

that their property is used for "charitable" purposes and so is exempt from real property tax. We hold that both property owners are correct.

Facts and Procedural History

The petitioners in these cases are Elant at Erie Station, Inc., formerly known as Adult Home at Erie Station, Inc. (AHESI), and Regional Community Action Program, Inc. (RECAP).

AHESI

AHESI's property is used for the operation of an "adult home," defined by Social Services Law § 2 (25) as "an adult care facility established and operated for the purpose of providing long-term residential care, room, board, housekeeping, personal care . . . and supervision to five or more adults unrelated to the operator." The home has a rate schedule, containing what both sides' experts found to be "market" rates, but only about 10% of its residents pay those rates. Something over half the residents are eligible for Supplemental Security Income (SSI); their care is paid for, at a reduced rate, by the Social Security Administration. The remaining 30-plus percent of the residents, referred to by AHESI as "contract occupants," pay for their own care, but are unable to afford the full market rate; they pay reduced fees determined by their assets and income. AHESI accepts all applicants qualified by age and medical condition, and has never turned away a would-be resident because of inability to pay the market rate.

The City rejected AHESI's application for exemption from real property tax, and the Board of Assessment Review upheld the City's determination. AHESI then sought judicial review of its assessments under article 7 of the Real Property Tax Law. Supreme Court decided, after an evidentiary hearing, that the property was not exempt. The Appellate Division reversed and upheld AHESI's claim to an exemption. We granted leave to appeal, and now affirm the Appellate Division's order.

RECAP

RECAP is a social work organization, devoted to combating homelessness, substance abuse and other social ills among low-income people in the Middletown area. RECAP owns homes in which participants in its "Community Re-Entry Program" live. They live there only for the "transitional" period until they have completed the program, though the transition is often lengthy. The City claims that almost half the residents have been in the homes for three years or more, but there is nothing in the record to show that any of the residents is not a bona fide program participant. RECAP receives rent from the properties comparable to rents charged by private landlords; the rent is paid partly by government agencies, and partly by the tenants themselves.

The City denied RECAP's applications for tax exemptions, and RECAP brought an article 78 proceeding seeking to annul that decision. Supreme Court denied relief, and the

Appellate Division affirmed. We granted leave to appeal, and now reverse.

Discussion

Real Property Tax Law § 420-a (1) (a) says:

"Real property owned by a corporation or association organized or conducted exclusively for religious, charitable, hospital, educational, or moral or mental improvement of men, women or children purposes, or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such purposes either by the owning corporation or association or by another such corporation or association as hereinafter provided shall be exempt from taxation as provided in this section."

This exemption is inapplicable when an officer, member or employee of the property owner receives a "pecuniary profit" from the activity involved, or when the organization is "a guise or pretense for . . . making any other pecuniary profit" (RPTL § 420-a [1] [b]). The City does not claim that section 420-a (1) (b)'s exception to the exemptions applies here. Nor does the City dispute that both AHESI and RECAP are "organized or conducted exclusively for . . . charitable . . . purposes" within the meaning of RPTL § 420-a (1) (a). The only question is whether their properties are "used exclusively for carrying out thereupon one or more of such purposes." We conclude that they are.

I

The City treats AHESI as a provider of housing to the

elderly, and says that its property is taxable under our decisions in Matter of Greer Woodycrest Children's Servs. v Fountain (74 NY2d 749 [1989]) and Matter of Presbyterian Residence Ctr. Corp. v Wagner (48 NY2d 885 [1979]), affq for reasons stated below 66 AD2d 998 [4th Dept 1978]). AHESI insists that it provides its residents not with "mere housing" but also with "a program of personal care." We regard this difference in characterizations as unimportant. Assuming that AHESI's property is used essentially for housing, the property is still tax exempt. Greer Woodycrest and Presbyterian hold that renting homes to elderly people who are not poor is not a "charitable" activity, but AHESI's property is used to provide housing to poor people at below market rates. This is plainly a "charitable" purpose (see Matter of Belle Harbor Home of Sages v Tishelman, 100 Misc2d 911 [Sup Ct Queens County 1979], affd on op below 81 AD2d 886 [2d Dept 1981]).

Although RPTL § 420-a (1) (a) says that exempt property must be "used exclusively" for charitable or other exempt purposes, we have held that the word "exclusively" is not to be read literally (Matter of Symphony Space v Tishelman, 60 NY2d 33, 38 [1983] ["In determining whether the real property of a corporation is used exclusively for the exempt purpose, the word 'exclusive' has been held to connote 'principal' or 'primary'"]). Thus, the City does not argue that AHESI should lose its tax exemption solely because 10% of its residents -- those who pay

market rates -- seem not to be receiving charity. The main dispute between the parties is whether the other 90% of the residents are poor enough to make AHESI's activity "charitable." The City does not dispute that the SSI recipients are poor enough (see Belle Harbor, 100 Misc 2d at 913 [property used primarily for charitable purposes where 90% of residents "have government benefits as their only source of income"]), but says that AHESI's contract occupants -- between 30 and 40 percent of the residents -- are not.

We disagree. The record shows that, in computing rents charged to contract occupants, AHESI required them to pay all of their assets that exceeded the \$2,000 maximum for SSI recipients, and also required them to pay all of their income with the exception of a \$50 allowance for incidentals and an additional allowance for medical bills and medical premiums. People whose expenses for housing and medical care leave them with no more than \$2,000 in assets and \$50 in disposable income are poor by any reasonable definition. We see no basis, in precedent or logic, for the City's proposed rule that only SSI recipients are poor enough to be objects of charity. We thus conclude that the Appellate Division correctly held AHESI's property to be tax exempt.

II

RECAP, unlike AHESI, receives market rents for its properties. Relying on Greer Woodycrest and Presbyterian, the

City argues, and the courts below held, that this fact defeats RECAP's claim to a tax exemption -- that a property owner who receives the same rent as a commercial landlord cannot be using its property for charitable purposes. We find this analysis to be flawed.

RECAP's charitable purpose is different from AHESI's, and from the purposes at issue in Greer Woodycrest and Presbyterian. While AHESI may be viewed as supplying housing to the impoverished elderly, and the property owners in Greer Woodycrest and Presbyterian as supplying housing to the non-impoverished elderly, RECAP is engaged in social work, helping homeless people, alcoholics, drug addicts and other afflicted members of society to become productive and useful citizens. This is undoubtedly a charitable activity, and the City does not claim it is not.

The City's argument is that RECAP's social work is not, for the most part, done on the properties in question -- these properties are simply residences. RECAP answers that the residences are made available only to participants in its program, and only while they are participating; it says that providing decent and affordable housing to participants furthers the program's goals. RECAP says that this case is controlled by Matter of St. Luke's Hosp. v Boyland (12 NY2d 135 [1962]). We agree.

The issue in St. Luke's was whether certain apartment

houses were being used "exclusively for . . . hospital . . . purposes" within the meaning of the predecessor statute to RPTL § 420-a (1) (a). The apartments were rented to hospital employees and their immediate families, and we held that this was a "hospital" use within the meaning of the statute. The test, we said, is whether the apartments "are devoted to a use which 'is reasonably incident' to the major purpose of the hospital" (12 NY2d at 143, quoting People ex rel. Watchtower Bible and Tract Socy. v Haring, 8 NY2d 350, 358 [1960]). We noted that it was customary for hospitals to provide living accommodations for at least some employees, and that there was evidence that some nurses and technicians would not have accepted, or would have left, their employment with the hospital if living quarters had not been provided.

The residential use of RECAP's property is no less "reasonably incident" to RECAP's purposes than the use of the apartment buildings in St. Luke's was to the hospital's. It can hardly be questioned that providing an acceptable place for people to live while they participate in social work programs advances the goal of keeping them in the programs and thus of helping them overcome their troubles.

The courts below erred in concluding that, because RECAP receives fair market value for its properties, the properties are not distinguishable from a commercial apartment complex. The distinction is that apartments in commercial

complexes are not provided solely to people struggling against alcoholism, drug addiction and the like on condition that they participate in programs designed to help them. That these people (or the government agencies that support them) pay market rents, and that RECAP may even benefit economically from its rental income, does not change the result. The issue is not whether RECAP benefits, but whether the property is "used exclusively" for RECAP's charitable purposes. RECAP could lose its exemption under RPTL § 420-a (1) (b) if the economic benefit went to its officers or employees personally, but an economic benefit to a charitable organization does not by itself extinguish a tax exemption. The question is how the property is used, not whether it is profitable. Matter of County Hispanic Found. (Board of Assessors) (198 AD2d 357 [2d Dept 1993]), which held otherwise, was incorrectly decided.

III

Accordingly, the order of the Appellate Division in the AHESI matter should be affirmed, with costs. The order of the Appellate Division in the RECAP matter should be reversed, with costs, the petition granted and the Commissioner of Assessment of the City of Middletown directed to grant RECAP a real property tax exemption for the tax year 2004/2005.

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Case No. 21: Order affirmed, with costs. Opinion by Judge Smith. Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Pigott and Jones concur.

Case No. 22: Order reversed, with costs, petition granted and respondent directed to grant petitioner a real property tax exemption for the tax year 2004/2005. Opinion by Judge Smith.

Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Pigott and Jones concur.

Decided March 13, 2008