

New York City Tax Appeals Tribunal

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In the Matter of :  
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CAMBRIDGE LEASING CORPORATION : DECISION  
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Petitioner. : TAT (E) 03-11 (RP)  
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The Commissioner of Finance of the City of New York (the "Commissioner" or "Respondent") filed an Exception to the Determination of the Chief Administrative Law Judge ("CALJ") dated September 28, 2004 (the "CALJ Determination"). The CALJ Determination: (1) cancelled the Notice of Determination, dated June 26, 2002, (the "Notice") issued by the New York City Department of Finance (the "Department") to Cambridge Leasing Corporation ("Petitioner") asserting a deficiency of New York City Real Property Transfer Tax ("RPTT"); and (2) granted Petitioner's request for a refund of \$47,678.98 of RPTT principal and interest. The Notice was issued in connection with the transfer on January 19, 2000 of three condominium units.

Respondent appeared by George P. Lynch, Esq., Assistant Corporation Counsel, New York City Law Department. Petitioner appeared by Jack Wilk, Esq., of Siller Wilk LLP. Both parties filed briefs and oral argument was held before the Tribunal on a consolidated basis with Matter of Daniel and Sheila Rosenblum, TAT (E) 01-31(RP) and Matter of David Gruber, TAT (E) 03-7(RP), *et al.*

On January 19, 2000, Petitioner sold three condominium units in the 500 Park Tower Condominium (the "Condominium") located at 500 Park Avenue, New York, New York (the "Building") to East End Investments, Inc. (the "Sale").<sup>1</sup> The three units were sold pursuant to a single Contract of Sale dated November 22, 1999 for \$3,275,000 (the "Sales Price") and were transferred by a single deed.<sup>2</sup> Two of the three condominium units, Apartments 24B and 25B (the "Combined Apartments"), are located, respectively, on the 24<sup>th</sup> and 25<sup>th</sup> floors of the Building and were physically combined prior to the Sale. The third condominium unit, Maid's Room Number 4 (the "Maid's Room"), is located on the 14<sup>th</sup> floor of the Building.<sup>3</sup>

The size of the Combined Apartments is approximately 3,500 square feet. The size of the Maid's Room is approximately 200 square feet, consisting of a 129 square foot main room, a walk-in-closet and a bathroom. The square footage of the Maid's Room is approximately 5.7% of the total square footage of the three units.

There are four "maid's room" condominium units in the Building, each of which: (a) is located on the 14<sup>th</sup> floor; (b) must be purchased in conjunction with the purchase or

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<sup>1</sup>Except as noted in footnote 4, the CALJ's Findings of Fact have generally been adopted for purposes of this Decision. Only those findings that are germane to this Decision have been restated above and, in some instances, those findings have been paraphrased. The remaining Findings of Fact of the CALJ can be found in the CALJ Determination. Respondent takes exception to the CALJ's Findings of Fact as noted in footnotes 2 and 3, *infra*.

<sup>2</sup>Arguing that the CALJ's Findings of Fact are incomplete, Respondent requests that we adopt seven additional findings "necessary to reach a conclusion in accord with applicable law." Respondent's Exception, Attachment A. We decline to adopt the seven findings. Several of the findings are already included in the CALJ's Findings of Fact and the others are not pivotal to our analysis of the matter at bar.

<sup>3</sup>Respondent takes exception to the CALJ's use of the phrase "Maid's Room" and contends that "Maid's Unit" should be substituted for "Maid's Room" in the Decision as the use of the phrase "Maid's Room" misleads the reader, distorts the facts, and conflicts with the operative documents. We disagree. In the Findings of Fact, the CALJ accurately described the size and location of the "Maid's Room" at issue. Moreover, the Stipulation of Facts signed by both parties and dated April 1, 2004 refers to the unit as the "Maids Room" or "Maid's Room." Thus, for purposes of continuity, we will refer to the unit as the Maid's Room.

ownership of a residential unit; and (c) must be used exclusively as a residence for a maid or other housekeeping employee of a residential unit owner or bona fide tenant thereof. Offering Plan, Part I, §§D.3, P.1 and P.2; Condominium By-Laws ("By-Laws"), Article 6, §6.14-1.3. The Offering Plan, dated May 4, 1983, also states that the maid's room condominium units would not contain any cooking or kitchen facilities.<sup>4</sup> Offering Plan, Part I, §D.3. A residential unit owner is permitted, at any time, to sell or convey a maid's room condominium unit to a residential unit owner in the Condominium or to lease a maid's room condominium unit to a residential unit owner in the Condominium or a bona fide tenant thereof. Declaration Establishing a Plan for Condominium Ownership, Article 8, §8.4; Offering Plan, Part I, §P.1. Housekeeping employees of residential unit holders are required to use the service entrance of the Building and any designated service elevator. By-Laws Article 14, §§13 and 14.

Petitioner filed an RPTT return (the "RPTT Return") with respect to the Sale in which it calculated and paid RPTT on the Sales Price using the a tax rate of 1.425% (the "1.425% Tax Rate").

The Department audited the RPTT Return and re-computed the tax using a tax rate of 2.625% (the "2.625% Tax Rate"). As a result of that audit, the Department issued the Notice, which asserted that Petitioner owed, with respect to the Sale, additional RPTT of \$39,300 and interest of \$8,378.98.

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<sup>4</sup>The CALJ's Finding of Fact 5 which in relevant part stated that the four maid's room units "cannot contain any cooking or kitchen facilities" has been modified to reflect that the Offering Plan states that the four maid's room units "will not contain any cooking or kitchen facilities." Offering Plan, Part I, §D.3.

Petitioner filed a Request for Conciliation Conference dated July 10, 2002, with the Department's Conciliation Bureau. By a check dated July 28, 2002, Petitioner paid the Department, under protest, the \$47,678.98 of additional RPTT and interest that was asserted in the Notice.

After receiving a Conciliation Decision, dated March 27, 2003, discontinuing a Conciliation proceeding based on Petitioner's express disagreement with the Conciliation Bureau's proposed resolution, Petitioner filed a Petition seeking a redetermination of the deficiency asserted in the Notice and requesting a refund of the \$47,678.98 of RPTT and interest that Petitioner paid the Department under protest.

The CALJ concluded that the transfer of the three condominium units (the Combined Apartments and the Maid's Room) was subject to RPTT at the 1.425% Tax Rate pursuant to §11-2102.a(9)(i) of the New York City Administrative Code (the "Code"). Furthermore, the CALJ concluded that "the sale of multiple individual residential condominium units (a Bulk Sale)<sup>5</sup> is a sale of residential property subject to" the tax rates provided by §11-2102.a(9)(i) of the Code (the "Lower Tax Rate Schedule"). CALJ Determination at 14. The CALJ further concluded that even if Bulk Sales were subject to the tax rates provided by §11-2102.a(9)(ii) of the Code (the "Higher Tax Rate Schedule"), the transfer at issue was not a Bulk Sale because the Maid's Room was part of the same residence as the Combined Apartments.

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<sup>5</sup>The phrase "Bulk Sale" has been used by the parties and the CALJ in conjunction with such phrases as "sale of multiple individual residential condominium units" and "sale of multiple residential units." Our use of the phrase "Bulk Sale" in this decision is for purposes of continuity and does not reflect the adoption of any particular definition.

In her Exception, the Commissioner argues that the transfer of the three condominium units (the Combined Apartments and the Maid's Room), did not constitute a transfer of an individual residential condominium unit (although the Commissioner conceded that the Combined Apartments are treated as an individual residential condominium unit due to the fact they have been combined) but, rather, was subject to the 2.625% Tax Rate as a sale of multiple residential condominium units from the same seller to the same buyer. The Commissioner also contends that the issue of whether a sale of multiple residential condominium units from the same seller to the same buyer is subject to the Lower Tax Rate Schedule was not properly before the CALJ as that issue was not raised by the parties or the CALJ. Thus, according to the Commissioner, the CALJ did not have jurisdiction to determine this issue. In the alternative, the Commissioner asserts that the sale of multiple residential condominium units from the same seller to the same buyer is subject to the Higher Tax Rate Schedule because the plain language of the relevant statutory provision limits the Lower Tax Rate Schedule to "conveyances of . . . individual residential condominium units."<sup>6</sup>

Petitioner contends that the CALJ's Determination should be affirmed because the Lower Tax Rate Schedule applies to the sale of multiple residential condominium units from the same seller to the same buyer (a Bulk Sale) and, in the alternative, even if a Bulk Sale is subject to the Higher Tax Rate Schedule, the transfer at issue was not a Bulk Sale. Petitioner also argues that the CALJ did not exceed his jurisdiction by holding that a transfer of multiple condominium units from the same seller to the same buyer qualifies for the Lower Tax Rate Schedule as the interpretation of the relevant statutory provision in order to determine the applicable tax rate was always an issue in this matter.

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<sup>6</sup>Section 11-2102.a(9)(i) of the Code.

For the following reasons, we sustain the CALJ's cancellation of the Notice and the granting of Petitioner's refund but we decline to adopt the CALJ's conclusion that no sale of multiple residential condominium units from the same seller to the same buyer ever could be subject to the Higher Tax Rate Schedule.

Section 11-2102.a of the Code imposes the RPTT "on each deed at the time of delivery by a grantor to a grantee" when the consideration for the real property exceeds \$25,000. The applicable tax rate is governed by §11-2102.a(9) of the Code:

[W]ith respect to conveyances made on or after August first, nineteen hundred eighty-nine . . . the tax shall be at the following rates:

(i) at the rate of one percent of the consideration for conveyances of one, two or three-family houses and individual residential condominium units where the consideration is five hundred thousand dollars or less, and at the rate of one and four hundred twenty-five thousandths of one percent of the consideration for such conveyances where the consideration is more than five hundred thousand dollars, and

(ii) at the rate of one and four hundred twenty-five thousandths of one percent of the consideration with respect to all other conveyances where the consideration is five hundred thousand dollars or less, and at the rate of two and six hundred twenty-five thousandths of one percent where the consideration for such conveyances is more than five hundred thousand dollars; . . .

In the matter at bar, the Sale involves the Combined Apartments and the Maid's Room. Respondent asserts that under the plain language of § 11-2102.a(9)(i) of the Code the sale of more than one residential condominium unit from the same seller to the same buyer

is subject to the Higher Tax Rate Schedule. However, Respondent has also acknowledged that the transfer of residential condominium units that have been physically combined into a single residence will not be treated as a Bulk Sale but will be treated as a transfer of an individual unit taxable under the Lower Tax Rate Schedule. Finance Memorandum 00-6, June 19, 2000 "Real Property Transfer Tax on Bulk Sales of Cooperative Apartments and Residential Condominium Units." Thus, Respondent's imposition of the 2.625% Tax Rate in the instant case is based on the fact that the Sale included the Maid's Room in addition to the Combined Apartments.

Under the facts presented, we find that the Maid's Room is not a separate individual residential condominium unit but is an integral part of the same residence as the Combined Apartments. The fact that the Maid's Room was not physically combined with or even on the same floor as the Combined Apartments is not determinative of whether the three units constituted a single residence. The Appellate Division in Sharp v. Melendez, 139 A.D.2d 262 (1<sup>st</sup> Dept. 1988), *motion for leave to appeal denied*, 73 N.Y.2d 707 (1989), found that for purposes of the application of the rent regulatory statutes, under certain circumstances, two nonadjacent apartments could constitute a single residence. It is also not determinative that a maid's room is not listed as an appurtenance under Real Property Law §339-e.14<sup>7</sup> (as are non-contiguous storage rooms and parking spaces). The four "maid's room" condominium units are all located on the 14<sup>th</sup> floor of the Building. The Maid's Room consists of a 129 square foot main room, a walk-in-closet and a bathroom and does not contain any cooking or kitchen facilities. In addition, the Maid's Room has to be purchased in conjunction with the purchase or ownership of a residential unit or leased to a residential unit owner or a *bona fide* tenant thereof; and has to be used exclusively as a residence for a maid or other housekeeping employee of a residential unit owner or *bona fide* tenant thereof.

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<sup>7</sup>Contained in Article 9-B of the Real Property Law.

Thus, we find, as did the CALJ, that the inclusion of the Maid's Room in the transfer with the Combined Apartments (which Respondent acknowledges is a single residence) did not render the transfer a Bulk Sale.

While we find that the transfer of the Combined Apartments and the Maid's Room was not the sale of multiple residential condominium units, we decline to adopt the CALJ's conclusion that no sale of multiple residential condominium units from the same seller to the same buyer could ever be subject to the Higher Tax Rate Schedule. Under the facts in the matter at bar it is not necessary for us to address that issue at this time and, thus, we decline to do so. For this reason, we need not address whether, or the extent to which, the Appellate Division's decision in Emerson Unitrust v. Commissioner of Finance of the City of New York, 16 A.D.3d 201 (1<sup>st</sup> Dept. 2005)<sup>8</sup> and the New York State Tax Appeals Tribunal's decision in Lamparelli Construction Company, Inc., DTA No. 819886, May 25, 2006, require the Higher Tax Rate Schedule to apply to a sale of multiple residential condominium units, cooperative apartments or one, two or three-family houses.

However, in declining to address the issue of whether any sale of multiple residential condominium units from the same seller to the same buyer could ever be subject to the Higher Tax Rate Schedule, we disagree with Respondent's contention that the CALJ lacked jurisdiction to address the issue. Respondent asserts that "[n]either of the parties raised this issue, and the CALJ did not raise it *sua sponte* during the proceedings, but instead waited until the issuance of the Determination to address it." Brief of Respondent Supporting Exception at 9. However, Respondent, in the Brief of Respondent filed with the CALJ, stated that:

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<sup>8</sup>Confirming the decision of this Tribunal in Matter of Emerson Unitrust and Mark Emerson, TAT (E) 99-82(RP), *et al.*, July 28, 2003.

[T]he Respondent has thus consistently ruled that a bulk transfer of two or more residential condominium units from a single grantor to a single grantee does not qualify for the lower rate schedule because it is not the conveyance of an individual residential condominium unit, but falls instead under the heading of "all other conveyances" under [§11-2102.a(9)(ii) of the Code]. [Brief of Respondent at 17.]

Thus, Respondent cannot now claim surprise that the issue of the appropriate tax rate to be applied to the sale of multiple residential condominium units from the same seller to the same buyer was discussed by the CALJ in his Determination.<sup>9</sup>

The Tribunal sent a letter dated January 13, 2006 to the parties in the matter at bar indicating, in relevant part, that while serving as Assistant Commissioner for Tax Law and Conciliations for the Department prior to her appointment to the Tribunal, Commissioner Hoffman participated in the issuance of Finance Memorandum 00-6, June 19, 2000, "Real Property Transfer Tax on Bulk Sales of Cooperative Apartments and Residential Condominium Units" and the letter ruling referred to in the Administrative Law Judge's Determination in Matter of Daniel and Sheila Rosenblum, TAT (H) 01-31(RP). Petitioner sent a letter, dated January 20, 2006, to the Tribunal stating that it did not object to Commissioner Hoffman sitting on the panel for this case.

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<sup>9</sup>We have considered all other arguments raised by the parties and find them unpersuasive.

Accordingly, we sustain the CALJ's cancellation of the Notice and the granting of Petitioner's refund but we decline to adopt the CALJ's conclusion that no sale of multiple residential condominium units from the same seller to the same buyer could ever be subject to the Higher Tax Rate Schedule.

Dated: September 12, 2006  
New York, New York

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GLENN NEWMAN  
Commissioner and President

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ELLEN E. HOFFMAN  
Commissioner