## ***Christina A. Alphonso v. Commissioner of Internal Revenue, 136 T. C. 247 (2011)***

In *Alphonso v. Comm'r*, the U. S. Tax Court ruled that a cooperative housing corporation shareholder cannot claim a casualty loss deduction for an assessment paid to repair a collapsed retaining wall owned by the cooperative. The court clarified that only property owners or lessees with a direct interest in damaged property may claim such deductions, impacting how cooperative residents handle repair assessments for common areas.

### Parties

Christina A. Alphonso, the petitioner, sought a casualty loss deduction against the Commissioner of Internal Revenue, the respondent, before the United States Tax Court. Alphonso was a stockholder and tenant of Castle Village Owners Corp. , a cooperative housing corporation.

### Facts

Christina Alphonso was a stockholder and tenant of Castle Village Owners Corp. , which owned a cooperative apartment complex in New York. The complex included a retaining wall that collapsed in 2005, causing significant damage. Castle Village assessed its shareholders, including Alphonso, $26,390 for the damage. Alphonso paid this assessment and claimed it as a casualty loss on her 2005 federal income tax return. The IRS disallowed her claimed deduction.

### Procedural History

Alphonso filed a timely federal income tax return for 2005, claiming a casualty loss for the assessment paid. The IRS issued a notice of deficiency disallowing the deduction. Alphonso petitioned the U. S. Tax Court, where the Commissioner moved for summary judgment. The Tax Court granted the Commissioner's motion for summary judgment.

### Issue(s)

Whether a shareholder of a cooperative housing corporation, who has paid an assessment for damage to the cooperative's property, is entitled to a casualty loss deduction under 26 U. S. C. § 165(a) and (c)(3) or under 26 U. S. C. § 216(a)?

### Rule(s) of Law

Under 26 U. S. C. § 165(a) and (c)(3), individuals may deduct losses from fire, storm, shipwreck, or other casualty to property not connected with a trade or business or a transaction entered into for profit. Only the owner of the damaged property or a lessee with a direct interest in the property can claim such a deduction. 26 U. S. C. § 216(a) allows tenant-stockholders of cooperative housing corporations deductions for their proportionate share of the corporation's real estate taxes and mortgage interest, but not for other expenses such as casualty losses.

**Holding**

The court held that Alphonso was not entitled to a casualty loss deduction under either 26 U. S. C. § 165(a) and (c)(3) or 26 U. S. C. § 216(a) for the assessment paid to Castle Village for the collapsed retaining wall. Alphonso did not have a property interest in the retaining wall sufficient to claim a casualty loss deduction, and § 216(a) does not extend to casualty loss deductions.

**Reasoning**

The court's reasoning was based on the distinction between property ownership and the rights granted by a cooperative housing corporation to its shareholders. The court cited *West v. United States*, where a similar assessment for damage to a cooperative's property was not deductible as a casualty loss because the shareholder did not have a property interest in the damaged asset. The court distinguished *Keith v. Commissioner*, where the taxpayer owned part of the lakebed and thus had a property interest in the damaged lake, from Alphonso's case where she had no such interest in the retaining wall.

The court also addressed Alphonso's argument under § 216(a), rejecting her interpretation that this section should be expanded to include casualty loss deductions. The court noted that § 216(a) was specifically enacted to allow deductions for real estate taxes and mortgage interest paid by cooperative housing corporations, and legislative history did not support an expansion to include casualty losses.

The court emphasized that the purpose of § 216(a) was to place cooperative housing shareholders on equal footing with homeowners regarding tax deductions for interest and taxes, not to extend this parity to casualty losses. The court also noted that while Alphonso had the right to use common areas, this did not equate to a property interest that would entitle her to a casualty loss deduction.

**Disposition**

The Tax Court granted the Commissioner's motion for summary judgment and entered a decision for the respondent.

**Significance/Impact**

The decision in *Alphonso v. Comm'r* clarifies the limits of casualty loss deductions for shareholders of cooperative housing corporations. It establishes that only those with a direct property interest in the damaged asset can claim such deductions, impacting how cooperative residents and their legal representatives handle assessments for repairs to common areas. The ruling reinforces the narrow scope of

 

§ 216(a) and its application solely to real estate taxes and mortgage interest, not to other expenses like casualty losses. This case has been cited in subsequent tax cases to underscore the distinction between property ownership and the rights conferred by cooperative housing arrangements.

 