

# SCAR Proceeding Owner-Occupancy Requirement

By Andrew Lieb

The Court of Appeals recently held that a single-family home is not “owner-occupied” for purposes of qualification in a Small Claims Assessment Review (SCAR) when such home is occupied “by an owner’s relative but not by the owner” “during the relevant tax period.” In so ruling, the court limited SCAR proceedings’ availability to fact-patterns that clearly establish occupancy by the owner.

Attorneys counseling clients who seek to utilize SCAR proceedings for their residential property tax grievances should review the court’s decision, *In the Matter of Mehran Manouel, et al., v. Board of Assessors, et al.*, as it sets forth guidance in the qualification requirements for jurisdictional purposes beyond its limited issue by way of a plethora of thoughtful dicta. More so, all attorneys should review the decision because it’s an artful explanation of the need for litigation counsel to find primary support for policy arguments, in legislative history and administrative interpretation, beyond a mere reliance on logic. As the court explained, “a reasonable and perhaps quite convincing argument” that is unsupported is properly “made to the Legislature” not the court.

SCAR proceedings are available to homeowners who wish to challenge their property tax assessment (i.e.,

assessed value of real property for a given tax year), pursuant to Real Property Tax Law §730, if the property is “owner-occupied” within the meaning of Real Property Tax Law §730(1)(b)(i).

The Court of Appeals addressed the scope of the “owner-occupied” requirement for SCAR proceedings on Feb. 24, 2015, in *In the Matter of Mehran Manouel, et al., v. Board of Assessors, et al.* According to the court, SCAR proceedings “provide[] low-cost, expeditious tax assessment review” as contrasted with a tax certiorari proceeding in State Supreme Court, which is “cost prohibitive for many homeowners.” Therefore, a determination as to qualification in a SCAR proceeding could be the difference between making a tax grievance financially viable for many single-family homeowners.

In rendering its decision, the court found the fact that the owner’s relative lived in the home rent-free irrelevant to its determination. In such, the court ruled that the petitioner’s policy argument, that “the owner-occupancy requirement was designed to exclude income-producing properties from SCAR,” was unavailing. Instead, the court held that the statutes plain language limited SCAR proceedings to properties that are owner-occupied by way of a strict constructionist



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interpretation.

Real Property Tax Law §730(1)(b) states that a SCAR proceeding is available where “the property is [] improved by a one, two or three family owner-occupied structure used exclusively for residential purposes.” The court looked to Black’s Law Dictionary in defining the word “owner” to mean “the holder of certain superior interests in property.”

The court acknowledged its precedent in *Town of New Castle* in demonstrating that the instant homeowners’ case had merit irrespective of not holding for the homeowners. In *Town of New Castle*, which addressed the “exclusively for residential purposes” aspect of the SCAR proceeding restriction, the court held that such language should also “include properties used occasionally or incidentally for nonresidential purposes” by way of looking to the public policy behind the availability of SCAR proceedings. So, what the court says is the difference between *Town of New Castle* and the instant application where in the former this same court read an expansive interpretation into the statute and in the instant matter the court ruled in a strict constructionist fashion. The answer says the court is the difference in how the claims were substantiated. In *Town of New Castle*, the applicant “relied on

legislative history and administrative guidance to support the conclusion that a narrow construction of the residency provision would contravene the primary purposes of RPTL 730”. *In the Matter of Mehran Manouel, et al., v. Board of Assessors, et al.* not only did the legislative history and administrative guidance not support the policy arguments made by the homeowner, it actually undercut those arguments in that the statute was over “thirty years” old and when introduced “the Association of Towns of the State of New York specifically objected to the proposed bill’s distinction between owner-occupied residential properties and non-owner occupied residential properties” to no avail.

Consequently, a great lesson for practitioners exists *In the Matter of Mehran Manouel, et al., v. Board of Assessors, et al.* Unless there exists support for a policy argument beyond logic, go to lobby the legislature instead of petitioning the court. Also, SCAR petitioners must reside at their owner-occupied home.

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