

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
566 PROSPECT OWNERS CORP. : DETERMINATION
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 a petition for revision of a determination or for refund of real estate transfer tax under Article 31 of the Tax Law.

On February 5, 1993 and March 25, 1993, respectively, petitioner by Adam Taylor, its president, and the Division of Taxation by William F. Collins, Esq. (Andrew J. Zalewski, Esq., of counsel) signed a consent to have the controversy determined on submission without a hearing. Dates for briefs were set with the last one due on May 25, 1993. The Division of Taxation submitted relevant documents to the Division of Tax Appeals on April 8, 1993. Petitioner submitted no brief and the Division of Taxation submitted a letter in lieu of a brief on May 13, 1993. After due consideration of the record, Nigel G. Wright, Administrative Law Judge, renders the following determination.

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

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.

(a) 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 Miroslaw 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.

(b) 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.

(a) 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.

(b) 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.

(c) 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) 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.

(b) 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.

CONCLUSIONS OF LAW

A. The petition raises the single issue of whether the correct taxpayer in this case is "566

Prospect Owners Corp.", which allegedly has a taxpayer identification number of 11-2960411. That name was used on the notices of determination in this case along with a taxpayer identification number of B-11-2898494-6 and a d/b/a of Wellor Development, Ltd. Wellor had been named on a letter from its counsel to the Division as the vendor of apartments located at 566 Prospect Place, Brooklyn, New York. Similarly, in fact, even petitioner's own request for conference in this case was in the name of "566 Prospect Owners Corp. d/b/a Wellor Dev. Ltd." with a taxpayer identification number of B-11-2898494-6. The petition to the Division of Tax Appeals prepared by petitioner was also styled the same way.

Apparently, petitioner now believes the proceedings are invalid because, as it communicated to the Division in connection with obtaining request forms, its correct title is Wellor Development, Ltd., and it implies there is another corporation with the identification number of 11-2960411 with the name 566 Prospect Owners Corp. However, 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 (Burnet v. San Joaquin Fruit & Investment Co., 52 F2d 123, 2 US Tax Cas ¶ 774). 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.

B. Petitioner's request for conference asserts that the transfers in question are exempt from tax as a mere change in identity or form of ownership under Tax Law § 1405-B because the transfers were to parties related to the sponsor. Petitioner has not, however, explained how the individual transferees could be related to the corporate transferor, it has not provided any documentation as to such assertions and has not repeated this protest as part of its petition herein. It is therefore concluded that such transfers were not exempt from tax.

C. The petition of 566 Prospect Owners Corp. d/b/a Wellor Development, Ltd. is denied and the notices of determination issued May 10, 1990 are sustained.

DATED: Troy, New York
November 24, 1993

/s/ Nigel G. Wright
ADMINISTRATIVE LAW JUDGE