

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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In the Matter of the Application for a review under Article 7 of the Real Property Tax Law of the Tax Assessments by CONG. KOLEL BNEI BRAK, INC.,

**DECISION/
ORDER**

Petitioner,

Index No:
2939/06

-against -

Motion Date:
5/4/09

TAX ASSESSOR FOR THE VILLAGE OF SPRING VALLEY, ROCKLAND COUNTY, NEW YORK AND THE BOARD OF ASSESSMENT REVIEW FOR THE VILLAGE OF SPRING VALLEY,

Respondent.

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LaCAVA, J.

In this Real Property Tax Law (RPTL) Article 4 proceeding, challenging the denial by the Village of Spring Valley (Village) of the real property tax exemption renewal sought by petitioner Cong. Kolel Bnei Brak, Inc (Bnei Brak) for the Tax Year 2006, for the premises designated on the Town tax map as Section 50.70, Block 1, Lots 27 and 29, and known as and located at 2 and 4 Morris Road, Spring Valley, New York, the following papers numbered 1 to 3 were considered in connection with the motion by petitioner in this matter for summary judgment:

<u>PAPERS</u>	<u>NUMBERED</u>
NOTICE OF MOTION/AFFIRMATION/AFFIDAVIT/EXHIBITS	1
AFFIRMATION IN OPPOSITION/AFFIDAVIT/EXHIBITS	2
REPLY AFFIDAVIT/EXHIBITS	3

Petitioner Bnei Brak is a not-for-profit, religious corporation pursuant to Religious Corporation Law Article 10, which

is also recognized pursuant to IRC 501 (c) 3 as a non-profit corporation. The corporation is led by the president, Abraham Eilander; it has owned the subject parcels for a number of years, and asserts that the houses thereon serve as housing for full-time clergy members, their Rabbi and Assistant Rabbi.

Prior to 2006, the parcels enjoyed tax exemptions. Petitioner duly and timely filed to extend said exemptions in late 2005 for the 2006 tax year, which application, on or about January 26, 2006, was denied as lacking proof that the petitioner was a religious corporation and that the premises were being used by officiating clergymen. Subsequently, and despite alleging that the requested documents were already on file, petitioner submitted proof of corporate status, and the status of the residents as officiating clergymen; however, on or about March 28, 2006, the application was again denied. After filing the instant petition, petitioners received an Answer from the Village asserting numerous Affirmative Defenses, including that the tenants receive HUD Section 8 subsidies for their tenancies. Petitioner has also applied for a renewal of the exemption for 2007 and 2008, which applications were similarly denied.

Petitioner now moves for summary judgment, arguing that the Village has erroneously denied the renewal applications on the authority of this Court's decisions in *Congregation Or Yosef v. Town of Ramapo*, 13 Misc. 3d 1214A (Supreme Court, Rockland County, Dickerson, J., September 27, 2006), *aff'd* 48 A.D.3d 731 (2nd Dept. 2008) and *Shmiel v. Assessor, Town of Ramapo*, 13 Misc. 3d 1215A (Supreme Court, Rockland County, Dickerson, J., September 29, 2006). In *Or Yosef* and *Shmiel*, this Court held that Section 8 subsidies to tenants at a premises were a bar to an tax exemption at the premises, particularly where it was demonstrated that the owner made a profit from the rental. As respondent properly points out here, petitioner not only concedes that the tenants in these premises receive Section 8 subsidies, but they have also failed to produce any evidence of what they assert to be a lack of profit inuring to the owner from the rentals.

Under CPLR 3212(b), a moving party is entitled to summary judgment "if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the Court as a matter of law in directing judgment" in their favor. In a proceeding pursuant to Article Four of the Real Property Tax Law, summary judgment is properly granted when there is no genuine issue of material fact and the petitioner is entitled to judgment as a matter of law." (Cf. *See Sailors' Snug Harbor in City of New York v. Tax Commission of City of New York*, 26 N.Y.2d 444, 449 [1970]).

Upon a summary judgment motion, the movant bears the initial burden of presenting evidence, in competent form, establishing entitlement to judgment as a matter of law, and tendering sufficient evidence to eliminate any material issues of fact from the case" (*Way v. George Grantling Chemung Contracting Corp.*, 289 A.D.2d 790, 793 [3rd Dept., 2001].) Unless and until that initial burden is met, there is no need for the non-movant to come forward with "evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*id.*; see also *Rodriguez v Goldstein*, 182 A.D.2d 396, 397 [1st Dept., 1992]). In a proceeding pursuant to Article Four of the Real Property Tax Law, summary judgment is properly granted when there is no genuine issue of material fact and the petitioner is entitled to judgment as a matter of law on the issue of their entitlement to an exemption." (Cf. See *Sailors' Snug Harbor in City of New York v. Tax Commission of City of New York*, 26 N.Y.2d 444, 449 [1970]).

In *Celardo v. Bell* (222 A.D.2d 547 [2d Dept., 1995]), the Court stated:

It is axiomatic that summary judgment 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 (*Sillman v Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 (1957) . If there is any doubt about the existence of a triable issue of fact or if a material issue of fact is arguable, summary judgment should be denied (*Museums at Stony Brook v Village of Pachogue Fire Dept.*, 146 A.D.2d 572 (1989) ...

The Court thus finds, regarding petitioner's motion, that, at the outset, petitioners have not met the initial burden, by failing to show entitlement to judgment as a matter of law. Both *Or Yosef* and *Shmiel* make clear that reception of Section 8 subsidies for tenants in a premises is a bar to a tax exemption for the owner of the same premises. Further, they also hold that reception of a profit for the rental of a premises, even where the premises is rented to an officiating clergyman, is also a bar to an exemption for the premises. As set forth above, Petitioner's moving papers not only concede the Section 8 housing subsidies, but fail to demonstrate the lack of a profit for the rental. When viewing respondents' properly submitted proof in a light most favorable to them, and upon bestowing the benefit of every reasonable inference

to them (*Boyce v. Vasquez*, 249 A.D.2d 724, 726 [3d Dept., 1998]), material issues of fact also exist as to not only whether petitioner is profiting from the rental of the instant parcels, but also regarding both the true ownership and charitable use of the subject premises.

Based upon the foregoing, it is hereby

ORDERED, that the motion by petitioner for summary judgment against respondent is denied.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Dated: White Plains, New York
July 23, 2009

HON. JOHN R. LA CAVA, J.S.C.

Nathan Kahan, Esq.
Attorney for Petitioner
127 Route 59
Monsey, New York 10952

Bruce M. Levine, Esq.
Village Attorney
200 North Main Street
Spring Valley, New York 10977