

**REPORT ON TRUMP VILLAGE 3, INC
TRANSFER TAX CASE**

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In a decision that will have profound repercussions throughout the Mitchell-Lama community, a judge sitting in the Kings County Supreme Court ruled on February 18, 2011 that the privatization of Trump Village 3 will cost the reconstituted cooperative upwards of 21 million dollars in New York City transfer taxes.

On August 9, 2010, the NYC Department of Finance issued a notice of determination to Trump Village of a tax deficiency in the amount of \$21,149,592.50 for unpaid transfer taxes. The notice stated that since Trump Village had amended its certificate of incorporation and left the Mitchell-Lama program and was now a private corporation, a reconstitution to this new form of ownership constituted a conveyance of the underlying real property, making it subject to the real property transfer tax. The notice further stated that since Trump Village had failed to verify the accuracy of the taxable consideration, the City deemed that the fair market value of the property at the time of transfer to be \$527,934,000.

To stop the imposition of the tax, Trump Village filed suit against the City in October, 2010. Trump Village contended that the real property transfer tax did not apply to its reconstitution because it did not transfer or convey its real property by delivery of a deed to another entity. Specifically, Trump Village argued that there was no delivery of a deed because there was only an amendment to its certification of incorporation and no new corporation was created.

Justice Richard Velasquez found the contention unavailing. According to the judge, a deed is defined under NYC Administrative Code §11-2101(2) as “any document

or writing” and this definition encompasses the amended certificate of incorporation as a deed. The judge pointed out that the certificate of incorporation actually states that its purpose is “*forming* a corporation pursuant to the Business Corporation Law”, as opposed to the Limited-Profit Housing Companies Law.

The judge held that Trump Village’s dissolution and reconstitution represented a fundamental change in the characteristics of the legal entity that owned the land and buildings. Despite the fact that the name may have remained the same, the judge wrote, the economic reality is that Trump Village, as a reconstituted cooperative, is a completely different entity with significant and dramatic substantive changes to the rights, restrictions and financial benefits its shareholders now possess, along with an increase in its market value from 54 million to more than 527 million.

The judge therefore decided that the dissolution and reconstitution constituted a taxable transfer because it effectuated a transfer of real property from Trump Village as organized under the Mitchell-Lama program to Trump Village as a for-profit cooperative under the Business Corporation Law.

As additional support for its opinion, the judge cited letter rulings and advisory opinions from both New York City and New York State on this issue. [Note: These rulings originally were issued as a result of requests for guidance made by CU4ML members.]

Trump Village also is challenging the amount of the tax. As a result, the judge gave Trump Village the right to go back to the Department of Finance to contest the actual amount of the claimed tax deficiency. It is expected as well that Trump Village will appeal the underlying determination holding it subject to the transfer tax. However,

it will not be a surprise if New York State, if it has not already done so, weighs in and sends Trump Village its own bill for the failure to pay the State transfer tax.