

## STATE TAX COMMISSION

In the Matter of Three Instruments Executed

by

VALENTINO NICOLETTI and JOSEPH BELLA

to

SECURITY TRUST COMPANY of ROCHESTER

# ORDER OF DETERMINATION

Pursuant to the provisions of Article 11, Sections 251 and 255 of the Tax Law, a formal hearing was held in the offices of the State Tax Commission in the City of Albany on May 8, 1968.

The acts and determinations of the Recording Officer of Monroe County were reviewed, in recording three instruments executed by Valentino Nicoletti and Joseph Bella to the Security Trust Company of Rochester as follows:

1. Dated August 11, 1961, and recorded August 11, 1961 in book 2716 of Mortgages, page 375,
2. Dated August 11, 1964, and recorded August 12, 1964 in book 2936 of Mortgages, page 592, and
3. Dated December 14, 1966, and recorded December 16, 1966 in book 3120 of Mortgages, page 99.

In response to notices to all parties, Mr. Valentino Nicoletti, Mr. Joseph Bella, and the Security Trust Company of Rochester appeared through their attorneys, Harris Beach, Wilcox, Dale and Linowitz, Esqs., (Charles E. Littlefield, of Counsel).

### FINDINGS OF FACT:

1. On August 11, 1961, Valentino Nicoletti and Joseph Bella executed an instrument in the form of a mortgage to the Security Trust Company for an indebtedness in the sum of fifty thousand (\$50,000) dollars. The mortgage was recorded by the Recording Officer of Monroe County on August 11, 1961 in book 2716, of Mortgages, page

375. A mortgage tax in the sum of two hundred fifty (\$250) dollars was paid at the time of recording.

The real property securing the mortgage was described as situated in the Town of Penfield, Monroe County.

The mortgage further provided:

"6. Lots No. 3 to and including No. 10 of proposed Garden Hill Subdivision, Section #1, fronting on Shoecraft Road, will be released from the lien of this mortgage upon principal payment of \$1500 per lot plus any other principal advances made on each lot together with interest on such advances."

The Recording Officer has made cross references on two pages of the said mortgage subsequent to the recording thereof noting a succession of fifty releases, six spreading agreements and one spreading and extension agreement affecting the collateral security of the said mortgage.

2. On August 11, 1964, Valentino Nicoletti and Joseph Bella executed an instrument in the form of a mortgage to the Security Trust Company for an indebtedness in the sum of twenty-seven thousand (\$27,000) dollars. The mortgage was recorded by the Recording Officer of Monroe County on August 12, 1964 in book 2936 of mortgages, page 592. A mortgage tax in the sum of one hundred-thirty-five (\$135) dollars was paid at the time of the recording.

The real property securing the mortgage was described as situated in the Town of Penfield, Monroe County. The mortgage further provided:

"Also excepting from the above described premises, all of the lots of Sections 1 and 2, with the exception of lot 19, section 2, and further excepting lots Nos. 26, 27, 28, 30 and 35 in the section 3, of the Garden Hill Subdivision, as shown on maps filed in the Monroe County Clerk's Office as follows: Section 1, Liber 151 of maps, page 60; Section 2, Liber 154 of maps, page 31; and Section 3, Liber 157 of maps, page 28."

The Recording Officer has made cross references on three pages of the said mortgage subsequent to the recording thereof, noting a succession of sixteen releases and three spreading agreements affecting the collateral security of the said mortgage.

3. On December 14, 1966, Valentino Nicoletti and Joseph Bella executed and delivered to the Security Trust Company, an instrument in the form of a mortgage spreading agreement. The instrument was recorded by the Recording Officer of Monroe County on December 16, 1966 without payment of mortgage recording tax. The determination by the Recording Officer was based upon an affidavit filed pursuant to Section 255 of the Tax Law, subject to review by the State Tax Commission.

The recorded instrument provides in part that the mortgages described in paragraphs 1 and 2 above are to be extended, imposed and spread over and upon an additional property described as situated in the Town of Gates, County of Monroe, known and described as Lot 65 of the Drexelwood Subdivision, Section 2.

4. At each of the times when the abovestated three instruments were executed, the Security Trust Company of Rochester had granted loans of funds to and subsequently received repayments from, Valentino Nicoletti and Joseph Bella. Messrs. Nicoletti and Bella were developing unimproved land by the construction of buildings thereon, for the purpose of being sold individually upon completion.

5. The records of the mortgagee, Security Trust Company of Rochester contain a series of transactions between August 11, 1961 and December 14, 1966 revealing a repayment of loans by the mortgagor of at least seventy-seven thousand (\$77,000) dollars, or at least equal to the combined principal indebtedness of the mortgages dated August 11, 1961 and August 11, 1964.

DETERMINATION:

A. The instrument in the form of a mortgage spreading agree-

ment dated December 14, 1966 as executed by Valentino Nicolletti and Joseph Bella secures a new and further indebtedness in the sum of seventy-seven thousand (\$77,000) dollars.

B. The recording of the said instrument on December 16, 1966 was subject to the mortgage recording tax.

C. The said mortgage recording tax pursuant to Section 253 of the Tax Law is computed to be three-hundred-eighty-seven (\$387) dollars.

D. The mortgage recording tax was not paid at the time of the recording of the said instrument, and is due and unpaid as of the date of this order of determination.

ORDER:

I. Pursuant to Section 253 of the Tax Law, the Recording Officer of Monroe County shall impose the Mortgage Recording tax upon the recording of an instrument in the form of a mortgage spreading agreement, executed by Messrs. Nicoletti and Bella to the Security Trust Company dated December 14, 1966 and filed with the Clerk of Monroe County on December 16, 1966 in book 3120 of mortgages at page 99.

II. The tax shall be computed on a principal obligation in the sum of seventy-seven thousand (\$77,000) dollars.

III. Pursuant to Section 258 of the Tax Law, an additional amount shall be added to the tax equal to one-half of one per cent per month from the filing date until payment.

IV. The said instrument shall not be released, discharged of record, or received in evidence, nor shall any assignment or agreement extending any such instrument be recorded unless the taxes


imposed herein have been paid.

DATED: Albany, New York this 9th day of March 19<sup>70</sup>~~69~~.

STATE TAX COMMISSION

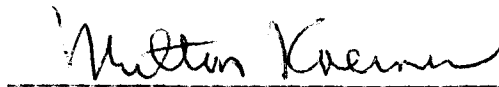
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PRESIDENT

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COMMISSIONER

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COMMISSIONER