

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

| | | |
|---|---|----------------|
| In the Matter of the Petition | : | |
| of | : | |
| 566 PROSPECT OWNERS CORP. | : | DECISION |
| D/B/A WELLOR DEVELOPMENT, LTD. | : | DTA No. 810625 |
| | : | |
| for Revision of a Determination or for Refund | : | |
| of Real Estate Transfer Tax under Article 31 | : | |
| of the Tax Law. | : | |

Petitioner 566 Prospect Owners Corp. d/b/a Wellor Development, Ltd., c/o Glen Properties, P.O. Box 938, Glen Cove, New York 11542, filed an exception to the determination of the Administrative Law Judge issued on November 24, 1993. Petitioner appeared pro se by Adam Taylor, its President. The Division of Taxation appeared by William F. Collins, Esq. (Andrew J. Zalewski, Esq., of counsel).

Petitioner did not file a brief. The Division of Taxation filed a letter advising it would not be filing a brief provided petitioner did not file a brief in support of its exception. The six-month period to issue this decision began on March 15, 1994, the date by which petitioner could submit a brief in support of its exception. Oral argument was not requested.

Commissioner Koenig delivered the decision of the Tax Appeals Tribunal. Commissioner Dugan concurs.

ISSUES

I. Whether the name and taxpayer identification number appearing on the notice of determination and all later papers in this proceeding are sufficient to describe and bind petitioner herein which now claims that it is properly named Wellor Development, Ltd. (with the same identification number).

II. Whether petitioner has shown that certain transfers of cooperative apartments were a mere change of identity or form of ownership so as to be exempt under Tax Law § 1405-B.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

The Division of Taxation ("Division"), submitted into evidence a single page of an offering plan for a cooperative conversion, which shows the sponsor/seller as Wellor Development, Ltd., of 227 Ocean Avenue, Northport, New York, whose shareholders and principals are Adam Taylor and Geoffrey Shotwell, and whose counsel is Lawrence F. DiGiovanna, Esq., of Brooklyn, New York.

On November 14, 1989, transfers were made of nine residential cooperative apartments located at 566 Prospect Place, Brooklyn, New York. These apartments were numbers 1A, 1B, 1D, 2D, 3A, 3D, 4A, 4B and 4D. The transferor/grantor is stated to be Wellor Development, Ltd., with a taxpayer identification number of 112898494. The transferees/grantees were Mirosław Hrycak (1A and 4B), Samuel Taylor (1B, 2D, 4A), Lorraine Taylor (1D, 3A, 3D) and Carmine Longo (4D). This information is taken from separate forms TP-584 and TP-584.1 for each apartment filed by Lawrence F. DiGiovanna, as attorney. These forms claimed credits to the transfer tax and showed no tax due.

A letter was received from Mr. DiGiovanna by the Division on October 19, 1989 (prior to the transfer) in connection with the filing of Division forms 700, 701 and 702, which identified the property in question as 566 Prospect Place and identified four apartments as transferred from the sponsor to its principals. None of these four is one of the nine apartments at issue in this proceeding.

The Division conducted an audit of the transaction and as a result added additional consideration to each of the apartments. The total consideration added was \$165,148.98.

Notices of determination were issued on May 10, 1990 with respect to each of these apartments. The nine notices assessed a total tax of \$532.52, plus penalty and interest, for a balance due of \$672.14. Three of these notices were sent to 566 Prospect Owners Corp. d/b/a

Wellor Development, Ltd., at 566 Prospect Place, Brooklyn, New York. Six of the notices were addressed to 566 Prospect Owners Corp. d/b/a Wellor Development, Ltd., 357 Bay Ridge Parkway, Brooklyn, New York. The taxpayer's identification number is B-11-2898494-6 on all nine notices.

Letters from the Division justified the assessments on the grounds that the consideration for a transfer involving a cooperative must include a proportionate part of any prior mortgage (quoting Tax Law § 1401[d][V].) The letters were sent to 566 Prospect Owners Corp. d/b/a Wellor Development, Ltd., of 357 Bay Ridge Parkway, Brooklyn, New York and, again, identified the taxpayer's identification number as B-11-2898494.

A request for a conciliation conference was made with respect to each of the nine notices. The request for conference (Form CMS-1) asserts that the property described consists of apartments at 566 Prospect Avenue, Brooklyn, New York and are the sponsor's unsold shares which were transferred to parties related to the sponsor. The request was in the name of "566 Prospect Owners Corp. d/b/a Wellor Dev. Ltd." with the taxpayer identification number of B-11-2898494-6. Attached to the request was a Form DTF-968 which had requested forms for requesting a conference and on which was entered in script a corrected name and address of Wellor Development, Ltd., 566 Prospect Place, Brooklyn, New York 11238.

A conference was held on October 16, 1991. The request was denied by order dated December 13, 1991. The order stated that after "consideration to the evidence presented, the request is denied" No further reason was given.

A petition to the Division of Tax Appeals was filed on March 16, 1992 with respect to the nine notices of determination (totaling \$672.14). The petition was in the name of 566 Prospect Owners Corp. d/b/a Wellor Development, Ltd., and signed by Adam Taylor, President. It shows petitioner's identification number as B-11-2898494-6. It states that 566 Prospect Owners Corp. was improperly named as the taxpayer and that such corporation, with identification number 11-2960411, is an owner's corporation which was not a party to the transfer in question

and did not file any tax returns for these transfers. The petition denied that such corporation ever did business as Wellor Development, Ltd.

OPINION

In the determination below, the Administrative Law Judge held that "a formal mistake in the name of the taxpayer on a Notice of Determination, as long as it reaches the correct party, does not invalidate the notice" and, further, "whether the title of this proceeding should be amended to facilitate enforcement proceedings has not been requested by the Division and is not passed on at this time" (Determination, conclusion of law "A").

As to petitioner's assertion that the transfers in question should be "exempt from tax as a mere change in identity or form of ownership under Tax Law § 1405-B" (Determination, conclusion of law "B"), the Administrative Law Judge held that petitioner has not provided any documentation as to such assertions, therefore, such transfers were not exempt from tax.

Petitioner 566 Prospect Owners Corp. d/b/a Wellor Development, Ltd. filed a notice of exception to the determination of the Administrative Law Judge. However, petitioner's exception failed to: 1) list what findings of fact and conclusions of law of the Administrative Law Judge it disagreed with; and 2) request any findings of fact and conclusions of law.

Petitioner's exception also states a brief will be submitted within the 30-day period allowed for submission of briefs, but a brief was never filed.

The Division, by letter, acknowledged that petitioner had filed a blank notice of exception in which it failed to specify those findings of fact and conclusions of law disagreed with, thus, making it impossible for the Division to respond to the notice of exception.

We find no basis in the record before us for modifying the determination of the Administrative Law Judge in any respect. Therefore, we affirm the determination of the Administrative Law Judge for the reasons stated in said determination.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of 566 Prospect Owners Corp. d/b/a Wellor Development, Ltd. is denied;

2. The determination of the Administrative Law Judge is affirmed;
 3. The petition of 566 Prospect Owners Corp. d/b/a Wellor Development, Ltd. is denied;
- and
4. The notices of determination, dated May 10, 1990, are sustained.

DATED: Troy, New York
September 1, 1994

/s/John P. Dugan

John P. Dugan
President

/s/Francis R. Koenig

Francis R. Koenig
Commissioner