

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

**In the Matter of the Liquidation of
The Home Insurance Company**

AFFIDAVIT OF JOEL R. MARCUS

I, Joel R. Marcus, depose and say:

1. I am a member of the bar of the State of New York and a partner in the firm of Pottish Freyberg Marcus & Velazquez, LLP, 641 Lexington Avenue, New York, New York 10022. I have specialized in tax assessment litigation, in particular litigation involving New York City real estate taxes, since 1977. I have handled numerous tax certiorari proceedings in the Supreme Court for the State of New York since that time. I am familiar with the facts and circumstances set forth herein and submit this affidavit, on behalf of the Liquidator of The Home Insurance Company (“Home”), to address certain points raised in the Opposition to Liquidator’s Motion for Approval of New York Tax Settlement (“Opposition”) filed by 59 Maiden Lane Associates (the “Owner”).

2. I have been counsel for Home in connection with the tax certiorari proceedings concerning the property at 59 Maiden Lane, New York, New York, for the tax years 1991/92 through 1995/96 since 1997.

3. Home controls the tax proceedings described above under a Settlement Agreement between Home, Olympia and York Maiden Lane Company, and others dated December 22, 1997 (the “O&Y Settlement”). That agreement provides in pertinent part that Home “shall coordinate fully and consult frequently with the Owner in connection

with any action taken or proposed to be taken in any such Tax Proceedings. The Owner may retain independent counsel who, after having given written notice to Home of his or her retention by the Owner, shall be given notice of and be invited to attend all meetings with representatives of the City of New York relating to any Tax Proceedings, and any administrative or judicial hearings relating to any Tax Proceedings.” O&Y Settlement § 7(a) (emphasis added). A copy of § 7(a) of the O&Y Settlement is attached as Exhibit A. The Home did not ever receive the written notice from counsel for the Owner (59 Maiden Lane Associates) required by the underscored language, so Home was not obligated to give notice of and invite the Owner to attend meetings with New York City or hearings concerning the tax proceedings.

4. The Owner has been aware of the pending tax certiorari proceedings since they were pending when the O&Y Settlement was entered and when the Owner purchased the property. Further, in 1999 and 2000, I met with the Owner’s representatives to obtain access to the property for Home's appraiser. During 1999, 2000 and 2001, other Home representatives and I requested information from the Owner concerning removal of asbestos from the property and the Owner’s purchase of the property to assist in preparing Home’s tax case. As information was not forthcoming, Home at one point requested a meeting, and a meeting of Home and the Owner's representatives was held in October 1999 at Home’s offices. At the meeting, I described the status of the case and explained that Home sought the information to assist in preparing for trial. Copies of correspondence making or following up on these requests are attached as Exhibits B and C. The Owner never provided the requested information. In addition, the Owner had initiated its own tax certiorari proceedings challenging the

assessments on the property for 1996/97 and subsequent tax years to the present. The Home's tax cases and the Owner's tax cases have on occasion been calendared for conferences before the New York Supreme Court on the same days, and the Owner's counsel in its own cases has been present before or during the conferences in Home's proceedings on at least two occasions.

5. The proposed settlement will have no effect on the Owner's actual taxes because it would only increase the taxes by a small amount that the Liquidator has already offered to pay. The chart at Paragraph 11 of the Opposition shows that the proposed settlement would increase the transitional assessments for the tax years 1997/98, 1998/99 and 1999/00, but also decrease the transitional assessment for the tax year 1996/97. The increase in the transitional assessment for 1999/00 would have no effect on the Owner's taxable assessment for that year because the actual assessment was lower than the transitional assessment and therefore is the taxable assessment for the year. The increase in the transitional assessments for 1997/98 and 1998/99 would increase the taxable assessment for those years by a total of \$3,869,352. However, the decrease in the transitional assessment for 1996/97 would reduce the taxable assessment for that year by \$3,670,000. The net increase in the Owner's taxable assessments for the years 1996/97 through 2000/01 shown on the chart would be \$199,352. At the applicable tax rates, the actual increase in the Owner's taxes would be approximately \$19,000. (My calculations indicate an increase of \$18,393.) The Liquidator has already offered to reimburse the Owner for any additional tax due to the proposed settlement in a letter dated January 14, 2003. A copy of that letter is attached as Exhibit D.

6. The assertion that the New York Supreme Court in the Owner's tax proceedings may look to the assessments in the proposed settlement as evidence of value is contrary to the principle that the establishment and review of tax assessments for each tax year is separate and distinct from the tax years preceding and following it. The established New York City practice would not give any weight to a settlement for prior tax years. The Bass case on which the Owner relies (and in which I was trial counsel) was highly unusual and involved exceptionally complex facts. The proposed settlement here could not reasonably be viewed as representing a "consensus" of the parties to the Owner's tax proceedings as to the market value and taxable value of the property. The parties to the proposed settlement (the Liquidator and New York City) are different from the parties to the Owner's tax certiorari proceedings (the Owner and New York City). Further, the Owner's Opposition itself demonstrates that the Owner does not agree with the valuations in the proposed settlement.

7. The proposed settlement assessments represent a compromise to reach an economic result, i.e., the approximately \$16 million tax refund recommended by Justice Schoenfeld of the New York Supreme Court. The proposed settlement is an exceptional result given the uncertainties and delays inherent in a trial. To my knowledge, New York City has not yet retained an appraiser for the tax proceedings, and it is therefore likely that it would be more than a year before Home's tax proceedings go to trial in the event the settlement is not consummated.

Signed under the penalties of perjury this 5th day of March, 2004.

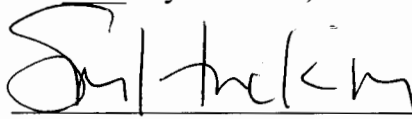


Joel R. Marcus

STATE OF NEW YORK
COUNTY OF NEW YORK

Subscribed and sworn to, before me, this 5th day of March, 2004

SUSAN HUCKINS
Notary Public, State Of New York
No. 01HU6096052
Qualified In Kings County
Certificate Filed In Kings County
Commission Expires 07/21/07



Notary Public/Justice of the Peace