe them to be true. The grounds for my belief as to all matters not stated upon my knowledge are information provided to me by the Plaintiffs, public documents reviewed by me, and consultations with Dr. Andrew Beveridge, a demographer and housing expert. This verification is made by Plaintiffs' counsel rather than Plaintiffs, pursuant to CPLR § 3020(d)(3), because Plaintiffs do not reside in the county in which Plaintiffs' counsel's office is located.

RANDOLPH M. MCLAUGHLIN

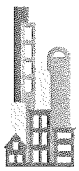
Sworn to before me this
26th day of February, 2014

Notary Public

MONA LIZA F. LAO
Notary Public, State of New York
No. 02LA6128143
Qualified in Kings County
Commission Expires June 6, 2017

Exhibit A

JULY 2013



FURMAN CENTER
FOR REAL ESTATE & URBAN POLICY
NEW YORK UNIVERSITY
SCHOOL OF LAW • WAGNER SCHOOL OF PUBLIC SERVICE

FURMAN CENTER POLICY BRIEF

Shifting the Burden:

Examining the Undertaxation of Some of the Most Valuable Properties in New York City

In this policy brief we highlight features of New York's property tax law that result in the severe and persistent undervaluation of some of the most valuable co-op and condo properties in the city. We report evidence about the magnitude of this undervaluation, identifying 50 individual co-op units that were sold in 2012 for more than the Department of Finance's estimated market value for the entire co-op building. We then explain the consequences of this undervaluation within the context of the property tax system as a whole.

WWW.FURMANCENTER.ORG

1. The Problem of Finding Comparisons for Hard-to-Compare Buildings

Section 581 of New York's Real Property Tax Law provides that:

> [R]eal property owned or leased by a cooperative corporation or on a condominium basis shall be assessed for purposes of this chapter at a sum not exceeding the assessment which would be placed upon such parcel were the parcel not owned or leased by a cooperative corporation or on a condominium basis.[1]

New York City interprets this provision to mean that co-op buildings and condo buildings with at least four units should be valued by the Department of Finance (DOF) as if they were rental properties. Rental properties are valued based on the income they generate and so condo and co-op buildings must also be valued using this approach.[2] However, because condos and co-ops do not generally generate income for their owners, the income from "comparable" buildings must be used to impute income to them. DOF uses statistical modeling to select the rental buildings used for these comparisons.

Section 581 places DOF in the difficult position of having to find rental properties that are comparable, for example, to highly prized buildings on Central Park. Quite simply, many of these sorts of buildings are not comparable to any rental properties in the city. Few, if any, rental buildings attract tenants as wealthy as people who buy luxury pre-war co-ops. Further, the city often selects rent regulated buildings as comparables for pre-war co-ops, presumably because of their comparable ages.[3] Just over 29.5 percent of the units in the rental buildings selected as comparables for the top ten buildings listed on Table 1 are subject to rent stabilization, and thus the amount of income they can generate is artificially limited. Rent regulation also likely affects investment in building improvements and maintenance, making those buildings especially poor comparisons.

The example of rent stabilization highlights the fact that a rental building may be similar to a co-op building in its size, location, number of units, and age, yet differ in other ways that make it less valuable. Many of these differences cannot easily be taken into account in a rigorous way. For example, the average value of the three buildings DOF selected as comparables for a very valuable building on the Upper East Side was, according to DOF, approximately $188 per square foot. Meanwhile, a single unit in this building recently sold for $54 million—or approximately $4500 per square foot. This extreme difference is driven in part by the fact that close to 30 percent of the units in the three rental buildings in question are rent regulated. However, even if the city were to value older luxury co-ops using the rental buildings that DOF has assessed as the most valuable in the city as comparables, the co-ops would still be significantly undervalued. Indeed, the most valuable rental buildings in Manhattan are valued by DOF at well under $500 per square foot—still less than one ninth of the per-square-foot sales price of the unit described above.[4]

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1 N.Y. Real Prop. Tax Law § 581(1)(a) (McKinney 2013). Smaller condos belong to tax class 1 and are valued using comparable sales. In this brief we will discuss only condos in tax class 2.

2 New York City Independent Budget Office (2006, December 5). *Twenty-Five Years After S7000A: How Property Tax Burdens Have Shifted in New York City* (p. 17) (hereafter IBO Property Tax Report). Retrieved from http://www.ibo.nyc.ny.us/iboreports/propertytax120506.pdf

3 To the extent that the city relies on building age when selecting comparables, any condo or co-op building built before 1974 is likely to be compared to buildings containing rent regulated units.

4 This suggests that DOF may also be undervaluing luxury rental buildings as well.

The use of comparables has resulted in many of the most valuable residential properties in the city being systematically undervalued for years. While the city exacerbates the problem by selecting partially rent regulated buildings as comparables to luxury co-ops, even the most valuable rental buildings simply do not compare to the most valuable condo and co-op buildings in the city. More to blame is Section 581, requiring the city to value condos and co-ops as if they were rental buildings, rather than by simply by comparing them to other recently sold condos and co-ops. The city does use a comparative sales methodology when valuing smaller (1-3 unit) residences, and arrives at much more realistic valuations. For example, DOF currently values Mayor Bloomberg's Upper East Side townhouse at $17.6 million—or approximately $2300 per square foot.

For a number of very valuable properties, the undervaluation this methodology creates is large. The Furman Center has identified 50 individual co-ops (in 46 buildings) that were sold in 2012 for more than DOF's estimate of the market value of the entire building for the coming fiscal year. Table 1 includes the sale prices, DOF's estimated building values, building values as percentages of the single unit sale price, number of residential units in the buildings, and neighborhoods of each of these properties. While these units were undervalued, that does not mean that the owners of the units did anything wrong. They are obligated to pay only the taxes charged. The problem instead lies in the assessment methodology and policy set by the state legislature and the city.

In one particularly striking case, a single apartment in a co-op building with 13 residential units was sold for $50 million, while the entire property was valued at $15.6 million. Even if the other 12 units in this building were totally worthless, and the entire property was valued to be worth only as much as the sales price of that single unit, the co-op building still would have owed approximately $1.6 million more in property taxes in the past year. The truth, of course, is that the tax discount received by the co-op's residents is far more than $1.6 million per year because the other 12 units are also worth a substantial amount. As the final column of Table 1 reveals, these severely undervalued properties are concentrated in Brooklyn and Manhattan, with more than 70 percent located in just a few neighborhoods: the Upper West Side and Upper East Side, and the Park Slope/Carroll Gardens and Fort Greene/Brooklyn Heights Community Districts.

Although these 50 units are extreme examples, the undervaluation of condos and co-ops is pervasive. Indeed, a study published by the Independent Budget Office in 2006 found that co-ops and condos were being valued at 23.4 percent of the amount that they would have been assigned using an alternative, sales-based methodology.[5] Moreover, that study found that the discount that condo and co-op owners enjoy on their market valuation varies widely across the city, with condos and co-ops in Park Slope/Carroll Gardens valued at 22.5 percent of their sales-based market values, and those in Jamaica valued at 44.8 percent.[6] This variation in the discount resulting from the DOF methodology arises from differences in how truly comparable rental buildings are to condos and co-ops across neighborhoods. In many cases, the rental buildings that are used as comparables for condos and co-ops are quite different from those co-ops and condos. The differences are particularly stark for pre-1974 co-ops, because they are compared to rental buildings that often are subject to rent regulation.

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5 IBO Property Tax Report at 33.

6 IBO Property Tax Report at 35.

Table 1: Sales in 2012 Where the Unit Price Exceeded DOF's Estimated Value of the Entire Building

Unit Sales Price ($)	FY2013/14 DOF Estimated Building Value ($)	Estimated Building Value as % of Single Unit Sales Price	Residential Units in Building	Community District
54,000,000	41,099,000	76%	66	Upper East Side
50,000,000	15,735,000	31%	13	Upper East Side
42,000,000	34,104,000	81%	24	Upper East Side
40,064,000	15,766,000	39%	19	Upper East Side
31,500,000	18,881,000	60%	18	Upper East Side
27,222,500	22,818,000	84%	17	Upper East Side
26,000,000	15,765,000	61%	12	Upper East Side
24,500,000	11,610,000	47%	20	Upper East Side
23,900,000	13,821,000	58%	12	Upper East Side
22,000,000	11,558,000	53%	14	Upper East Side
20,000,000	15,617,000	78%	12	Upper East Side
19,500,000	13,132,000	67%	6	Upper East Side
14,000,000	9,994,000	71%	17	Upper East Side
12,800,000	12,221,000	95%	13	Upper East Side
10,133,333	4,065,000	40%	16	Greenwich Village/Soho
4,275,000	3,801,000	89%	13	Clinton/Chelsea
3,250,000	1,629,000	50%	19	Fort Greene/Brooklyn Heights
2,922,175	2,153,000	74%	9	Upper East Side
2,800,000	1,390,000	50%	10	Fort Greene/Brooklyn Heights
2,600,000	2,347,000	90%	6	Upper West Side
2,550,000	1,390,000	55%	10	Fort Greene/Brooklyn Heights
2,300,000	1,770,000	77%	4	Upper West Side
2,100,000	1,596,000	76%	5	Fort Greene/Brooklyn Heights
2,010,000	1,609,000	80%	21	Upper West Side
1,880,000	1,455,000	77%	3	Park Slope/Carroll Gardens
1,865,000	1,128,000	60%	4	Park Slope/Carroll Gardens
1,805,000	1,749,000	97%	4	Greenwich Village/Soho
1,762,500	984,000	56%	20	Fort Greene/Brooklyn Heights
1,650,000	896,000	54%	3	Park Slope/Carroll Gardens
1,403,500	437,000	31%	2	Fort Greene/Brooklyn Heights
1,375,000	660,000	48%	11	Greenwich Village/Soho
1,359,300	1,351,000	99%	4	Upper West Side
1,350,000	1,243,000	92%	4	Fort Greene/Brooklyn Heights
1,240,000	437,000	35%	2	Fort Greene/Brooklyn Heights
1,210,000	1,125,000	93%	4	Park Slope/Carroll Gardens
1,150,000	1,012,000	88%	4	Park Slope/Carroll Gardens
995,000	854,000	86%	7	Fort Greene/Brooklyn Heights
975,500	712,000	73%	3	Fort Greene/Brooklyn Heights
880,000	437,000	50%	5	Bedford Stuyvesant
780,000	741,000	95%	6	Greenpoint/Williamsburg
699,000	570,000	82%	4	Park Slope/Carroll Gardens
630,000	432,000	69%	11	Park Slope/Carroll Gardens
625,000	583,000	93%	11	Jackson Heights
625,000	583,000	93%	11	Jackson Heights
622,000	620,000	100%	11	Jackson Heights
550,450	550,000	100%	11	Jackson Heights
465,000	365,000	78%	15	Crown Heights/Prospect Heights
411,500	365,000	89%	15	Crown Heights/Prospect Heights
384,000	354,000	92%	16	Sunset Park
360,000	295,000	82%	8	Bedford Stuyvesant

Source: New York City Department of Finance Automated City Register Information System, Final Assessment Roll File, Furman Center for Real Estate and Urban Policy

The use of income from rent regulated buildings to value older co-ops is one of the primary culprits in the persistent undervaluation of those buildings. The use of rent stabilized buildings as comparables was initially seen as a virtue when the law was amended in 1981 because it constrained the rate of property tax growth on co-ops and condos, providing them with some of the protection from annual increases that one- to three-family homes enjoy from the "assessment caps" rules.[7] Moreover, a significant number of co-op buildings were in fact former rental buildings, and the law required co-ops and condos to be compared to rentals to ensure that owners who chose to convert their properties were not penalized for their decision. Regardless of the reasons for the provision, over time the law, as the city interprets it, has generated enormous and persistent disparities in the taxes paid by condo and co-op owners across neighborhoods. Our chapter entitled "Distribution of the Burden of New York City's Property Tax," in our State of New York City's Housing and Neighborhoods 2011 report, contains a more detailed discussion of this history.[8]

2. The Burden Shifting Effect of the Undervaluation of Condos and Co-ops

To appreciate the full effect of the undervaluation of condos and co-ops, it is important to understand how this policy fits into the larger property tax system. New York City's property tax system explicitly provides for drastically different tax treatment of equally valuable properties depending on the kind of property. In 1981, New York State adopted a system that divided property in New York City and Nassau County into four classes, with different rules for the assessment of each class and with different tax rates in each.[9] The system results in widely disparate tax burdens for different kinds of properties of the same value.[10]

At the same time that the legislature created the class system, it fixed the share of the property tax levy each class was to bear, which was basically the share paid in 1981 when the system was adopted.[11] In 1990, the legislature also enacted a cap on any adjustments of the class shares due to changes in market values.[12] The result is highly favorable to the owners of one- to three-family homes (Class 1 properties). As

7 IBO Property Tax Report at 32.

8 Furman Center for Real Estate and Urban Policy. (2012). *State of New York City's Housing and Neighborhoods 2011: Distribution of the Burden of New York City's Property Tax.* Retrieved from http://furmancenter.org/files/sotc/Distribution_of_the_Burden_of_New_York_Citys_Property_Tax_11.pdf

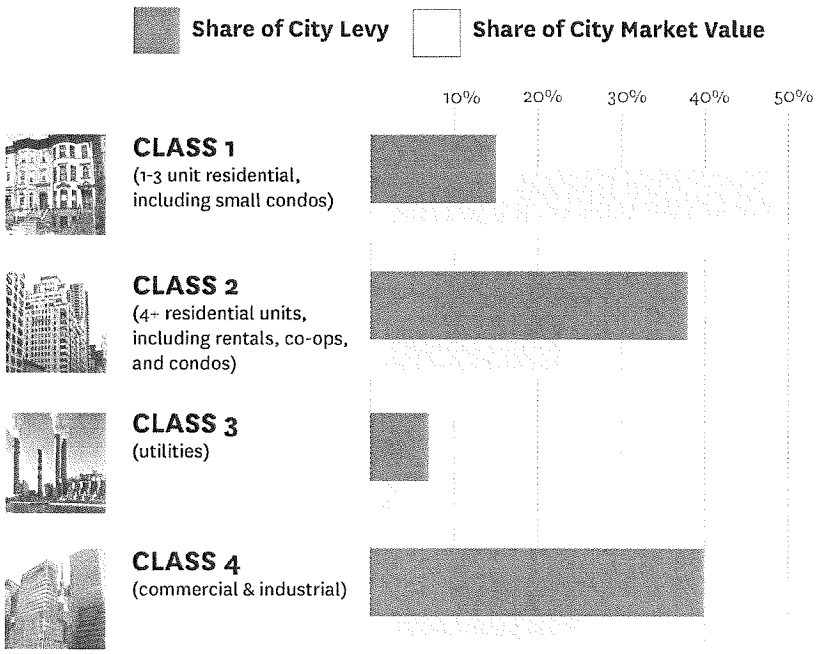
9 IBO Property Tax Report at 9-11.

10 Class 1 includes most residential property of one to three units, such as single-family homes, small apartment buildings, or small stores or offices with one or two apartments attached. It also includes certain vacant land zoned for residential use and most condos under four stories. Class 2 includes all other primarily residential property, such as large multi-family rental buildings, co-ops, and condos over three stories. Class 3 includes property with equipment owned by gas, telephone, or electric companies. Class 4 includes all commercial and industrial property. New York City Department of Finance. Glossary of Property Assessment Terms. Retrieved from www.nyc.gov/html/dof/html/property/property_val_glossary.shtml#T

11 IBO Property Tax Report at 17.

12 IBO Property Tax Report at 17.

Figure 1: Share of Tax Levy and Share of DOF Estimated Value by Tax Class, Fiscal Year 2010-2011



Source: New York City Department of Finance Property Tax Report, Furman Center for Real Estate and Urban Policy

Figure 1 illustrates, those property owners pay a smaller share of the tax levy (15.4%) than their properties' share of citywide market value as calculated by DOF (48.3%).[13] Class 1 is the only class that pays a share of taxes smaller than its share of the city's market value. The remaining three property classes pay a greater share of the total tax bill than their respective share of the city's market value. However, co-ops and condos with more than three units are included in Class 2, along with larger rental properties. Properties in this class are valued based on their income and expenses. If condos and co-ops were valued more accurately, Class 2's share of city market value would likely be higher, and the disparities in tax burden among the four classes would therefore be reduced somewhat.

The primary consequence of the undervaluation of condos and co-ops, though, is within Class 2 itself. Because the share of the tax levy collected from each class in a given year is fixed, when certain properties are undervalued, the tax rate set by the city council to raise that share must increase, effectively shifting the tax burden from undervalued properties to the other properties in the same class.[14] In the case

13 The "market value" referred to here is the values assigned to properties by the Department of Finance. As this brief demonstrates, for certain properties, DOF's valuations may not accurately reflect the true market value.

14 Furman Center for Real Estate and Urban Policy. (2012). *State of New York City's Housing and Neighborhoods 2011: Distribution of the Burden of New York City's Property Tax.* Retrieved from http://furmancenter.org/files/sotc/Distribution_of_the_Burden_of_New_York_Citys_Property_Tax_11.pdf

Table 2: Characteristics of New York City Households by Tax Class and Property Type, 2011

	Citywide	*Class 1*	*Class 2: co-ops built pre-1974*	*Class 2: co-ops built post-1974 and all condos*	*Class 2: rental buildings*
Median Income	$48,040	$58,800	$68,000	$98,000	$40,000
Persons	2.5	3	2	2.1	2.2
% Poverty	17.4	11.9	9.3	10	20.6
% White Householder	41.3	42.4	61.9	57.8	38.2
% Black Householder	22.3	23.8	14.6	9.3	21.4
% Hispanic Householder	23.9	18.7	12.8	10.2	29.5
% Asian Householder	11.5	14.2	9.9	21.2	9.8
% with Children	30.2	37.4	18.4	24.4	26.9
% Receiving Public Assistance	16	10.6	6	4.4	20

Source: New York City Housing and Vacancy Survey, Furman Center for Real Estate and Urban Policy

of Class 2, the other properties are large rental buildings. Shifting the tax burden in this way has distributional consequences. Although we cannot say for certain who bears the ultimate economic burden of the property tax within rental properties, it is likely that some of it is borne by renters and some by the property owner. In rent stabilized properties, the formula used by the Rent Guidelines Board to set the rent ensures that that changes in taxes result in changes in rents. Tenants in Class 2 rentals have very different demographics than the households who live in co-ops and condos: at the median, they make less than half the income of the owners of more recently built co-ops and condos. The burden of the undervaluation of co-ops and condos therefore falls on families already struggling to afford housing in New York City. Tenants in Class 2 rentals are also much more likely to be black or Hispanic and to have children than co-op and condo owners, so the burden of undervaluation may threaten the city's ability to attract and retain a diverse range of households.

Table 2 shows the demographic characteristics of the households living in Class 2 condos and co-ops and those living in Class 2 rental buildings. We highlight those who live in pre-1974 co-ops because those buildings are most likely to be undervalued as a result of the use of rent regulated buildings as "comparables" for many of these properties.

3. Smart Policy?

The distribution of the property tax matters because it affects decisions about land use and development, including the supply of rental housing versus homes for ownership. It also affects how much of the economic burden of supporting New York City's public services and government different classes of taxpayers, such as renters, landlords, homeowners, and real estate investors, must bear. A proper analysis of the various elements of the property tax policies that the state and the city have adopted, like the valuation methodology for condos and co-ops, requires specifying, at the outset, what the aims of the tax system are—what incentives we want the property tax to create for development and maintenance, and who should bear the economic burden of the property tax.

To identify these aims, we look at the basic structure of New York's property tax and the general principles that it reflects, and

then evaluate whether the undervaluation of condos and co-ops through the use of the income method makes sense in light of those principles. First, the class share system reflects a policy preference for one- to three-unit residential properties over four-plus unit residential properties and commercial properties. That preference likely arises from a preference for homeownership, at least in part because of the benefits homeownership is thought to bring society. Consistent with such a preference, the property tax law grants a partial exemption (the "STAR" exemption) for owner-occupiers. Moreover, the tax law also includes an abatement for condo and co-op owners designed to bring the taxation of Class 2 homeowners more closely in line with the favorable taxation of owner-occupiers in detached homes.[15] The fact that the abatement was recently revised to exclude pieds-à-terre[16] reinforces this conclusion. Thus, there are numerous ways that New York's property tax system reflects a preference for owner-occupiers over landlords and renters.

Second, state law requires that New York City cap the rate at which assessed values in Class 1 can increase in a single year, or over a five-year period. It also caps the rate of assessment increase for Class 2 properties with fewer than 10 units. One of the early justifications for using rent stabilized buildings as comparables for condos and co-ops was that it would provide them with some of the same benefits as smaller properties in terms of capping property tax increases.[17] These features reflect a preference for preventing sharp increases in property taxes over a short period of time.

Is the undervaluation of condos and co-ops consistent with these two aims? Although the undervaluation of condos and co-ops does result in a lower tax burden for owner-occupiers of these units than for landlords and tenants in Class 2, it is an extremely imprecise way of implementing such a tax preference. As a 2006 Independent Budget Office report documented, once the condo/co-op tax abatement has been taken into account, the effective tax rate for these units can be even less than the tax rate on a Class 1 property.[18] Moreover, the tax benefits of using the income method to value a property vary widely depending on the arbitrary availability of comparable rental buildings and whether rent regulated "comparables" are used. So the use of the income method creates differences in effective tax rates both between Class 2 owner-occupiers and Class 1 owner-occupiers, and between owner-occupiers of Class 2 condos and co-ops located in different neighborhoods or in buildings with different characteristics. For similar reasons, the use of the income method provides only a very poor and uneven tool for stabilizing assessment increases for Class 2 owner-occupiers. Only those buildings built before 1974 are likely to have rent stabilized rental buildings as comparables and thereby to benefit from their slower rate of income growth.

Amending the state law to authorize DOF to use sales prices to estimate the value of co-op and condo buildings would solve the problem we highlight here. However,

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15 Reacting to the favoring of Class 1 homeowners, owners of Class 2 condos and co-ops successfully lobbied for the creation of the Cooperative and Condominium Property Tax Abatement Program. IBO Property Tax Report at 34. The co-op/condo abatement provides significant relief to eligible owners, effectively reducing their taxes by between 17.5 and 25 percent in fiscal year 2013, depending on the assessed value of the property. New York City Department of Finance. *Cooperative and Condominium Tax Abatement*. Retrieved from http://www.nyc.gov/html/dof/html/property/coop_condo_abatement.shtml

16 Higgins, M. (2013, March 31).Tax-Abatement Changes Affect Many Unit Owners. *The New York Times*. Retrieved from http://www.nytimes.com/2013/03/26/realestate/tax-abatement-changes-affect-many-unit-owners.html?pagewanted=all

17 IBO Property Tax Report at 32.

18 IBO Property Tax Report at 36.

the undervaluation of condos and co-ops is only one of several significant inequities in the property tax system, detailed and explained in greater depth in the Furman Center's State of New York City's Housing and Neighborhoods 2011 report. Correcting them would not only require significant changes in the law, but would also be politically challenging. But the fact that 50 individual co-op units sold in the past year for more than their entire building's valuation reminds us, once more, of the need to reexamine the fairness and efficiency of the property tax system.

About the Furman Center and the Moelis Institute for Affordable Housing Policy

The Furman Center for Real Estate and Urban Policy is a joint center of the New York University School of Law and the Robert F. Wagner Graduate School of Public Service at NYU. Since its founding in 1995, the Furman Center has become a leading academic research center devoted to the public policy aspects of land use, real estate development, and housing. The Furman Center launched the Moelis Institute for Affordable Housing Policy to improve the effectiveness of affordable housing policies and programs by providing housing practitioners and policymakers with information about what is and is not working, and about promising new ideas and innovative practices.

Exhibit B

181 Misc.2d 219, 687 N.Y.S.2d
240, 1999 N.Y. Slip Op. 99120

Diana Coleman et al., Plaintiffs,
v.
Abe Seldin, as Chairman of Board of Assessors of Nassau County, et al., Defendants.

Supreme Court, Nassau County,
March 8, 1999

CITE TITLE AS: Coleman v Seldin

HEADNOTES

Taxation
Assessment
Assessment Method Challenged as Racially Discriminatory--Applicability of Civil Rights Act of 1964 Title VI

([1]) In an action for declaratory and injunctive relief against defendants Nassau County and its Board of Assessors in which plaintiff homeowners contend that the County maintains a racially discriminatory residential assessment system that impacts minority homeowners, defendants' motion to dismiss plaintiffs' cause of action for violations of title VI of the Civil Rights Act of 1964 (42 USC § 2000d) and its implementing regulations affecting housing (24 CFR 1.4) on the ground that the complaint does not allege that the County's real property tax assessment system is a Federally assisted program is denied. Nassau County is a proper defendant in the title VI action and the Board of Assessors and the real property assessment program administered by them are subject to title VI and its implementing regulations. Title VI prohibits "any program or activity receiving Federal financial assistance" (42 USC § 2000d) from discriminating on a racial basis, and it broadly defines "program or activity" as "all of the operations of" specific entities, including "a department, agency, special purpose district, or other instrumentality of a State or of a local government" (42 USC § 2000d-4a [1" [A"). Accordingly, where any part of an entity's operations is extended Federal financial assistance, all of that entity's operations are programs or activities and are subject to title VI.

Taxation
Assessment
Assessment Method Challenged as Racially Discriminatory--Violation of Civil Rights Act of 1964 Title VI--Necessity of Proof of Intentional Discrimination

([2]) In an action for declaratory and injunctive relief against defendants Nassau County and its Board of Assessors in which plaintiff homeowners contend that the County maintains a racially discriminatory residential assessment system that impacts minority homeowners, defendants' motion to dismiss plaintiffs' cause of action for violations of title VI of the Civil Rights Act of 1964 (42 USC § 2000d) and its implementing regulations affecting housing (24 CFR 1.4) on the ground that there is no proof of intentional discrimination is granted. Title VI prohibits only intentional discrimination, not actions that have a disparate impact upon minorities, although it does delegate the authority to promulgate regulations incorporating a disparate impact standard to Federal agencies. Plaintiffs, however, are not entitled to utilize the lower disparate impact standard in evaluating the County's alleged discriminatory practices relating to real property. No Federal agency administers any program of aid or financial assistance in support of real property assessment in the County, nor has any Federal agency promulgated any regulations relating to this function or that is otherwise connected to the County's real property assessment programs or policies. On its face the legislation was not intended to cover all discrimination, but rather that discrimination in any Federal financial assistance program. ***220**

Taxation
Assessment
Assessment Method Challenged as Racially Discriminatory--Prior Notice to County of Assessment Method's Disparate Impact

([3]) In an action for declaratory and injunctive relief against defendants Nassau County and its Board of Assessors in which plaintiff homeowners contend that the County maintains a racially discriminatory residential assessment system that impacts minority homeowners, the County is on notice that its current practice of assessment has or may have a disparate impact on minority communities. Beginning in 1964, litigation involving the County's method of assessment has shown that it may have a disparate impact, and has highlighted the inevitability of County-wide assessment.

What in the past may have been viewed as "unintentional" discrimination may now fairly be considered intentional, and the County's continued failure to act in reliance on "unintentional" discriminatory results can no longer act as a shield for the County's practices.

Taxation
Assessment
Assessment Method Challenged as Racially Discriminatory--Standing to Maintain Action for Violation of Fair Housing Act

([4]) In an action for declaratory and injunctive relief against defendants Nassau County and its Board of Assessors in which plaintiff homeowners contend that the County maintains a racially discriminatory residential assessment system that impacts minority homeowners, defendants' motion to dismiss plaintiffs' cause of action for violations of the Fair Housing Act (42 USC § 3601 et. seq. [FHA") on the ground that the FHA, which addresses "Discrimination in the sale or rental of housing" (42 USC § 3604), cannot apply as plaintiffs already own their own homes is denied. Plaintiffs' allegations that the assessment system has an adverse discriminatory impact upon minority homeowners and inhibits their ability to own, buy, sell and rent dwellings and obtain mortgages, that this system of assessment has an impact on the community, and that governmental services and benefits are thus distributed in a discriminatory manner are sufficient to establish plaintiffs' standing as aggrieved persons under the FHA. The FHA applies to the real property assessment policies, procedures and conditions practiced and imposed by defendants.

Taxation
Assessment
Assessment Method Challenged as Racially Discriminatory--Violation of Fair Housing Act--Proof of Discriminatory Intent Not Necessary

([5]) In an action for declaratory and injunctive relief against defendants Nassau County and its Board of Assessors in which plaintiff homeowners contend that the County maintains a racially discriminatory residential assessment system that impacts minority homeowners, defendants' motion to dismiss plaintiffs' cause of action for violations of the Fair Housing Act (42 USC § 3601 et. seq. [FHA"), which prohibits racial discrimination in the sale, rental or purchase of housing, on the ground that no intent to discriminate can be shown by plaintiffs is denied. A plaintiff stating a claim under the FHA need allege only discriminatory effect and need not show that the decision complained of was made with discriminatory intent.

Taxation
Assessment
Assessment Method Challenged as Racially Discriminatory--Violation of Nassau County Government Law § 603--Exhaustion of Administrative Remedies Not Necessary

([6]) In an action for declaratory and injunctive relief against defendants Nassau County and its Board of Assessors in which plaintiff homeowners ***221** contend that the County maintains a racially discriminatory residential assessment system that impacts minority homeowners, defendants' motion to dismiss plaintiffs' cause of action for violations of Nassau County Government Law § 603, which requires an equitable and scientific system of assessing property for taxation, on the ground that plaintiffs have failed to exhaust their RPTL remedies is denied. While generally a taxpayer who challenges his property assessment is relegated to a tax certiorari proceeding brought under the provisions of RPTL article 7 for review of the assessment, one may forego this procedure and instead mount a collateral attack on the taxing authority's action if the challenge is to the assessment method.

Taxation
Assessment
Assessment Method Challenged as Racially Discriminatory--Violation of Nassau County Government Law § 603--Sufficiency of Evidence

([7]) In an action for declaratory and injunctive relief against defendants Nassau County and its Board of Assessors in which plaintiff homeowners contend that the County maintains a racially discriminatory residential assessment system that impacts minority homeowners, defendants' motion to dismiss plaintiffs' cause of action for violations of Nassau County Government Law § 603, which requires an equitable and scientific system of assessing property for taxation, on the ground that it was previously determined

that the County's method of assessment was not illegal or unconstitutional is denied. The data underlying the cause of action in that previous determination dates from 1989 and before, and a reexamination of the effects of the County's methodology is appropriate. The alleged disparity between the market value and assessed value of property in different County locations and the need to utilize equalization rates which are 3.17% County-wide but vary with the community seriously argue against either a scientific or equitable system of assessment determination. Defendants' attempt to realign disparate community property assessments established in 1938 and 1964 cannot be considered scientific when the underlying data may be so dated as to defy adjustment except on an individual basis, and no assessment system can be equitable if the community variations are substantial and the redress is confined to certiorari proceedings which are voluntary, must be commenced by individual taxpayers, invite substantial delays in reimbursement for overpayment, and necessarily require the payment of unreimbursed attorney's fees and costs.

TOTAL CLIENT SERVICE LIBRARY REFERENCES

Am Jur 2d, Civil Rights, §§ 249, 474-478; State and Local Taxation, §§ 180, 181, 190, 810-812.

Carmody-Wait 2d, Judicial Review of Tax Assessments and Taxes §§ 146:4-146:9, 146:17, 146:22.

McKinney's, RPTL art 7.

42 USCA § 2000d-4a (1) (A); § 3601 *et seq.*

NY Jur 2d, Civil Rights, § 140; Taxation and Assessment, §§ 235, 241, 300, 303, 305-307, 388-391, 395, 396, 405, 406.

NY Real Prop Serv, §§ 61:26-61:44. ***222**

ANNOTATION REFERENCES

See ALR Index under Administrative Law; Civil Rights and Discrimination; Parties; Taxes.

APPEARANCES OF COUNSEL

Farrell Fritz, P. C., Uniondale, and *Parnon & Pratt,* L. L. P., Huntington, for defendants. *New York Civil Liberties Foundation,* New York City (*Leon Friedman* of counsel), *Nassau Chapter of New York Civil Liberties Union,* Mineola (*Donald Shaffer* of counsel), *Reilly, Like, Tenety, Ambrosino & Vetri,* Babylon, *Koppel, Martone, Leistman & Herman,* Mineola, and *William D. Seigel,* Garden City, for plaintiffs.

OPINION OF THE COURT

F. Dana Winslow, J.

Defendants' motion pursuant to CPLR 3211 for an order dismissing the complaint is granted in part and denied in part as determined hereafter.

In this action for declaratory and injunctive relief against the Chairman and members of the Board of Assessors of Nassau County and Nassau County, the plaintiffs, who are homeowners, contend that the County maintains a racially discriminatory residential assessment system that impacts minority homeowners in Nassau County.

Three causes of action are alleged: the first two address violations of Federal law, the third is predicated upon a violation of the Nassau County Government Law (otherwise known as the Nassau County Charter). The first cause of action alleges violations of title VI of the Civil Rights Act of 1964 (42 USC § 2000d) and its implementing regulations affecting housing (24 CFR 1.4). The second cause of action alleges violations of title VIII of the Civil Rights Act of 1968 (42 USC § 3601 et. seq. [Fair Housing Act"). The third cause of action alleges violations of section 603 of the Nassau County Government Law (L 1936, ch 879, as amended by L 1946, ch 708, § 1, eff July 1, 1946). Each cause of action is addressed seriatim.

Initially, the court notes that the defendants have a heavy burden to show that the complaint should be dismissed pursuant to CPLR 3211 (a) (7) for failure to state a cause of action. The allegations are accepted as true and consideration "is limited to ascertaining whether the pleading states any cause of action, and not whether there is evidentiary support for the complaint" (*LoPinto v J. W. Mays, Inc.,* 170 AD2d 582, 583). ***223** Consequently, the court will consider the claims as being true and the contentions in the light most favorable to the plaintiffs (*LoPinto v J. W. Mays, Inc., supra*).

TITLE VI

The first cause of action alleges violations of title VI of the Federal Civil Rights Act of 1964, which prohibits recipients of Federal financial assistance from discriminating on a racial basis.

42 USC § 2000d provides: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

The defendants contend that the County's real property tax assessment system is not racially discriminatory in intent or effect, but rather results in reasonably fair and equitable assessments. In support of this contention the defendants rely, *inter alia,* on prior case law (*see, Matter of Board of Mgrs. v Board of Assessors,* 197 AD2d 620; *Matter of Chasalow v Board of Assessors,* 202 AD2d 499). The court finds that neither of these cases is determinative. In *Matter of Board of Mgrs.* the Court held that the County system of assessment as applied to the petitioner's property was not constitutionally infirm. In that case the petitioner's property was reclassified from class I property to class II property and was reassessed based upon this new classification at a higher burden. The Court concluded, based upon the record presented, that insofar as the cost method of assessment was applied in a consistent manner with respect to all class I property in Nassau County, that similarly situated taxpayers were treated uniformly and the reassessment of the petitioner's property did not result in disparate tax treatment of a constitutional dimension. In the case at bar no constitutional infirmities are alleged, nor were title VI claims asserted in *Matter of Board of Mgrs.*

Matter of Chasalow (*supra*) is similarly inapplicable to the case at bar. In that proceeding, brought pursuant to CPLR article 78, the appellate court reversed the trial court's finding that the method of assessment employed by the Board of Assessors of Nassau County was illegal and unconstitutional. Although the method of assessment remains the same, the challenge presented in the instant action is not predicated upon constitutional violations and accordingly, of necessity, must be evaluated by different standards rendering the determination in *Matter of Chasalow* distinguishable. ***224**

The defendants raise two points regarding the plaintiffs' title VI claims. The first is that title VI does not apply to the County's real property tax assessment system because the complaint does not allege that the system is a Federally assisted program. In support of this position the defendants rely on *Grove City Coll. v Bell* (465 US 555 [1984"), *Hodges v Public Bldg. Commn.* (864 F Supp 1493 [ND Ill 1994"), and *Schroeder v City of Chicago* (927 F2d 957 [7th Cir 1991"). Following the *Grove City Coll. v Bell* case (*supra*), the Civil Rights Restoration Act of 1987 (Pub L 100-259, 102 US Stat 28 [CRRA") was enacted which broadened the definition of "program or activity" defined in title VI (*see,* 42 USC § 2000d-4a), which, as relevant here, provides as follows:

"For the purposes of this subchapter, the term 'program or activity' and the term 'program' mean all of the operations of--

"(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

"(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government".

In *Hodges* (*supra*), a suit considering the proposed expansion of a Chicago high school, the plaintiffs contended that the defendants, including the City of Chicago, blocked the expansion based on intentional racial discrimination. The *Hodges* court, although recognizing the expansion of *Grove City's* (*supra*) narrow reading of title VI by the CRRA, rejected the plaintiffs' trickle-down theory of Federal financial assistance, holding that the City was "not an 'operation' of 'a department, agency, special purpose district, or other instrumentality of a State or of a local government,' or of 'the entity of such State or local government that distributes such assistance' " (*Hodges v Public Bldg. Commn., supra,* at 1505). That court concluded that the City is a municipality and, as such, did not fit within the definition of "program or activity" for purposes of title VI. As noted by the court in *Hodges* (*supra*), *Schroeder v City of Chicago* (*supra*) also held that the City of Chicago did not fit the statutory definition of "program or activity" and was not a department or instrumentality of a local government, but rather, as a full-blown municipality, was an entire local government (*Hodges v Public Bldg. Commn., supra,* at 1506).

In contrast, the Second Circuit in *Innovative Health Sys. v City of White Plains* (117 F3d 37 [2d Cir 1997") has concluded ***225** that a broad interpretation of the terms "program or activity" made the discrimination claims asserted pursuant to title II of the Americans with Disabilities Act of 1990 (42 USC § 12131 et. seq. [ADA") and the Rehabilitation Act of 1973 (29 USC § 794 [a") applicable to the City defendant. In that case the court noted that both title II of the ADA and section 504 of the Rehabilitation Act (Pub L 93-112, 87 US Stat 355) prohibit discrimination by a public entity based on a

disability. The ADA provides "[N"o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity" (42 USC § 12132). The Rehabilitation Act is similarly worded: "No otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" (29 USC § 794 [a").

The Rehabilitation Act defines "program or activity" as "all of the operations" of specific entities, including "a department, agency, special purpose district, or other instrumentality of a State or of a local government" (29 USC § 794 [b" [1" [A"). The court determined that the plain meaning of "activity" is a " 'natural or normal function or operation' " and that both the ADA and the Rehabilitation Act clearly encompass zoning decisions by the City (*Innovative Health Sys. v City of White Plains, supra,* at 44). The court further noted that the language of title II's anti-discrimination provisions does not limit the ADA's coverage to conduct that occurs in the " 'programs, services, or activities' " of the City, but rather is a catch-all phrase that prohibits all discrimination by a public entity, regardless of the context (*supra,* at 45).

Innovative Health Sys. (*supra*) is both applicable and instructive in the instant matter. Most significantly, title VI employs the same phraseology as does the Rehabilitation Act and a "program or activity" applicable under that statute provides persuasive insight into the application of the identical phrase in the instant matter. Nor is it uncommon for courts in considering claims under analogous title VI regulations to look to title VII (Federal Civil Rights Act of 1964) disparate impact cases for guidance (*see, e.g., New York Urban League v State of New York,* 71 F3d 1031; *Elston v Talladega County Bd. of Educ.,* 997 F2d 1394, 1407, n 14 [11th Cir 1993"; ***226** *Georgia State Conference of Branches of NAACP v State of Georgia,* 775 F2d 1403, 1417 [11th Cir 1985"; *Larry P. v Riles,* 793 F2d 969, 982, nn 9, 10 [9th Cir 1984").

As noted by the plaintiffs, the court in *Association of Mexican-Am. Educators v State of California* (836 F Supp 1534, 1541) held that title VI itself permits a claim against the State. In support of this position is a line of cases in which a State was a title VI defendant "even though it was not a 'program or activity' " (*supra,* at 1541; *see, United States v Yonkers Bd. of Educ.,* 893 F2d 498, 500 [2d Cir 1990"; *Georgia State Conference of Branches of NAACP v State of Georgia,* 775 F2d 1403, 1407 [11th Cir 1985", *supra; Queets Band of Indians v State of Washington,* 765 F2d 1399, 1404, n 2 [9th Cir 1985", *vacated as moot* 783 F2d 154 [9th Cir 1986"; *United States v School Dist.,* 577 F2d 1339, 1350, n 18 [6th Cir 1978"; *Knight v State of Alabama,* 787 F Supp 1030, 1361-1365 [ND Ala 1991"; *United States v State of Louisiana,* 692 F Supp 642, 650-653 [ED La 1988"). The court in *Association of Mexican-Am. Educators v State of California* (*supra,* at 1543) also interprets 42 USC § 2000d-4a and concludes that where " 'any' ... 'part of' [an" entity's operations 'is extended Federal financial assistance' " all of that entity's operations are "programs or activities" and are subject to title VI.

In addition to a State being a proper defendant under title VI, there is a line of cases which have held that cities (*see, Johnson v City of Saline,* 151 F3d 564 [6th Cir 1998"; *Trovato v City of Manchester,* 992 F Supp 493 [D NH 1997") and districts (*see, San Diego Unified Port Dist. v Gallagher,* 62 Cal App 4th 501, 73 Cal Rptr 2d 30; *Bledsoe v Palm Beach County Soil & Water Conservation Dist.,* 133 F3d 816 [11th Cir 1998") are also covered entities under the ADA and title II, both statutes pertaining to "services, programs, or activities" of a public entity.

([1]) Accordingly, after review of numerous cases interpreting the applicability of title VI, title II, the ADA, the Restoration Act and the Rehabilitation Act, from the Second and other Circuits, the court concludes that Nassau County is a proper defendant in this title VI action and that the Board of Assessors and the real property assessment program administered by them are subject to this statute and its implementing regulations (*see also, New York Urban League v Metropolitan Transp. Auth.,* 905 F Supp 1266, 1273 [SD NY 1995", *vacated and remanded sub nom. New York Urban League v State of New York,* 71 F3d 1031 [2d Cir 1995" [the "plain language of 42 U.S.C. § 2000d-7(a)(1) is reinforced by the fact that Congress ***227** amended Title VI to make clear that the statute authorizes suit against an entire system for the discriminatory practices of a discrete program within that system receiving federal funds"", citing *United States v City of Yonkers,* 880 F Supp 212, 232 [SD NY 1995").

The defendants next contend that title VI requires proof of intentional discrimination. In *Guardians Assn. v Civil Serv. Commn.* (463 US 582), the Supreme Court held that section 601 of title VI (Pub L 88-352, 78 US Stat 241) prohibited only

intentional discrimination, not actions that have a disparate impact upon minorities (*see, supra,* at 610-611, concurring opn of Powell, J., in which Burger, Ch. J., and Rehnquist, J., joined; *supra,* at 612, concurring opn of O'Connor, J.; *supra,* at 641-642, dissenting opn of Stevens, J., in which Brennan and Blackmun, JJ., joined; *see also, New York Urban League v State of New York,* 71 F3d 1031 [2d Cir 1995", *supra*). The Court also concluded that title VI delegated the authority to promulgate regulations incorporating a disparate impact standard to Federal agencies (*see, Guardians Assn. v Civil Serv. Commn., supra,* at 584, opn of White, J.; *supra,* at 623, n 15, dissenting opn of Marshall, J.; *supra,* at 643, dissenting opn of Stevens, J., in which Brennan and Blackmun, JJ., joined; *see also, Alexander v Choate,* 469 US 287, 293; *New York Urban League v State of New York,* 71 F3d 1031). Additionally, at least 24 Federal agencies have reached this same conclusion (*see, Alexander v Choate,* 469 US 287, 297, n 17). In this regard, the United States Department of Transportation has promulgated regulations pursuant to title VI which prohibit actions with a disparate impact upon the protected class, as follows (49 CFR 21.5 [b" [2"): "A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program ... may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color or national origin".

In nearly identical fashion the Department of Housing and Urban Development has promulgated regulations prohibiting actions with disparate impacts, as follows (24 CFR 1.4 [b"):

"(1) A recipient under any program or activity to which this Part 1 applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin ...

"(ii) Provide any housing, accommodations, facilities, services, financial aid, or other benefits to a person which are different, ***228** or are provided in a different manner, from those provided to others under the program or activity ...

"(2)(i) A recipient, in determining the types of housing, accommodations, facilities, services, financial aid, or other benefits which will be provided under any such program or activity, or the class of persons to whom, or the situations in which, such housing, accommodations, facilities, services, financial aid, or other benefits will be provided under any such program or activity, or the class of persons to be afforded an opportunity to participate in any such program or activity, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity as respect to persons of a particular race, color, or national origin."

An examination of the cases which have addressed these and similar regulations establish, as contended by the plaintiffs, that a prima facie showing of a disparate impact is sufficient to defeat a motion to dismiss. Once such a showing has been made then the burden shifts to the defendant to demonstrate the existence of a "substantial legitimate justification" for the alleged discriminatory practice (*see, Georgia State Conference of Branches of NAACP v State of Georgia,* 775 F2d, *supra,* at 1417).

The plaintiffs' first cause of action seeks to have the court apply this lower disparate impact standard in evaluating the County's alleged discriminatory practices relating to real property assessment. However, and as is readily conceded, no Federal agency administers any program of aid or financial assistance in support of real property assessment in the County. Nor has any Federal agency promulgated any regulations relating to this function or that is otherwise connected to Nassau County government's real property assessment programs or policies. While the court recognizes that title VI applies to all functions carried out by the County or any of its departments or agencies, plaintiffs would have the court reach one step further and apply a disparate impact analysis to the effects of the County's real property assessment program.

The court's concern about the seeming inequity fostered by the County's reliance on 1938 data in the administration of its real property assessment functions cannot override the title VI requirements. Despite the claimed discrimination by the ***229** County's continued use of this database and methodology, the plaintiffs have not identified nor could the court find any regulations promulgated under any Federal program or activity applicable to the County's real property assessment system which would warrant the application of the lower standard. Though the plaintiffs seek to utilize the disparate impact analysis of the County's real property assessment program, the simple truth is that the County's real property assessment program is not a recipient under any

program or activity to which Federal financial assistance is provided.

The landscape evidenced by the Supreme Court's analysis in *Guardians Assn.* (*supra*) makes clear that an action predicated upon the title VI statutory scheme requires an evidentiary showing of intent. This element is absent from the plaintiffs' title VI claim. Following the plaintiffs' argument, that a showing of disparate impact is sufficient under the instant circumstances, to its logical conclusion leads to an untenable result. If the court were to apply a disparate impact analysis in analyzing the County's real property assessment system based on regulations promulgated, for example, by the Department of Housing and Urban Development to promote the fair and equitable administration of housing development programs, *inter alia,* under what conditions and when would a court analyze alleged discrimination based upon the higher standard enunciated by the Supreme Court and inherent in the title VI statutory scheme? Stated another way, if the regulations promulgated by Federal agencies for the administration of unrelated programs, such as urban development or police protection, were applied to cover real property tax assessment activities, the lower standard then applicable would eclipse the necessary showing of intentional discrimination supported both by a fair reading of the statute and by the United States Supreme Court determinations. There must be some connection between the regulation sought to be utilized and the activity alleged to be prohibited in order for the plaintiffs to gain the benefit of the lower disparate impact standard.

The plaintiffs fail to address the issue of whether the regulations promulgated under one program of benefits is or can be applicable to a party which does not participate or is not involved in such program or activity. Such regulations reduce the evidentiary burden on a plaintiff and allow a showing of disparate impact to be sufficient in establishing a prima facie case but does not obviate the necessity to establish that the specific regulation allegedly violated bears some connection to ***230** the plaintiff. All of the cases examined, which were brought pursuant to various regulations promulgated under the discrimination statutes (*supra*), arise out of claims of discrimination under a program or activity to which the specific regulation applies (*see, e.g., Chester Residents Concerned for Quality Living v Seif,* 132 F3d 925 [3d Cir 1997" [action against Pennsylvania Department of Environmental Protection concerning operation of a waste processing facility"; *New York Urban League v State of New York,* 71 F3d 1031 [2d Cir 1995", *supra* [action challenging allocation of funds for mass transit under Department of Transportation regulations"; *Scelsa v City Univ.,* 806 F Supp 1126 [SD NY 1992" [in an employment discrimination action plaintiff must be the intended beneficiary of a Federal spending program"; *3004 Albany Crescent Tenants' Assn. v City of New York,* 1997 WL 225825, 1997 US Dist LEXIS 6138 [SD NY, May 5, 1997, McKenna, J." [to satisfy disparate impact claim plaintiffs must show the discriminatory effect of defendant New York City Department of Housing Preservation and Development policies"; *Campaign for Fiscal Equity v State of New York,* 86 NY2d 307 [action concerning State distribution of Federal funds for education relying on regulations promulgated by the Department of Education").

The court's conclusion in this regard is further supported by an examination of the House of Representatives Report No. 88-914, prepared by the Judiciary Committee for House of Representatives Bill HR 7152, which, as noted by the defendants, became title VI of the Civil Rights Act of 1964:

"The Committee on the Judiciary, to whom was referred the bill (H.R. 7152) to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations ... to prevent discrimination in federally assisted programs ... report favorably thereon with amendments and recommend that the bill do pass.

"PURPOSE AND CONTENT OF THE LEGISLATION

"The bill, as amended, is designed primarily to protect and provide more effective means to enforce the civil rights of persons within the jurisdiction of the United States. In furtherance of these objectives the bill ... (6) prohibits discrimination in any Federal financial assistance program". (HR Rep No. 914, 88th Cong, 2d Sess, reprinted in 1964 US Code Cong & Admin News 2391.)

([2]) On its face the legislation was not intended to cover all discrimination, but rather that discrimination in any Federal ***231** financial assistance program. The County's assessment function is one of collection rather than distribution of funds and services. Since the Board of Assessment is not the recipient of title VI funds, no title VI regulation is available to the plaintiffs. Thus, Nassau County's real property tax assessment program is not part of any Federal financial assistance program, and the court is constrained but compelled to dismiss the first cause of action predicated upon alleged violations of title VI, not because the court believes

that the current system is equitable, but rather because the narrow issue of intent cannot be sustained.

Defendants' motion to dismiss plaintiffs' claims pursuant to title VI is granted.

PRIOR NOTICE

([3]) The court notes, though not alleged, that the County may be on notice that its current practice of assessment has or may have a disparate impact on minority communities. Notice was first provided in 1964 in *C. H. O. B. Assocs. v Board of Assessors* (45 Misc 2d 184, 197 [Sup Ct, Nassau County", *affd* 22 AD2d 1015) which provided "the court does not intend to suggest and does not find that there is no need for a complete review of all of the assessments in this county, or that it might not be a good thing to do". The court held that the failure of the County Board of Assessors to maintain uniformity in the ratio of assessments of all land, vacant and improved, to market value did not invalidate the assessment roll where equality of assessment could actually be achieved by the method employed. A great deal has occurred since 1964 when the *C. H. O. B. Assocs.* case was decided, particularly with respect to the uneven real property appreciation experienced by different communities within this county, but no revaluation was ordered in the ensuing 35 years.

Another case which highlighted the inevitability of County-wide reassessment is *Matter of Krugman v Board of Assessors* (141 AD2d 175). In *Matter of Krugman,* the trial court denied a motion for summary judgment and on appeal the Appellate Division reversed, finding that the defendant's method of assessment whereby properties were reassessed after a sale or transfer, a so-called "Welcome Neighbor" reassessment, was illegal and violated both the State and Federal constitutional and statutory requirements of uniformity and equality (*supra,* at 182; *see also,* RPTL 305 [2"). The Court further held that "[i" n order to achieve uniformity and ensure that each property ***232** owner is paying an equitable share of the total tax burden the assessors, at a minimum, were required to review all property on the tax rolls in order to assess the properties at a uniform percentage of their market value" (*supra,* at 183). The court has difficulty distinguishing the illegal reassessment found in *Matter of Krugman* (*supra*) and that practiced by Nassau County today by the maintenance of selective reassessment initiated by taxpayers pursuant to RPTL article 7 proceedings. In effect, by reassessing property after such challenges based on comparable recent sales in the neighborhood of the challenged properties, the County is nonetheless engaging in selective reassessment. This conclusion is bolstered by the explosive success in tax certiorari proceedings in recent years, and the reported commensurate substantial costs to the County. It is irrelevant that the tax certiorari proceedings are initiated by taxpayers. The County is engaging in selective reassessment which results in a claim of discrimination between owners of similarly situated properties. The initiation of a claim to invoke a right is clearly not the same as offering that right as a matter of course.

The recognition that the defendants are on notice that the current assessment methodology may have a disparate impact is further evident from this court's decision in *Matter of Chasalow v Board of Assessors* (May 23, 1989, McGinity, J.) and in the related decisions flowing therefrom (decision dated Dec. 16, 1992; 176 AD2d 800; 202 AD2d 499, *supra, lv denied* 83 NY2d 759). In the end, the appellate court reversed the trial court's determination that the County's current method of assessment was illegal. The petitioner's evidence did not meet the rigorous requirements needed to establish a constitutional infirmity under the Equal Protection Clauses of either the Federal or State Constitution, but rather only established "a moderate statistical deviation from a hypothetical norm" (*Matter of Chasalow v Board of Assessors,* 202 AD2d, at 501). This court notes that the challenge in the matter *sub judice* is (1) to titles VI and VIII and Nassau County Charter § 603, and (2) that nearly 10 years have elapsed since the commencement of *Matter of Chasalow,* which resulted in the finding of a "moderate statistical deviation". Contrary to the defendants' contentions, *Matter of Chasalow* is not controlling here. Of note is the closing comment in *Matter of Chasalow* (202 AD2d, at 502) in which the Court concluded: "It appears that the treatment by the Board of Assessors of reductions in assessed value achieved by means of judicial review might conceivably be viewed as creating a disparate form of assessment." ***233**

The court further notes that insofar as the County is now on notice of the likely disparate impact of its assessment practices, what in the past may have been viewed as "unintentional" discrimination may now be fairly considered intentional. The County's continued failure to act in reliance on "unintentional" discriminatory results can no longer act as a shield for the County's practices.

TITLE VIII

Plaintiffs' second cause of action alleges violation of title VIII, the Fair Housing Act (42 USC § 3601 *et seq.*), which prohibits racial discrimination in the sale, rental or purchase of housing.

42 USC § 3604 (a) and (b) provide:

"Discrimination in the sale or rental of housing and other prohibited practices

"As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful--

"(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

"(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin."

The seminal question presented by the plaintiffs' title VIII claims is whether the statute can reasonably be interpreted to apply to the instant facts. The court could not find and the parties did not present any decision which is four square on point with the instant claims, and the plain meaning of the statute provides little assistance in determining the viability of the plaintiffs' title VIII claims. Defendants contend that the statute cannot apply as the plaintiffs already own their homes. Defendants further contend that violations of the Fair Housing Act require a showing of intent to discriminate by the plaintiffs, a showing they maintain the plaintiffs cannot make.

As an initial consideration the court notes that the language of the Fair Housing Act, like all the anti-discrimination statutes, is " 'broad and inclusive' " and is subject to " 'generous construction' " (*see, Metropolitan Hous. Dev. Corp. v Village of* ***234** *Arlington Hgts.*, 616 F2d 1006, 1011 [7th Cir 1979"; *Trafficante v Metropolitan Life Ins. Co.*, 409 US 205, 209 [1972"). "Generally, and particularly in a fair housing situation, the existence of a federal statutory right implies the existence of all measures necessary and appropriate to protect federal rights and implement federal policies" (*see, Metropolitan Hous. Dev. Corp. v Village of Arlington Hgts.*, 616 F2d, at 1011; *see also, Sullivan v Little Hunting Park,* 396 US 229, 239 [1969"). Additionally, as both the courts in *Stackhouse v DeSitter* (620 F Supp 208 [ND Ill 1985") and *United States v Gilbert* (813 F2d 1523 [9th Cir 1987") noted, the Fair Housing Act's prohibitions "against ' "otherwise mak [ing" unavailable or deny[ing" a dwelling" ... appear[" to be as broad a prohibition as Congress could have made, and all practices which have the effect of making dwellings unavailable on the basis of race are therefore unlawful' " (*United States v Gilbert, supra,* at 1528; *Stackhouse v DeSitter, supra,* at 211, n 6 [quoting 42 USC § 3604 (a)").

The court in *Metropolitan Hous. Dev. Corp.* (*supra,* at 1011) continued: "[t" he courts of appeals, recognizing these policies, regularly have provided relief from exclusionary zoning (or its equivalent by refusal to permit tying into city's water and sewer systems through denial of annexation or issuance of permit) under the Fair Housing Act" (*see, Kennedy Park Homes Assn. v City of Lackawanna,* 436 F2d 108 [2d Cir 1970", *cert denied* 401 US 1010; *United Farmworkers v City of Delray Beach,* 493 F2d 799 [5th Cir 1974"). In fact, the broadness of the language of the FHA and the rigor to which its prohibitions are applied is well illustrated by the relief normally granted both by Federal courts and State courts in exclusionary zoning cases, "what has become known as 'site-specific relief,' that is, the opening up of a particular parcel to low- or moderate-income multiple housing on a case-by-case basis" (*Metropolitan Hous. Dev. Corp. v Village of Arlington Hgts., supra,* at 1011). "Such relief ordinarily runs counter to local zoning or other local legislation, but given the national open housing policy established by Congress, acting under the Civil War Amendments, the state or local legislation must yield to the paramount national policy. The Supreme Court has left no doubt as to the outcome of such a conflict between local and national interests" (*supra*).

The broadness of the national public policy under the FHA is further illustrated by the long line of cases requiring that local authorities make "reasonable accommodations" in rules, policies, practices and services in relation to persons with ***235** handicaps (42 USC § 3604 [f" [3" [B"; *Samaritan Inns v District of Columbia,* 114 F3d 1227 [DC Cir 1997"; *Hovsons, Inc. v Township of Brick,* 89 F3d 1096 [3d Cir 1996").

In addition to the FHA's application in exclusionary zoning cases, the statute has been held to encompass mortgage redlining, insurance redlining, racial steering "and other actions by individuals or governmental units which directly affect the availability of housing to minorities" (*see, Southend Neighborhood Improvement Assn. v County of St. Clair,* 743 F2d 1207, 1209 [7th Cir 1984"; *see also, Halet v Wend Inv. Co.,* 672 F2d 1305 [9th Cir 1982" [discriminatory rental decisions"; *United States v City of Parma,* 661 F2d 562 [6th Cir 1981", *cert denied* 456 US 926 [rejection of public and low-income housing and restrictive land use ordinances"; *Marable v Walker & Assocs.,* 644 F2d 390 [5th Cir 1981" [unequal application of rental criteria"; *United States v Mitchell,* 580 F2d 789 [5th Cir 1978" [racial steering").

The court finds of particular interest those cases where actions have been brought against property and casualty insurers challenging redlining as a form of racial discrimination in which insurers charged higher rates for people in certain areas (*see, e.g., National Assn. for Advancement of Colored People v American Family Mut. Ins. Co.,* 978 F2d 287 [7th Cir 1992"). In *National Assn. for Advancement of Colored People v American Family,* the court held that the FHA was applicable to redlining. The plaintiffs made the connection to the FHA by alleging, *inter alia,* that as a mortgage loan was usually essential to home ownership, and as lenders were unwilling to provide credit without insurance, redlining practices regarding such insurance, particularly in regard to higher premiums, priced some would-be buyers out of the market.

National Assn. for Advancement of Colored People v American Family (*supra*) also addressed a jurisdictional issue raised by the defendants in the matter *sub judice.* Here the defendants contend that the plaintiffs are not aggrieved as they already own their homes and the County assessment practices obviously did not affect them, in effect, raising the issue of standing. The similar argument in the *National Assn. for Advancement of Colored People* case, that none of the plaintiffs had been unable to buy a house, was rejected, the court noting that 42 USC § 3602 (i) defines "aggrieved person" as:

"[A"ny person who ...

"claims to have been injured by a discriminatory housing practice; or ... ***236**

"believes that such person will be injured by a discriminatory housing practice that is about to occur."

The court further noted that the plaintiff National Association for Advancement of Colored People itself had standing, in addition to several of the plaintiffs. The National Association for Advancement of Colored People as an organization includes many African-American homeowners and prospective homeowners and as such has organizational standing under the FHA. In this regard the complaint alleges that the assessment system has an adverse discriminatory impact upon minority homeowners and inhibits their ability to own, buy, sell and rent dwellings and obtain mortgages. The plaintiffs further allege that this system of assessment has an impact on the community and that governmental services and benefits are thus distributed in a discriminatory manner. Based on the *National Assn. for Advancement of Colored People* holding, these allegations are sufficient to establish the instant plaintiffs' standing as "aggrieved persons" under the FHA.

([4]) Further, "given the national open housing policy established by Congress, acting under the Civil War Amendments, the state or local legislation must yield to the paramount national policy" (*Metropolitan Hous. Dev. Corp. v Village of Arlington Hgts.,* 616 F2d, *supra,* at 1011). This court concludes that the FHA applies to the real property assessment policies, procedures and conditions practiced and imposed by the defendants herein. The court can discern no substantive distinction in the application of the broad national anti-discrimination policy, as embodied in the FHA, between zoning policies and real property assessment policies effecting the fair provision of housing.

([5]) The defendants also assert that no intent to discriminate can be shown by the plaintiffs and therefore the claims under the FHA must fail. Yet, a plaintiff, in stating a claim under the Fair Housing Act, need allege only discriminatory effect and need not show that the decision complained of was made with discriminatory intent (*see,* Civil Rights Act of 1968 [Pub L 90-284, 82 US Stat 73" § 801 *et seq.;* § 804 [a", [c", *as amended* 42 USC § 3601 *et seq.;* § 3605 [a", [c"; *Soules v United States Dept. of Hous. & Urban Dev.,* 967 F2d 817, 822; *Huntington Branch, Natl. Assn. for Advancement of Colored People v Town of Huntington,* 844 F2d 926 [2d Cir 1988", *affd in part* 488 US 15; *United States v Incorporated Vil. of Is. Park,* 888 F Supp 419 [ED NY 1995"; *Sassower v Field,* 752 F Supp 1182 [SD NY 1990"). ***237**

In deciding a CPLR 3211 (a) (7) motion the pleadings are afforded a liberal construction, the allegations are accepted as true and the plaintiff is accorded the benefit of every possible favorable inference in determining whether the facts as alleged fit within any cognizable legal theory. The court may not dismiss the complaint unless it appears beyond doubt that no set of facts in support of the allegations would entitle the plaintiffs to relief (*see, Conley v Gibson,* 355 US 41, 45-46 [1957"; *LoPinto v J. W. Mays, Inc.,* 170 AD2d 582, *supra; Corvetti v Town of Lake Pleasant,* 227 AD2d 821). Accordingly, the defendants' motion to dismiss plaintiffs' title VIII claims is denied.

SECTION 603

Plaintiffs' third cause of action alleges that the real property assessment system violates Nassau County Charter § 603 which requires an "equitable and scientific system of assessing property for taxation" (Nassau County Government Law § 603 [L 1936, ch 879, as amended by L 1946, ch 708, § 1, eff July 1, 1946"). The defendants rely on *Matter of Chasalow v Board of Assessors* (202 AD2d, *supra,* at 501) where the Court noted that "[i"t is well settled that in the area of real property taxation, rough equality, not complete uniformity, is all that is required". The defendants further contend that the plaintiffs cannot challenge any perceived overassessment of their properties in this action as they have failed to exhaust their RPTL remedies.

Addressing the exhaustion argument first, in *Matter of Krugman v Board of Assessors* (141 AD2d, *supra,* at 179-180) the Court noted: "Generally, a taxpayer who challenges his property assessment is relegated to a tax certiorari proceeding brought under the provisions of RPTL article 7 for review of his assessment [citations omitted". However, certain exceptions to the exclusive jurisdiction of RPTL article 7 exist. It is well recognized that where the jurisdiction of the taxing authority is challenged or the tax itself is claimed to be unconstitutional, one is not required to pursue a remedy under RPTL article 7 [citations omitted". Furthermore, a taxpayer may properly forego the statutory certiorari procedure and mount a collateral attack on the taxing authority's action if the challenge is to the method employed in the assessment involving several properties rather than the overvaluation or undervaluation of specific properties (*Matter of Dudley v Kerwick,* [52 NY2d 542"; *Matter of 22 Park Place Coop. v Board of Assessors,* [102 AD2d 893")." ***238**

([6]) In the matter *sub judice* the plaintiffs seek declaratory and injunctive relief and challenge the method of assessment employed by the County. This procedure is proper and the court finds the defendants' contention in this regard meritless (*see, Matter of Feldman v Assessor of Town of Bedford,* 236 AD2d 399; *Corvetti v Town of Lake Pleasant,* 227 AD2d 821; *Matter of Krugman v Board of Assessors,* 141 AD2d 175, *supra; Matter of 22 Park Place Coop. v Board of Assessors,* 102 AD2d 893, *supra; Hewlett Assocs. v City of New York,* 57 NY2d 356).

As concerns the defendants' motion on the merits, the case *Matter of Board of Mgrs. v Board of Assessors* (202 AD2d 417) is instructive. That case also involved a challenge to Nassau County Government Law § 603, and the appeal, which was decided the same month as *Matter of Chasalow* (*supra*) and by the same Bench, reversed the trial court which had (1) denied the appellant's motion to dismiss the article 78 proceeding, and (2) after a nonjury trial, (a) declared illegal the assessment of one unit of the petitioners' condominiums, (b) directed the appellants to adopt rules and regulations for assessment which comply with Nassau County Government Law § 603, and (c) directed the appellants to assess all of the petitioner's condominium units with the new rules and regulations. The petition challenged the Board of Assessors' assignment of a "A
10%" grade to the respondent's condominium units based upon published rules and regulations and the residence schedules specifications which divided residential building classifications into five grades: "AA", "A", "BB", "B", and "C".

The appellate court found that the petition should have been dismissed on the appellant's motion, holding as follows:

"Ordinarily, challenges to assessments on the grounds that they are illegal, irregular, excessive, or unequal, are to be made in a certiorari proceeding under RPTL article 7 [citations omitted". However, where the challenge is based upon the method employed in the assessment of several properties rather than the overvaluation or undervaluation of specific properties, a taxpayer may forego the statutory certiorari procedure and mount a collateral attack on the taxing authority's action through either a declaratory judgment action or a proceeding pursuant to CPLR article 78 [citations omitted".

"In reviewing a taxpayer's claim to determine whether this exception to the statutory procedure based upon the taxing

authority's methodology has been demonstrated, ' "[m"ere allegations, unsupported by evidentiary matter, that the attack is on the methods employed rather than individual evaluations, ***239** are not enough to relieve plaintiffs of the obligation to pursue their relief via the provisions of Article 7 of the Real Property Tax Law " ' (*Matter of Krugman v Board of Assessors, supra,* at 180, quoting *Samuels v Town of Clarkson* [91 AD2d 836, 837" [other citations omitted"). Where allegations seek a review of individual assessments, rather than the formula used, a proceeding pursuant to CPLR article 78 is improper ...

"Further, the proof at the trial was improperly related to the propriety of the assessment and a review of the assessors' mental processes, observations, and judgments [citation omitted". The allegation regarding noncompliance with section 603 was never supported by evidentiary proof [citations omitted".

"The petitioner never specifically alleged that the appellants-respondents' rules and regulations and specifications (1) failed to account for factors such as obsolescence, depreciation, and market value, (2) violated RPTL 305 (2), or (3) were facially invalid. As a result, the appellants-respondents were never provided with notice or an opportunity to be heard on these and other issues which were addressed by the Supreme Court, and never had the opportunity to make an appropriate record [citations omitted"." (*Matter of Board of Mgrs. v Board of Assessors, supra,* at 419-420.)

The Court therefore dismissed the petition. In the case at bar, the plaintiffs specifically allege that the County's assessment methods failed to account for market values and have supported their claim concerning noncompliance with Nassau County Government Law § 603 by evidentiary proof, namely that the exemplar properties have a disproportionate assessment as a result of the County's use of stale 1938 data.

Nassau County Government Law § 603 mandates scientific and equitable assessments. While RPTL 305 (1) provides that the "existing assessing methods in effect ... on the effective date of this section may continue", RPTL 305 (2) requires that all real property in each assessing unit be assessed at a uniform percentage of value. Read together, it is clear that while the County's use of fractional assessment and cost methodology may continue, the County nonetheless has an obligation to provide uniformity in assessments.

The defendants' reliance on the decision in *Matter of Chasalow* (*supra*) is misplaced. The data underlying the cause of action in that case dates from 1989 and before. The court finds that a reexamination of the effects of the County's methodology is appropriate today. ***240**

([7]) The alleged disparity between the market value and assessed value of property in different County locations and the need to utilize equalization rates which are 3.17% County-wide but vary with the community seriously argue against either a scientific or equitable system of assessment determination. Defendants' use of the word adjustment in the context of attempting to realign disparate community property assessments established in 1938 and 1964 cannot be considered scientific when the underlying data may be so dated as to defy adjustment except on an individual basis. No assessment system can be equitable if, as plaintiffs allege, the community variations are substantial and the redress is confined to certiorari proceedings which (a) are voluntary, (b) must be commenced by individual taxpayers, (c) invite substantial delays in reimbursement for overpayment, and (d) necessarily require the payment of unreimbursed attorney's fees and costs. The plaintiffs have made a sufficient showing to withstand the instant dismissal motion. Accordingly, the defendants' motion to dismiss plaintiffs' claims under the Nassau County Charter is denied.

The court notes that 34,000 residential small claims assessment review petitions were filed in 1998. If the plaintiffs' allegations concerning disparate impact and nonuniform assessment are established at trial, the County will not be able to use RPTL 305 (1) or *Matter of Chasalow* (*supra*) as a shield to insist that it may continue its existing assessing method. Nassau County's reliance on prior judicial determinations is misguided. Precedent is the starting point for rational analysis, not the end point for comfortable adherence to favorable decisions. ***241**

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