

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 47

-----X  
ROBERT M. LEVINE, As Trustee Of The  
Marion Levine Revocable Trust,  
Plaintiff-Petitioner(s),

Index #151958/14

-against-  
SEVEN PINES ASSOCIATES LIMITED  
PARTNERSHIP,  
Defendant(s).

Pursuant To Present:  
Hon. Geoffrey Wright  
Judge, Supreme Court

-----X

**DECISION**

After a trial without a jury, I decide as follows:

The building was operated under the State Mitchell-Lama law, which was passed to provide affordable housing for families of low to moderate income. This, of course affect the amount of rent that could be charged. The limitation on income continues for some of the apartments after the removal of the building from the Mitchell-Lama program, and thus a number of apartments (61% according to the Respondent) have a cap on the rent that can be charged.

Next, there is the issue of the cost to maintain the build. The Petitioner represents the ownership interest of 1/2 of 1% a limited partnership unit in the Respondent, or 4.17% of the Respondent partnership. Due to a restructuring of the partnership, the Petitioners were given an option of reinvesting with the new entity, or taking a buy out of its interest. This proceeding was brought to fix the value of the Petitioner's interest in the partnership.

It was the Petitioner's position that its interest is worth \$1,573,000.00, now revised to \$990,000.00. The Respondent contends that said interest is worth \$325,000.00. For the following reasons, I find the Respondent's argument more compelling:

Initially, the residential apartment building was constructed under the New York State Urban Development Program, and thereby received government subsidies for some of the construction costs. There is a discrepancy in the testimony of the experts called by either side. The Respondent challenges the Petitioner's expert, who relied on certain estimates of maintenance and insurance costs, whereas the Petitioner's expert used the actual cost history of the building, and explained why certain costs, such as insurance, were higher than might otherwise be anticipated, included, regular inspections by agencies handling assisted tenancies resulting in more repair work, and a history in the building of incidents leading to higher than expected insurance costs.

Overall, I find that the Respondent's expert analysis of the value of the building to be

more convincing that of the Petitioner. Some the values used in establishing the position of the Petitioner were estimates, which were chosen over the actual expenses history of the building. I found no compelling reason for this approach. The two major factors where estimates were used were the repair and maintenance costs, and the insurance costs.

I note here that the valuation date of the property is not a factor in my decision, as neither side has argued any variation in the value of the property based on the valuation date.

Additionally, I find that the Petitioner and his experts make too light of the DLOM ["Discount for Lack of Marketability"]. The Petitioner is a dwarf planet in the 7 Pines universe. It has no real influence in the management of the building, both as a matter of percentage of interest, and its physical distance from the building, as evidenced by its decision to opt out of the new operating arrangement.

The claimed value of the Petitioner's interest in the building in question would amount to almost 5% of the Respondent's valuation of the building, far beyond the actual mathematical interest of the Petitioner. Unfortunately, there are no true comparable buildings of similar ownership in Yonkers, so market valuation is hampered. Further, and this factor was significant in my finding. The Petitioner does not adequately account for the number of non-market tenancies in the building. Taking all of that into consideration, the Respondent's argument is much more compelling. The value of the Petitioner's interest in the enterprise is \$325,000.00, as argued by the Respondent. I deny legal fees to both sides.

The foregoing constitutes the decision and order of the court.

Dated: January 23, 2017

  
GEOFFREY D. WAINWRIGHT  
AJSC