

IN THE MATTER OF

Offer to Allow Judgment

The Home Insurance Company, successor-in-interest to
Olympia & York Maiden Lane Company,

Consolidated Index No. 209012/95

Petitioner,
- against -

Block 67 Lot 1
Location: 59 Maiden Lane
Borough: Manhattan

THE TAX COMMISSION OF THE CITY OF NEW
YORK AND THE DEPARTMENT OF FINANCE,

Respondents.

It is hereby stipulated and agreed by the undersigned that final judgment be entered herein reducing the assessed valuations to the amounts stated in the column "Corrected Assessed Valuation":

| Tax Year | Assessed Valuations | | Value Claimed | Corrected Assessed Valuation | Amount of Reduction |
|----------|---------------------|---------------|---------------|------------------------------|---------------------|
| | Land | Total | | | |
| 1991/92 | \$45,000,000 | \$100,800,000 | \$70,000,000 | \$37,450,000 | \$63,350,000 |
| 1992/93 | \$45,000,000 | \$94,050,000 | \$67,500,000 | \$37,450,000 | \$56,600,000 |
| 1993/94 | \$45,000,000 | \$82,803,240 | \$56,250,000 | \$80,100,000 | \$2,703,240 |
| 1994/95 | \$45,000,000 | \$80,100,000 | \$56,250,000 | \$80,100,000 | \$0 |
| 1995/96 | \$42,300,000 | \$77,400,000 | \$35,000,000 | \$77,400,000 | \$0 |

without interest on any refund of excess taxes paid.
Dated, New York, October 1, 2003.

POTTISH FREYBERG, MARCUS & VELAZQUEZ, LLP
Attorney for Petitioner

STATE AND COUNTY OF NEW YORK, ss.:

JOEL R. MARCUS, being duly sworn, says, that he is one of the attorneys associated with the attorney for the petitioner herein; that he is duly authorized to make and accept said offer in behalf of the petitioner and to consent to the entry of a judgment adjudging as above, and consents to the entry of the said judgment without further notice.

I further certify that a Request for Judicial Intervention has been filed with the Court, and the appropriate fee paid, for each of the petitions covering the tax years noted above and bearing the index numbers appearing on, and disposed of, by the Court's Order.

It is further stipulated that, after the entry of a judgment in accordance with this stipulation of settlement, if petitioner or any individual or entity acting on petitioner's behalf is convicted of, or enters a plea of guilty to, a crime related to the assessed value of the property in the within proceeding, the judgment shall be deemed vacated and the petitioner shall forthwith return all funds remitted hereunder to respondents.

Sworn to before me this
day of October, 2003.

Signature: JOEL R. MARCUS
Address: 641 Lexington Avenue, New York, N.Y. 10022
Tel.: (212) 308-7070

Approved:

Deputy Comptroller

STATE AND COUNTY OF NEW YORK, ss.:

_____, Acting Corporation Counsel of the City of New York, an Attorney at Law, under penalty of perjury affirms and says, that he has been vested with the powers of the Corporation Counsel, who is attorney for the respondents in the above-entitled proceeding, for the purposes of this offer. That defendant is duly authorized to make and accept the foregoing offer of judgment by virtue of said designation, and has subscribed the same pursuant to such authority.

Dated:

Acting Corporation Counsel

At a Special Term of the Supreme Court, I.A.S. Part 24 thereof,
held in and for the County of New York, at the County
Court House, in said County on the _____ day of
_____, 1900 .

PRESENT:

HON. MARTIN SCHOENFELD

Justice.

IN THE MATTER OF

Consolidated Index No. 209012/95

The Home Insurance Company, successor-in-interest to
Olympia & York Maiden Lane Company,

Petitioner,

- against -

| <u>Tax Year</u> | <u>Index No.</u> | <u>Year</u> |
|-----------------|------------------|-------------|
| 1991/92 | 50068 | 1991 |
| 1992/93 | 50067 | 1992 |
| 1993/94 | 204858 | 1993 |
| 1994/95 | 204093 | 1994 |
| 1995/96 | 209012 | 1995 |

THE TAX COMMISSION OF THE CITY OF NEW
YORK AND THE DEPARTMENT OF FINANCE,

Respondents.

This proceeding having been instituted to review the assessments upon the real property located in the Borough of Manhattan of the above named petitioner designated as Block 67 Lot 1,

NOW, upon reading and filing the petition for review of real property assessment and/or the petition, order and writ of certiorari, the offer to allow judgment including the consent of the attorneys for the parties hereto, it is

ORDERED that the said assessments set forth in the annexed offer to allow judgment be reduced and fixed at the amounts stated in the column "Corrected Assessed Valuation" in said order, and it is further

ORDERED that the above proceedings are hereby consolidated into one proceeding and said consolidated proceeding shall be captioned and indexed as above, and it is further

ORDERED AND DIRECTED that the officer or officers having custody of the assessment roll or the tax roll upon which the above mentioned assessment and any taxes levied thereon have been entered shall forthwith correct the said entries in conformity to this judgment, and shall note upon the margin of the said roll opposite the said entries that the same have been corrected by the authority of this judgment, and it is further

ORDERED AND DIRECTED that, unless sooner paid, there shall be audited and allowed to the petitioner and included in the tax levy of The City of New York, made next and after the entry of this order, and paid to the petitioner the amounts, if any, paid by the said petitioner as taxes against the said erroneous assessment in excess of what the taxes would have been if the said assessment has been made as determined by this order, without interest thereon, but with the amount of interest, if any, paid on such excess by reason of delinquent payment.

Enter,

J.S.C.

plaintiffs' motion to, *inter alia*, set aside the jury verdict and to enforce a purported stipulation of settlement, unanimously affirmed, without costs.

While the jury was out deliberating in this personal injury action, defendant made a settlement offer of \$250,000, which plaintiffs rejected. Thereafter, the Trial Justice informed the parties that the jury had reached a verdict, but defendant's attorney, apparently due to noise in the room, misunderstood him to say that he would be calling the jury back soon since it was almost 5:00 o'clock, and once again made an offer to settle for \$250,000, which this time was accepted by plaintiffs. However, as soon as defendant's attorney learned that the jury had reached a verdict, she withdrew the offer, whereupon plaintiffs sought to enforce the alleged agreement. The negotiations having taken place outside of the presence of the Trial Justice and the reporter, a reconstruction of the events was attempted with the Trial Justice noting that he first learned of the purported settlement offer only when he heard plaintiffs' counsel claim that the offer was accepted. The jury was then called in and announced a verdict in favor of defendant. Plaintiffs moved to set aside the verdict and to enforce the purported settlement, which motion was denied.

The purported stipulation is unenforceable since it was neither in a subscribed writing nor made in open court (CPLR 2104; *see, Matter of Dolgin Eldert Corp.*, 31 N.Y.2d 1, 334 N.Y.S.2d 833, 286 N.E.2d 228). Nor have plaintiffs shown that there was substantial compliance with the purported agreement, or that they detrimentally relied on it (*see, id.* at 11, 334 N.Y.S.2d 833, 286 N.E.2d 228, *citing Golden Arrow Films, Inc. v. Standard Club of California, Inc.*, 38 A.D.2d 813, 328 N.Y.S.2d 901).



179 A.D.2d 387

**In re Sandra BASS, et al., Petitioners-
Respondents-Appellants,**

v.

**The TAX COMMISSION OF the CITY
OF NEW YORK, et al., Respondents-
Appellants-Respondents.**

Supreme Court, Appellate Division,
First Department.

Jan. 9, 1992.

Real property tax assessments for six years were reduced by the Supreme Court, New York County, Parness, J., and appeal was taken. The Supreme Court, Appellate Division, held that evidence supported reductions.

Affirmed.

1. Taxation §485(3)

Credible evidence supported reduction of real property tax assessments for six years; court credited testimony that there were significant physical and functional impairments throughout building as result of presence of asbestos, rejected both Tax Commission's income capitalization approach and building owner's reproduction cost approach and instead arrived at value based on analysis of both approaches that emphasized pragmatic adjustment to economic realities of one particular building.

2. Taxation §485(1)

Presumption of validity of assessment by taxing authority is rebutted where credible evidence to contrary is received.

Before SULLIVAN, J.P., and CARRO,
MILONAS, ASCH and RUBIN, JJ.

MEMORANDUM DECISION.

Order and judgment (one paper), Supreme Court, New York County (Stanley Parness, J.), entered March 13, 1991, which reduced real property tax assessments on petitioners' property designated as Block 4, Lot 1 on the assessment rolls for the Borough of Manhattan for the tax years