

**FILED AND
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**ROCKLAND
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND
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JEWISH INSPIRATION, INC.,

Plaintiff,

Index No. 5549/05

-against-

ASSESSOR, TOWN OF RAMAPO, THE TOWN OF
RAMAPO, ROCKLAND COUNTY, NEW YORK AND
THE BOARD OF ASSESSMENT REVIEW FOR THE
TOWN OF RAMAPO,

DECISION AND ORDER

Defendants.

-----X

DICKERSON, J.

TAX EXEMPTION : JEWISH INSPIRATION, INC.

In this most recent exploration¹ of the scope of exemptions from real property taxes, the Plaintiff, Jewish Inspiration, Inc., ["Jewish Inspiration"] moves pursuant to CPLR 3212 for Summary Judgement against the Defendants, the Assessor of the Town of Ramapo, the Town of Ramapo, and the Board of Assessment Review for the Town of Ramapo ["the Town"], seeking a declaration that the subject property is fully exempt from real estate taxation pursuant to RPTL § 420-a for the tax years 2004 and 2005. The Town filed a Cross-Motion for Summary Judgement dismissing the Plaintiff's Complaint.

Factual Background

Jewish Inspiration is the owner of real property located at 2 Raoul Court, Monsey, New York. The property, a single family residence², is " approximately 5,574 square feet in gross living area, excluding the basement, and was purchased by Devora Rietti on December 31, 2003 from Mombasha Development Corp. On February 4, 2004, Devora Rietti transferred the property to Jewish Inspiration, Inc. "³, subject to two mortgages totaling \$472,000⁴. The Plaintiff's President, Rabbi Jonathan Rietti, resides in the subject property.

Application For Tax Exemption

The Plaintiff applied for an exemption on February 24, 2004 pursuant to RPTL 420-a, describing the subject property as " (1) Residence for Clergy; (2) Counseling and conference rooms; (3) Administrative Office for production of tapes of Jewish Inspiration "⁵. The application was denied on April 12, 2004.

PLAINTIFF'S CONTENTIONS

Teaching Teachers

The Plaintiff asserts that it " develops curriculum, lesson plans and teaching materials for religious schools, teachers, Special Ed. Teachers, private tutors, resource room teachers and parents home-schooling their children " ⁶ as well as providing religious educational consultation for parents, students, teachers and school principals.

" We train teachers in the content of the new curriculum and train them in the Montessori method of practical teaching in the classroom and how to assess the child's progress. " ⁷

Religious Lectures On Tape

The Plaintiff asserts that it prepares approximately two hundred [200] religious lectures a year which " take place across the US at Jewish day schools and high schools, synagogues and religious functions. " ⁸ The Plaintiff claims that "[a]s a service to the general public, we produce and distribute duplications of the lectures on audio cassette and CD so that the benefits of the lectures may be enjoyed by a larger audience. The duplication facilities and storage space are on location. Our administration offices for all of the above services is on location. " ⁹

The Library

In addition, the Plaintiff contends that 95% of the subject property's basement area is used for " the production and development as well as private tutoring, teacher training, lectures and seminars...we have a very large library which contains source materials which are consistent and necessary for what we teach...This library constitutes ten percent (10%) of the first floor...I use this room for individual counseling and research in reference to the products that we deal with and create..."¹⁰

Charging For Its Services

The Plaintiff asserts that charging for its services " does not in any way change the status. A charitable organization may charge for services that it provides providing the charges are reasonable based upon the services."¹¹

Services Consistent With Certificate Of Incorporation

The Plaintiff asserts that its services are " consistent with our Certificate of Incorporation as Non-For-Profit Corporation. Based upon this, we believe that as a matter of law the Assessor of the Town of Ramapo is in error and that the exemption should be granted."¹²

THE DEFENDANTS' CONTENTIONS

Not A House Of Worship

" Inspections performed by my staff revealed that approximately forty percent of the basement of the house is used for the business of producing and selling educational tapes. In addition, Jonathan Rietti uses a room on the first floor of the house as a study. We are unaware of the frequency or nature of the use of the study...The plaintiff applied for an exemption for the years 2004 and 2005, claiming that the property was in use as a parsonage and as the center for the production of educational tapes. A review of the application as well as the inspection confirmed that no congregation existed, and the purpose of the plaintiff corporation is to promote and sell tapes and other curricula to schools, not to run a house of worship. Thus, no parsonage existed "¹³.

Purely A Business Venture

" We also determined that the production and sale of the tapes and other material, as well as any counseling performed by Mr. Rietti, was in the nature of a business venture...In addition, even if the use of the property to produce and sell the materials was an exempt purpose,

our inspections reveal that this use of the premises was minimal and incidental to the use of the property as a residence."¹⁴.

Incidental Use

The Town asserts that " the use of a small portion of the premises to produce tapes which are sold for a fee to schools, as well as for meeting with persons to be counseled, is merely incidental to the primary use of the property as a residence for the Rietti family."¹⁵

Who Benefits The Most?

In addition, the Town contends that Rabbi Rietti told an employee from the Assessor's office " that he counsels gifted students and students with learning disabilities, and sells tapes and curricula to schools. Both the counseling and the tape and curricula sales were for a fee. Rabbi Rietti stated that he is self-employed as the principal owner of Jewish Inspiration, and benefits the most in financial matters from the corporation's business."¹⁶

No Congregation, No Ceremonies, No Parsonage

Relying on Matter of Life Ministries v. Nassau County, 3 N.Y.3d 455, 787 N.Y.S.2d 705 (2004)(" we construe 'officiating' as looking

outward to a cleric's relationship with his or her congregation...Thus a full-time, ordained member of the clergy who presides over an established church's ecclesiastical services and ceremonies, conducts weddings and funerals, and administers sacraments of the church - in short, one who 'officiates' - is entitled to the statutory exemption."), it is the Town's view that the " plaintiff has failed to show that Rabbi Rietti has a congregation, much less presides over its ceremonies and administers sacraments, and therefore, the plaintiff is not entitled to an exemption based upon use of the premises as a parsonage."¹⁷

The Town contends that although the subject property is described by the Plaintiff as a rabbi's residence, the property is not owned by a religious congregation but rather by a corporation that produces educational materials.

Not An Officiating Clergyman

" While Mr. Rietti may well be an ordained Rabbi, it is evident that he is not an officiating clergyman, as his employment seems to be that of a producer of religious and educational materials, not a spiritual leader of a congregation...It is apparent that while Rabbi Rietti may pray before and after lectures and conferences, along with whoever else is present, no actual congregation exists and thus he has no position as an officiating clergyman."¹⁸.

Requirements Of RPTL § 420-a Not Met

The Town asserts that the Plaintiff does not meet the requirements of RPTL 420-a which requires the party seeking a tax exemption to prove that it is organized and used exclusively for tax exempt purposes. The Town contends that Jewish Inspiration "exists solely as the self-employment of Jonathan Rietti, who sells educational tapes to schools and counsels students for a fee "¹⁹.

Discovery Needed

" As no discovery has yet been conducted, the exact financial relationship between the corporation and its principal is yet unknown. The corporation owns the deed to the premises, which it acquired from Devora Rietti days before the filing of the initial application for an exemption...More importantly, even if the plaintiff met the first test for an exemption, it fails to qualify under the second test. The principal use for the very large house is that of residence to the Rietti family. At best, less than half of the basement as well as an upstairs room are used for the corporation's purposes."²⁰

DISCUSSION

Standards Of Proof

It is well-settled that "the proponent of a summary judgement motion must establish a cause of action or defense by making a *prima facie* showing of entitlement to judgement as a matter of law tendering sufficient evidence to eliminate any material issues of fact from the case". Way v. Grantling, 289 A.D.2d 790, 793, 736 N.Y.S.2d 424 (3d Dept. 2001)[See also: Winegrad v. New York Univ. Med. Ctr., 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316 (1985)]. Further, upon such a showing, " the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action ". Way v. Grantling, supra, 289 A.D.2d at 794 [See also: Zuckerman v. City of New York, 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595 (1980)]. However, failure of the proponent of a summary judgement motion to make such a *prima facie* showing "requires denial of the motion, regardless of the sufficiency of the opposing papers". Winegrad v. New York Univ. Med. Ctr., supra, 64 N.Y.2d at 853.

The Second Department has held, "[i]t is axiomatic that summary judgement is a drastic remedy which should only be granted if it is clear that no material issues of fact have been presented. Issue

finding, rather than issue determination, is the court's function". Celardo v. Bell, 222 A.D.2d 547, 548, 635 N.Y.S.2d 85 (2d Dept. 1995) [See also: Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957)]. " Since summary judgement is the procedural equivalent of a trial, if there is any doubt as to the existence of a triable issue or where the material issue of fact is 'arguable', summary judgement must be denied ". Museums at Stonybrook v. Village of Patchogue Fire Department, 146 A.D.2d 572, 573, 536 N.Y.S.2d 177 (2d Dept. 1989)[See also: Phillips v. Kantor & Co., 31 N.Y.2d 307, 338 N.Y.S.2d 882 (1972)].

Conclusion

Based upon an extensive review of the papers submitted by the parties, this Court concludes that both the Plaintiff and the Defendants have failed to show entitlement to summary judgment as a matter of law. This Court finds that material issues of fact exist which preclude summary judgement, including, among other things, exactly what portion of the subject property is actually used by the Plaintiff in carrying out its religious, charitable, or educational purposes.

Accordingly, both the Plaintiff's Motion and the Defendants' Cross-Motion are denied.

The foregoing constitutes the decision and order of this Court.

Dated: White Plains, N.Y.
June 12, 2006

HON. THOMAS A. DICKERSON
JUSTICE SUPREME COURT

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ENDNOTES

1. See e.g., Matter of Gemilas v. Assessor of the Town of Ramapo, (Rockland Sup. 2004)(Free Loan Society seeks tax exemption pursuant to RPTL § 420-a); Matter of Congregation Sherith Yisoel Viledniki v. Town of Ramapo, 5 Misc. 3d 1027 (Rockland Sup. 2005) (motion seeking to depose the Tax Assessor denied); Merriam Osborn Memorial Home Association v. City of Rye, 6 Misc. 3d 1035 (West. Sup. 2005)(burden of proof under RPTL § 420-a; charitable exemption; hospital exemption); Salvation & Praise Deliverance v. The City of Poughkeepsie, 6 Misc. 3d 1021 (Dutchess Sup. 2005)(bar claim action granted; Article 7 petition moot); Adult Home At Erie Station v. Assessor of the City of Middletown, 8 Misc. 3d 1010 (Orange Sup. 2005)(post trial decision on valuation and tax exemption of adult home); Matter of Congregation Kneset Israel v. Assessor of Town of Ramapo, 8 Misc. 3d 1021 (Rockland Sup. 2005)(RPTL § 462; officiating clergy); Otrada, Inc. v. Assessor of the Town of Ramapo, 9 Misc. 3d 1116 (Rockland Sup. 2005)(restoration of 100% tax exemption pursuant to RPTL § 420-a), rearargument granted 11 Misc 3d 1058 (Rockland Sup. 2006).

2. The subject property is described in the 2005/2006 assessment roll in the Town of Ramapo as 89/56.5-2-51. The house consists of " two stories and a basement, and contains a living room, dining room, eight bedrooms, two kitchens, a mud room, a recreation room, a play room, an exercise room, a study, a great room and a laundry room." [Affidavit of Scott Shedler sworn to March 28, 2006 (" Shedler Aff. ") at para. 3].

3. Shedler Aff. at para. 2.

4. Affirmation of Michael B. Specht dated March 27, 2006 [" Specht Aff. "] at para. 1 and Ex. B.

5. Specht Aff. at Ex. C, para. 10.

6. Affirmation of Jonathan Rietti dated February 6, 2006 [" Rietti Aff. I "] at page 2.

7. Rietti Aff. I at page 3.

8. Rietti Aff. I at page 5.

9. Rietti Aff. I at page 6.

10. Affirmation of Jonathan Rietti dated April 21, 2006 [" Rietti Aff. II "] at pages 2-3.
11. Rietti Aff. II at page 4.
12. Rietti Aff. I at paras. 6-7.
13. Shedler Aff. at paras- 4-6.
14. Shedler Aff. at paras. 4-6.
14. Specht Aff. at para. 9.
16. Specht Aff. at para. 4.
17. Specht Aff. at para. 2.
18. Specht Aff. at para. 2.
19. Specht Aff. at paras. 5-6.
20. Specht Aff. at paras. 5-6.