



direction from that principal. Since, at the time she purchased the Property, Petitioner did not know the identity of the person to whom she would later transfer the Property, she could not have entered into an agency relationship with that transferee. The record further indicates that Petitioner signed the deed transferring the Property and that the transfer occurred.

#### **FINDINGS OF FACT**

A deed dated April 29, 2004 (the "Deed") indicates that Petitioner conveyed the Property to Jason Levine (City's Ex. K) (the "Transfer"). This is the Transfer that the Department seeks to tax.

Although Petitioner was able to communicate effectively, her testimony with respect to the Transfer is incomplete, internally inconsistent, vague, and contradicted by the documentary evidence. Her testimony and demeanor lead me to believe that she did not disclose all that she knows about her purchase and sale of the Property and the mortgage financing. This is most likely due, in large measure, to the fact that the Transfer was part of a transaction that in Petitioner's own words, was "somewhat illegal." Tr. p. 30.

Petitioner testified that in March of 2004, she was approached by two friends, Tawana Shaw and Dean Lewis, and also by Kent Hokai. They told her that she could make \$15,000 to \$17,000 if she had good credit and allowed a house to be put in her name for a month, after which time the house would be sold to another person. Tr. pp. 15, 33. Petitioner testified that she was to be given a check for \$15,000 at the time she purchased the Property and a "substantial amount" more when another buyer subsequently bought the house. Tr. pp. 29-30. She testified that she entered into this transaction at

the suggestion of two people, neither of whom was Jason Levine and that Jason Levine did not approach her about these transactions. Tr. p. 22.

Petitioner did not explain how this transaction was supposed to work or how she would make money from it. She claims that at the time she entered into the transaction, she had not seen the Property; nor did she know its address, its owner or to whom the Property was to be sold one month after the transaction. Tr. pp. 22, 37.

Petitioner testified that sometime in March of 2004, she went to an office in Queens, New York where she signed some papers. She did not remember the address of that office. She did not indicate who else was present; nor did she recall any checks changing hands. Tr. pp. 35-36. She testified that she was not paid at this time. Tr. pp. 15, 20. She did not explain why she signed those papers without being paid.

The documentary evidence indicates that on March 26, 2004, Petitioner bought the Property from Lunis Logan and Hector Martinez for \$490,000 (City's Ex. A, p. A38; City's Ex. I). Petitioner borrowed \$441,000 from Alliance Mortgage Banking Corp. ("Alliance Mortgage") which placed a mortgage on the Property (City's Ex. J). The record does not indicate how the \$49,000 balance of the purchase price was paid or who paid it.

Petitioner testified that she did not know she was borrowing funds and having a mortgage placed on the Property. Tr. p. 26. However, Petitioner also testified that she was told that somebody was going to be evicted from the Property and that her good credit and her good name were being used to help a family keep their home.

Tr. p. 51. Petitioner did not explain how her good credit would help someone keep their home if she was not entering into a mortgage transaction with respect to the Property.

The Deed conveying the Property from Petitioner to Jason Levine is dated April 29, 2004 and purports to contain Petitioner's signature. The acknowledgment on the Deed is dated May 7, 2004 and contains the signature and notary stamp of Barry Sussman. The State Real Property Transfer Report, Form, RP-5217NYC, indicates that the Transfer was a "Sale Between Relatives or Former Relatives" for no consideration and purports to be signed by Petitioner and Mr. Levine. It is not dated. The City RPTT Return, Form NYC RPT, states that the Transfer was an arms-length transfer. This form also states that the consideration was "zero." The certification on page 5 of the Form NYC RPT purports to be signed by Petitioner, was notarized by Barry Sussman and is dated May 5, 2004. The notary statement for Mr. Levine's signature, which is on the same portion of the form, is dated May 7, 2004. The ACRIS Recording and Endorsement Cover Page for the Deed indicates that the person who presented the Deed for recording on May 7, 2004 was Kent Hokai and that the recorded Deed was to be returned to Mr. Hokai. (City's Ex. A, pp. A11-A18). The Department of Housing Preservation and Development Affidavit in Lieu of Registration Statement states that the Property is a one or two-family dwelling. This affidavit is purported to have been signed by Petitioner and notarized by Barry Sussman on May 13, 2004. Petitioner testified that her signature on all four of these documents was forged.<sup>1</sup> Tr. pp. 18, 41-42.

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<sup>1</sup> The documents in the City's audit report (City's Ex. A) are photocopies. However, because of the allegation by Petitioner that her signature was forged, Respondent was directed to produce the original Form NYC RPT, since that would have been in her possession. Respondent produced the original of the Form NYC RPT and also the Affidavit in Lieu of Registration Statement.

The Form TP-584, Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate and Certificate of Exemption from the Payment of Estimated Personal Income Tax (City's Ex. A, pp. A24-A26), states that the Transfer was subject to an outstanding credit line mortgage. This form claims an exemption from mortgage recording tax as a "transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer."

Sometime after March 26, 2004, (the date on which Petitioner purchased the Property), Petitioner was served with papers stating that the Property was going into foreclosure. Petitioner's testimony is inconsistent as to when that occurred, but she did testify that this occurred a few months after she purchased the Property. Tr. pp. 15-16, and 37. However, the documentary evidence provided by Petitioner indicates that Petitioner was notified by a Foreclosure Summons and Complaint dated March 29, 2005 (Taxpayer's Ex. 1), that the holder of the mortgage note on the Property was beginning a foreclosure action because the March 2004 mortgage was in default. This notification took place approximately one year after Petitioner purchased the Property. There is nothing in the record to explain the discrepancy between Petitioner's testimony that she was served with papers about the foreclosure in 2004 and the documentary evidence that she provided at the Hearing which indicates that such service transpired in 2005.

Petitioner testified that because she did not understand why the Property was "still in her name," she contacted Tawana Shaw and Dean Lewis and tried to contact Jason Levine since his name was on the foreclosure papers. She claims she was told that she would have to sign some papers to get the Property out of her name, but she did

not indicate who told her this. She claims she did not know what papers she was supposed to sign, so she did not sign anything. Tr. p. 16.

Petitioner testified that she then visited the Property. She claims she learned that there were tenants living in the Property who had been sending their rent to Post Office Box 102, East Rockaway, New York. Petitioner testified that this Post Office Box belonged to Jason Levine, although she did not indicate how she knew this. Petitioner did not indicate to whom the rent checks were payable. She testified that she did not know exactly who Mr. Levine was. Tr. p. 31. She testified that she believes that Mr. Levine had been collecting the rent but not paying the mortgage. Tr. p. 50.

Petitioner testified that at the time the Property was transferred to her, she had not met Jason Levine and did not know who he was. She asserted that she only became aware of him after she was notified that the Property was in foreclosure. Tr. pp. 22, 31.

Petitioner claims she then went to the police who told her that it was a civil matter and that she would have to sue Mr. Levine. Tr. p. 31. She did not indicate which City Police Department precinct she went to or to whom she spoke at the police station. She provided no documentation that she even filed a report with the City Police Department. She also did not indicate that she pursued the advice she claims to have been given by the police to sue Mr. Levine.

Petitioner testified that in 2005 she was contacted by a Mr. Bailey from Alliance Mortgage who told her that he could help her get the Property out of her name if she signed certain papers. Tr.

p. 43. She testified that she did not know what those papers were, so she did not sign anything. She testified that she was told the Property would be out of her name by July of 2005. Tr. pp. 42-43. Petitioner stated that the Property was "out of her name" by sometime in 2005, however, she does not recall signing any additional documents that would have caused that to occur. Tr. pp. 41-42.

A deed dated July 8, 2005 (City's Ex. M) indicates that Jason Levine (who received the Property from Petitioner by the Deed that effectuated the Transfer at issue here) conveyed the Property to Dora Ogando. The Department's records indicate that the consideration was \$535,000 (City's Ex. A, p. A9). At the same time, Ms. Ogando took out two mortgages on the Property, one in the amount of \$428,000 (City's Ex. O) and the other in the amount of \$107,000 (City's Ex. N).

A Satisfaction of Mortgage dated March 13, 2007 (City's Ex. Q) indicates that Petitioner's mortgage note in the amount of \$441,000 was finally paid, but the record does not indicate when or how it was paid. The Recorded Satisfaction of Mortgage was addressed to Petitioner at P.O. Box 102, East Rockaway, NY, 11518, the same address to which Petitioner claims the tenants in the Property had been sending their rent. The Form TP-584, Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate and Certificate of Exemption from the Payment of Estimated Personal Income Tax (City's Ex. A, pp. A24-A26) that was filed in connection with the April 29, 2004 Transfer from Petitioner to Mr. Levine, states that this was a transfer subject to an outstanding credit line mortgage. Since there is no indication that a credit line mortgage was ever entered into, the logical inference from the facts in the record indicates that while the Property was deeded from

Petitioner to Mr. Levine on April 29, 2004, the mortgage Petitioner caused to be placed on the Property remained on the Property until the sale in July, 2005 by Mr. Levine to Ms. Ogando.

On cross examination, Petitioner was asked if there was anything in writing to describe her agreement regarding these transactions. She answered that "I know now, all of this is somewhat illegal, so of course, no one was going to give me any written documents saying they were going to give me any money at all." Tr. p. 30.

On cross examination, Petitioner identified her signature on the Petition (Tribunal's Ex. 2) as her true signature. Tr. p. 33.

Tawana Shaw testified and confirmed that she approached Petitioner with the idea for the transactions. Her contact person was Kent Hokai, who was engaged in the real estate business.

The City Department of Finance (the "Department") audited the Form NYC RPT filed in connection with the Transfer. Because that form stated that there was no consideration for the Transfer, the Department's auditor sent a letter dated December 6, 2005 to Petitioner at the address of the Property asking her to describe the facts underlying the Transfer. Petitioner did not respond to this letter. The auditor then computed the tax based on what she determined to be the fair market value of the Property using the \$535,000 selling price of the sale from Mr. Levine to Ms. Ogando on July 8, 2005, fourteen months after the Transfer. The Department then sent to Petitioner, at the address of the Property, a Notice of Proposed Tax Adjustment dated December 15, 2006. Petitioner did not respond to that notice.

On February 21, 2007, the Department issued a Notice of Determination addressed to Petitioner at her home address, asserting a deficiency of City RPTT in the amount of \$17,814.70, consisting of tax in the amount of \$14,043.75, interest computed to March 23, 2007 of \$3,560.29 and penalty of \$210.66. The tax was computed on consideration of \$535,000. On May 2, 2007, Petitioner timely filed a Petition with the City Tax Appeals Tribunal. (Tribunal's Ex. 2).

### **POSITIONS OF PARTIES**

Petitioner asserts that the "straw man" exception to the RPTT applies here. She claims that she should not be responsible for the RPTT because Jason Levine was the only one responsible for the Property. She also asserts that she never transferred any property and that, if a transfer occurred, she was unaware of it.

Respondent contends that Petitioner has not shown that either she or Mr. Levine was an agent, dummy, straw man or conduit or that Petitioner purchased the Property to allow someone else to obtain mortgage financing. As a result, Respondent asserts, Petitioner is responsible for the RPTT. Respondent did not directly address the issue of whether the Transfer occurred.

### **CONCLUSIONS OF LAW**

The RPTT applies to transfers by deed of real property located in the City and is imposed at the time the deed is delivered by the grantor to the grantee. Code §11-2101(a). It is presumed that all transfers by deed are taxable and the taxpayer has the burden of proving that a particular transfer is not taxable. Code §11-2103.

The RPTT does not apply to a "deed . . . conveying real property . . . from a mere agent, dummy, straw man or conduit to his principal or a deed . . . conveying real property . . . from the principal to his agent, dummy, straw man or conduit." Code §11-2106.b.7. Petitioner contends that this exemption applies here.

For this exemption to apply, there must be an agent of some kind acting for a principal. The use of the multiple terms "agent, dummy, straw man or conduit" indicates that the types of transactions that qualify for this exemption can take more than one form so long as it is clear that it includes a party who fits within one of these categories. *46 West 55<sup>th</sup> Street Corporation*, TAT 92-0408 (City Tax Appeals Tribunal, June 3, 1999).

The City RPTT Rules ("Rules") applicable to this exemption provide examples about the kinds of transactions that are exempt from tax under this provision. These include transfers between a principal and his or her agent where there is a written agency agreement and where the agent functions as an agent and not a principal in all dealings with the property and with third parties. 19 RCNY §23-05(7)(iii). Other examples involve transfers to or from corporations solely to obtain a mortgage or make certain changes in a mortgage. 19 RCNY §23-05(7)(i) and (ii). *See, also, Targee Medical Associates*, TAT 92-1207 (City Tax Appeals Tribunal, December 29, 1993).

However, the particular examples in 19 RCNY §23-05(7) are not the only times the exemption under Code §11-2106.b.7 can apply. The "conduit" exemption was applied where a third party held property very briefly to enable the principal to get certain federal income tax benefits under Internal Revenue Code §1031. *46 West 55<sup>th</sup> Street Corporation, supra*.

The Department ruled that the "conduit" exemption also applies where to comply with Muslim religious prohibitions on charging interest, a bank structures a home financing transaction such that the seller sells the home to the bank for the price agreed with the ultimate buyer and the bank resells the home to the ultimate buyer for a purchase price that includes an amount equivalent to interest and with a payment schedule equivalent to mortgage payments. FLR 024790-021, 2002 NY City Tax LEXIS 27.

The "straw man" exemption also can be used to exempt from tax a transfer between an essentially identical transferor and transferee. *MCP Associates, L.P.*, TAT(E) 95-97(RP) (City Tax Appeals Tribunal, October 31, 1997). Sometimes, a "straw man" is understood to be an undisclosed agent where the straw man/agent purchases property in his/her name to conceal the identify of the true owner. See, *Charles Fridman*, TAT(H) 93-1435(RP) (City Tax Appeals Tribunal, ALJ Division, September 26, 1996).

However, all of these exempt arrangements have a common element that is missing here. The agent, dummy, straw man, nominee, or conduit acts as an agent of someone else, namely, his or her principal. For a transfer to be exempt under this provision, it must be a transfer between a principal and his or her agent.

"An agency is a fiduciary relationship which results from a manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and the consent by the other to act." *Matter of Custom Mgt. Corp. v New York State Tax Commn.*, 148 AD2d 919, 920 (3<sup>rd</sup> Dept. 1989); *Matter of Holmes v. Wetzler*, 152 AD2d 871 (3<sup>rd</sup> Dept. 1989).

For the Transfer from Petitioner to Mr. Levine to be exempt from the RPTT as a "straw man" arrangement, Petitioner must establish that before she purchased the Property in March of 2004, she entered into an agency relationship with Mr. Levine in which she consented to act for him and to be subject to his control and in which he consented for her to act on his behalf. However, Petitioner could not have been acting as Mr. Levine's agent in March of 2004, since her own testimony establishes that she had no idea who Mr. Levine was at the time she purchased the Property and she did not enter into the transaction at his direction. Accordingly, Petitioner was not an agent or "straw man" entitled to the RPTT exemption.

It may well be that after entering into a transaction that Petitioner, herself, characterizes as "somewhat illegal" and from which she expected to be paid \$15,000 to \$17,000, Petitioner was victimized by those with whom she was associated. However, there is no exemption in the RPTT that deals with such situations. Even when a transferor loses money on a transaction because property is sold at a loss the RPTT applies. All that is necessary for that tax to apply is that there is a transfer and no applicable exemption from tax.

In her testimony, Petitioner claimed that her signature was forged on the Deed from her to Mr. Levine as well as on the related governmental filings. If this were true, Petitioner could not have transferred the Property in the Transfer at issue. Since neither Petitioner nor Respondent provided a handwriting expert to testify about whether Petitioner's signature on these documents was forged, I visually compared Petitioner's signature on the Petition that she filed with the Tribunal with the signatures on the documents relating to the conveyance to Mr. Levine that she claims she did not

sign.<sup>2</sup> See, CPLR Rule 4536; *Ibanex v. Pfeiffer*, 76 Misc. 2d 363 (N.Y. Civ. Ct. 1973). I am satisfied that Petitioner signed the disputed documents and that it is her signature which appears on them. I also find Petitioner's testimony that she did not sign the Deed to Mr. Levine not to be credible.

The Deed signed by Petitioner was recorded. Mr. Levine's signature appearing on the governmental filings that accompanied the deed for recording indicates that the Deed had been delivered to him. By her own testimony, Petitioner asserts that Mr. Levine was acting as the owner of the Property when she visited the Property after she received notice of the foreclosure action.

While the transaction as described by Petitioner and the documentary evidence make little sense, Petitioner has offered no other explanation for how the Property got out of her name other than by the Transfer which Respondent correctly asserts is taxable.

**ACCORDINGLY, IT IS CONCLUDED THAT** because Petitioner did not know who her purported principal was before she acquired the Property, she could not have consented to act at his direction and on his behalf. Since no agency relationship was established, Petitioner is not entitled to the exemption from the RPTT for transfers to or from a mere agent, dummy, straw man or conduit to his principal. The record further indicates that Petitioner transferred the Property in the transaction that is the subject of the Notice of Determination.

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<sup>2</sup> While the record contains only a photocopy of the deed, it does contain the original of the Form NYC RPT and the Affidavit in Lieu of Registration Statement, both of which Petitioner claims she did not sign. Accordingly, I was able to compare her original signature on these two documents and the photocopy of her signature on the deed with the original signature on the Petition which she identified as her true signature.

For the reasons set forth above, the Petition of Georgette Moyer is denied and the Notice of Determination dated February 21, 2007 is sustained.

DATED: April 14, 2009  
New York, New York

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MARLENE F. SCHWARTZ  
Administrative Law Judge