

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

In the Matter of the Application of

JOSHUA MENDELSON and JULIE SAMUELS,

Petitioners,

STIPULATED
FINAL JUDGMENT

-against-

Index No. 2022-52435

THE ASSESSOR AND THE BOARD OF ASSESSMENT
REVIEW OF THE TOWN OF CLINTON AND
THE TOWN OF CLINTON,

Respondents.

For Review, Under Article 7 of the Real Property Tax Law,
of the Assessment of certain Real Property in the said
Town of Clinton, New York

The above-named Petitioners having duly brought this proceeding to review the tax assessment made against certain premises of the Petitioners located in the Town of Clinton, County of Dutchess, State of New York for assessment year 2022, which such premises are identified as follows: Town of Clinton Tax Map Parcel 6569-00-082270 (the "Parcel");

WHEREAS, the Parcel is the real property mentioned and more fully described in the petition made and filed herein, and the Petitioner having appeared by Whiteman Osterman & Hanna, LLP (Christopher M. McDonald, Esq. of counsel) and Respondents Assessor of the Town of Clinton (the "Assessor"), the Board of Assessment Review of the Town of Clinton ("BAR"), and the Town of Clinton (collectively with the Assessor and the BAR, the "Town"), having appeared by Cappillino Rothschild & Egan LLP (Shane J. Egan, Esq. of counsel) and the parties having entered into and consented to this Stipulated Final Judgment (the "Judgment");

NOW, by stipulation of the parties, it is hereby,

ORDERED, ADJUDGED AND DECREED, that 2022 assessment of the Parcel on the assessment rolls of the Town for year 2022 shall be corrected to provide that the assessment of the Parcel is reduced from \$1,337,000 to \$1,250,000 and it is further,

ORDERED, ADJUDGED AND DECREED, that absent a showing of “physical improvement” (as such term is used in Section 727(2)(c) of the Real Property Tax Law) to the Parcel, the 2023 assessment of the Parcel on the assessment rolls of the Town for the year 2023 shall be \$1,250,000, and it is further,

ORDERED, ADJUDGED and DECREED that the remediation and repair work as described in the letter of Daniel T. Hubbell attached hereto as **Exhibit A** (the “Remediation Work”) shall not constitute “physical improvement”, and it is further,

ORDERED, ADJUDGED and DECREED, that Respondent Assessor or other officers having custody of the assessment rolls of the Town for the 2022 assessment year shall forthwith correct, revise or establish the entries for the Parcel to reflect the reduction in assessment herein recited by making appropriate notations thereon, and it is further,

ORDERED, ADJUDGED and DECREED, that the Town or the County of Dutchess (“the County”) shall refund excess Town taxes, Town chargebacks, Town special district charges and all other Town tax levies, if any, paid on the uncorrected 2022 assessments of the Parcel, and it is further,

ORDERED, ADJUDGED and DECREED, that the County shall refund excess County taxes, County chargebacks and all other County tax levies, if any, paid on the uncorrected 2022 assessments of the Parcel, and it is further,

ORDERED, ADJUDGED and DECREED, that the Rhinebeck Central School District (the “School District”) shall refund excess School District, library and special district charges paid, if any, on the uncorrected 2022 assessments of the Parcel, and it is further,

ORDERED, ADJUDGED and DECREED, that the refunds, if any, set forth above, shall be paid to Whiteman Osterman & Hanna LLP, attorneys for the Petitioners, One Commerce Plaza, Albany, New York 12260, with interest thereon waived provided any such refunds are made within sixty (60) days of the service of this Judgment with notice of entry thereof or an application for audit and payment under RPTL § 726(3) on the County and the School District, and it is further,

ORDERED, ADJUDGED and DECREED that the provisions of Real Property Tax Law § 727 shall apply to this proceeding and the Parcels for assessment years 2024 and 2025, provided, however, that none of the Remediation Work shall constitute a “physical improvement” under Section 727(2)(c) thereunder.

Dated: _____, 2023
Poughkeepsie, New York

Hon. James V. Brands, A.J.S.C.

STIPULATION

The Attorneys for the respective Parties do hereby consent to this Order and Judgment.

Dated: _____, 2023

WHITEMAN OSTERMAN & HANNA, LLP

Daniel T. Hubbell, Esq.

Attorneys for Petitioner

Joshua Mendelsohn and Julie Samuels
One Commerce Plaza
Albany, NY 12260
(518) 487-7622

Dated: _____, 2023

CAPPILLINO ROTHSCHILD & EGAN LLP

Shane J. Egan, Esq.

Attorneys for Respondents

Assessor of the Town of Clinton, The Board of
Assessment Review of the Town of Clinton, and
the Town of Clinton
7 Broad Street
Pawling, New York 12564-0390

EXHIBIT A

[ATTACHED]

WHITEMAN
OSTERMAN
& HANNA LLP

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January 10, 2023

VIA ELECTRONIC MAIL (se@cappillino.com)

Shane J. Egan Esq.
Cappillino & Rothschild, LLP
7 Broad Street
P.O. Box 390
Pawling, NY 12654

RE: *Joshua Mendelsohn et al. v Assessor, Town of Clinton et al.*
Dutchess County Docket No. 2022-52435

Dear Shane:

This firm represents Joshua Mendelsohn and Julie Samuels (“Petitioners”) in the above-referenced tax certiorari proceeding (the “Proceeding”) and the owners of certain real property located within the Town of Clinton (the “Town”) identified as SBL No. 6569-00-082270 (the “Property”).

As we discussed, Petitioners purchased the Property in August 2020 for \$1,195,000. In the months after the closing, Petitioners discovered a number of significant latent defects with the Property, which are further detailed in this letter. Had Petitioners been aware of these defects prior to the closing, they would not have paid \$1,195,000 for the Property.

Since Petitioners discovered the defects, they have engaged in considerable remedial work. Some of these deficiencies were quickly discovered after the closing, while others were only discovered when the Petitioners consulted the original engineer who drew up the construction

plans for the house.¹ This initiated a significant program of identifying the issues and determining remedies. Petitioners subsequently contracted with this original engineer—Sal Triano—on the plans for the necessary repair work.

Moreover, all of the work performed to date has been completed amid the backdrop of 2021 and 2022's supply constraints and, as such, it has resulted in increased costs. Some existed prior to the previous owner's multi-year project of adding on to the house, but most seem to be the result of the previous owner's desire to ultimately flip the house once the costs of the project became too high. The narrative included below outlines the series of repairs Petitioner have been required to take and underscores that they were indeed necessary to correct significant structural and other deficiencies.

- 1) Master Bathroom. The floor of the master bathroom, a bathroom that had been part of a certificate of occupancy received just months prior to Petitioner purchasing the Property, had already rotted through. This required tearing the room down to the studs, replacing the subfloor in most of the room, most of the sheetrock, almost all tile, and most glass. At this time, this remediation project is almost entirely complete.

Sum incurred: \$90k with some consideration for fixtures Petitioners replaced

- 2) Stormwater Management. The home was not properly waterproofed on the exterior and lacked any infrastructure to manage stormwater run-off. This necessitated applying flashing on all openings, which required removing the siding from portions of the house. Gutters and drainage systems were also added to direct stormwater away from the house. There remains drywall on the lower level that has lost its structural integrity due to water intrusion and must be replaced. This project is substantially complete.

Sum incurred: \$77k

Future expenses: \$10k

- 3) Carport. Petitioners have been advised that the structural components of the carport (e.g. concrete footings, load bearing supports and trusses) are insufficient for the weight of the carport. Petitioners consulted with two local contracting firms who both advised it would be more economical to demolish and rebuild the carport than to repair the deficiencies. This project has not yet begun.

Contractor estimated cost: \$70k

¹ Notably, the original project engineer declined to sign off on final, as-built plans to satisfy Town requirements for a certificate of occupancy due to deviations and deficiencies in the construction. The engineer left the project prior to construction completion.

- 4) Driveway. Last year, a culvert that allows a stream to flow under the driveway failed. Petitioners retained an emergency contractor to replace the existing culvert with a temporary culvert and re-lay the gravel drive over that area. Petitioners were advised at that time that the driveway would need to be reconstructed. Petitioners then initiated that project in 2022. During the most recent rainfalls this season, the replacement culvert is also beginning to fail. NYSDEC staff advised that the costs to redesign and rebuild the driveway, such that the culvert is replaced with a more substantial structure enabling the stream to flow under the driveway, would run in excess of \$100,000.

Expenses to date: \$59k

Future anticipated expense: \$80k

- 5) Deck not structurally sound. The large deck added to the house by the prior owner was not properly tied horizontally to the house structure. Rather, it was tied to an open cinderblock base, and even then, the various structural elements were not properly connected. Petitioners' contractor repaired the deck by installing a new concrete base and properly tying all structural components to the house and internal deck system. This project is complete.

Expenses to date: \$18k

- 6) Incomplete construction. As part of the previous owner's haste to sell the Property, there were several elements of the construction that were not completed. There is little or no insulation within the house, reducing much of the value of the geothermal system installed. The chimney was not raised as was specified and required on the plans,² and is now too low for regular, safe use, according to both the original engineer and a leading local chimney specialist. The family room has a major sliding door that if opened leads to a several-foot drop to nowhere. Petitioners were required to install decking and stairs immediately outside this sliding door as a condition of their mortgage. The stovetop vent hood, which sits on the island in the center of the kitchen and not near a wall, had not been connected to anything beyond the island itself. Lastly, the area immediately outside the house consists of large piles of slate excavated as part of the prior owner's incomplete work and will require extensive retaining walls to shore up in the coming years.

Expenses to date: \$15k

Anticipated costs: Thermal efficiency: \$40k; chimney: \$20-\$30k; retaining walls: \$100,000+

² When the roofline was raised as part of the prior owner's renovations, the chimney was required to be raised as well.

On 2021 assessment roll of the Town, the Town assessor increased the Property's assessment from \$540,000 to \$1,195,000. Notwithstanding the aforementioned defects, Petitioners did not challenge the increase in the Property's assessment, as they recognized that the assessed value of the Property was equal to the purchase price, and they concluded that once the defects were properly addressed, the Property's value would likely be close to \$1,195,000. On the 2022 assessment roll, however, the Town assessor further increased the Property's assessment to \$1,337,000. Petitioners believe that given the defects with the Property, such an increase in assessment is not justified, and thus timely challenged the increase in assessment before the Town Board of Assessment Review ("BAR") and thereafter filed the Proceeding.

As you can see, the costs to properly repair and remediate these defects are well in excess of the \$142,000 reduction in assessment that Petitioners have requested. Accordingly, we respectfully request that the Town reduce the assessed value to \$1,195,000, which is equal to the purchase price paid by Petitioners for the Property.

This communication is for settlement purposes only, is without prejudice to any of Petitioners' rights, claims, and remedies, all of which are expressly reserved, and shall not be used in any manner in the pending Proceeding or any dispute related thereto. Should you have any additional questions, please do not hesitate to contact our office.

Sincerely,

/s/ Daniel Hubbell

Daniel Hubbell