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**ROCKLAND
COUNTY CLERK**

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 Tax Assessments by

CONGREGATION KNESSET ISRAEL

Petitioner,

Index No: 5138/04

-against-

DECISION and ORDER

THE ASSESSOR OF THE TOWN OF RAMAPO,
BOARD OF ASSESSMENT REVIEW FOR THE TOWN
OF RAMAPO, EAST RAMAPO SCHOOL DISTRICT
and TREASURER OF ROCKLAND COUNTY, NEW
YORK,

Respondents.

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DICKERSON, J.

R.P.T.L. § 462 : WHAT ARE OFFICIATING CLERGYMEN?

Real Property Tax Law [" R.P.T.L. "] § 462 provides [as an
additional basis¹ for a real property tax exemption] a " parsonage
exemption "², i.e., when the " property owned by a religious corporation
(is) actually used by the officiating clergymen thereof for
residential purposes (it) shall be exempt from taxation ". The meaning

of an " officiating clergymen " and, in particular, whether a full-time or part-time officiating clergyman can also have a full-time or part-time weekday job as a teacher with another religious institution, is the subject of a Summary Judgment Motion³ brought by Respondents seeking dismissal of the Petitioner's R.P.T.L. Article 7 tax certiorari petition for the 2004-2005 tax year [" the Petition "] and the Petitioner's Cross Motion For Summary Judgment⁴.

Factual Background

The Petitioner, Congregation Kneset Israel [" Congregation "], is a synagogue located in Spring Valley, New York. The Rabbi of the synagogue, Rabbi Chaim Schabes, lives in the subject property " owned "⁵ by the Petitioner located at 7 Barrie Drive, Spring Valley, New York, and known as Section/block/lot 13/41.20-2-51.

The Spiritual Leader And His Duties

Rabbi Chaim Schabes [" Rabbi Schabes "] is the spiritual leader of the Congregation and officiates at the Congregation's religious services. According to Rabbi Schabes the Congregation consists of 60 to 70 families, he is the only rabbi affiliated with the synagogue and his duties include " teaching classes, conducting service, and answering

questions, consultations, there is a certain level of consulting and helping out when there's issues in the families and so on "6.

Time Spent With The Congregation

According to Rabbi Schabes he works at the Congregation's synagogue on weekends, from Friday afternoon until Sunday⁷, that his morning weekday hours at the Congregation are from 7:00AM until 8:15AM or 8:30AM " depending on the line after the services "⁸, that he returns to the synagogue in the evenings at, approximately, 8:30PM or 9:00PM for additional work " depending on the evening " and depending " if I give a class "⁹ and that on holidays, weekends and Sundays he also gives classes¹⁰.

Full Time Or Part Time Rabbi?

When asked at his deposition if his position as a rabbi was full-time, Rabbi Schabes responded, " Not a full time, it's - yes and no, I mean I I'm there in the mornings, I'm there in the evenings, and I'm on call throughout the day, I do have a teaching position otherwise but it does occupy a good few hours for the day "¹¹. Thereafter Rabbi Schabes stated that " I devote on average more than 40 hours a week working as rabbi for the congregation"¹².

Employed During The Week As A Teacher

Rabbi Schabes is employed week days as a teacher at the Kesser Torah School, where he teaches from 9:30AM in the morning until 2:15PM in the afternoon. Rabbi Schabes also teaches two periods a week at a high school for girls, Ateres Bais Yakov¹³.

The Rabbi's House

The subject property was purchased by Rabbi Schabes in April of 2002 and he has resided there ever since. In February 2004, several months after accepting employment with the Petitioner, the Congregation purchased the subject property from Rabbi Schabes for either \$395,000.00 or \$400,000.00¹⁴. At that time, Rabbi Schabes had a balance due on his mortgage of \$195,000.00. Although no money was paid to Rabbi Schabes by the Petitioner for the purchase of the house, the rabbi testified that the Congregation " owed " the balance to him¹⁵. The only document executed between Rabbi Schabes and the Congregation reflecting this balance was described by the rabbi as a " legal Jewish document ", a copy of which was possessed by Rabbi Schabes and the Congregation¹⁶. Rabbi Schabes testified that although the Congregation pays the mortgage, it remains in the rabbi's name¹⁷ because " if they would have the mortgage they were doubtful as to whether they would be have an easy time getting the mortgage and it would definitely be at a higher

rate ¹⁸. The monthly mortgage payment is approximately \$1900.00, and the Congregation deducts the payments from his salary of \$35,000.00 per year¹⁹.

DISCUSSION

Is Rabbi Schabes an Officiating Clergyman

The issue to be determined herein is whether Rabbi Schabes is an "officiating clergym[a]n" for the Congregation as that term is set forth in R.P.T.L. § 462. The Court of Appeals recently addressed this issue in Matter of Word of Life Ministries v. Nassau County, 3 N.Y.3d 455, 458, 787 N.Y.S.2d 705 (2004) wherein the status of four associate pastors as "officiating clergymen" was examined. Recognizing that "officiating clergymen" is undefined in the statute, the Court of Appeals stated that "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."

Petitioner's Position

A Part-Time Officiating Clergyman

The Petitioner asserts that the factors applied by the Court of Appeals in Matter of Word of Life Ministries, *supra* " in reaching the conclusion that the home of the pastors were tax exempt, one of which (among several) was that the assistant pastors in that case happened to have worked full-time for the church, is not necessary in other cases for a religious corporation to be entitled to the exemption, since the facts of each case is different " ²⁰. The Petitioner also opined that " it is not necessary for the rabbi to be full time, as long as he officiates for the Congregation " ²¹. It is the Petitioner's position that there is " no full-time " requirement for a tax exemption under either R.P.T.L. § 462 or under Matter of Word of Life Ministries , *supra*.

According to the Petitioner Rabbi Schabes is the officiating clergyman of Congregation Knesset Israel since " He leads the services, gives lectures, teaches classes, gives counseling, has consultations with congregants regarding their personal matters, runs youth groups, conducts weddings and ritual circumcisions and gets involved in all aspects of what is expected of an Orthodox rabbi in connection with his congregation. His relationship with his congregation is such that he is clearly looked at and accepted by his congregants as their Rabbi " ²².

The Petitioner insists that since Rabbi Schabes is the officiating clergyman of Congregation Knesset Israel, and since he lives in the house owned by the Congregation, the premises should be exempt from taxation pursuant to R.P.T.L. § 462.

A Full-Time Officiating Clergyman

The Petitioner also asserts that " even if there was a full-time requirement for entitlement for exemption under RPTL §462 ", Rabbi Schabes satisfies this full-time requirement " as he puts in on average more than 40 hours per week in performing his services for the Congregation...On weekends, Rabbi Schabes performs the major portion of his services for the Congregation. Obviously, his most significant services for the Congregation is his work for the Congregation on the Sabbath " ²³.

Respondents' Position

Part-Time Officiating Clergyman

Also relying on the Court of Appeals decision in Matter of Word of Life Ministries, *supra*, Respondents assert that the Petitioner is not entitled to a tax exemption under R.P.T.L. § 462 since " its rabbi is not a full-time officiant, but rather a part-time clergyman " ²⁴.

Respondents' state that Rabbi Schabes testified in his deposition [and does not dispute in his Affirmation] that during weekdays he teaches at two different schools from 9:30AM in the morning until 2:15PM in the afternoon. It is Respondents' view that " While Rabbi Schabes is apparently the only clergyman employed by the Petitioner, his work hours are at best part-time, and he relies upon outside employment as a teacher " ²⁵.

Respondents dispute Petitioner's argument that Respondents are in error in insisting that only a full-time clergyman would be entitled to an exemption. They emphasize that what swayed the Court of Appeals in Matter of Word of Life Ministries, *supra*, " was the fact that all of the assistant pastors were full-time employees, who held no outside employment. The facts in this case are not identical, as Rabbi Schabes is a part-time rabbi who derives most of his income from his teaching positions " ²⁶.

Does Full-Time Officiating Clergymen Mean No Outside Employment?

The Court of Appeals, clearly, stated in Matter of Word of Life Ministries, *supra*, at 3 N.Y.3d 458 that one of the tests of " officiating clergymen " is being a " full time member of the clergy who presides over an established church's ecclesiastical services ". However, can such an officiating clergyman also be employed full-time or part-time weekdays as a teacher by an unrelated religious entity? On

this issue Matter of Word of Life Ministries, supra, is not quite so clear. For example, the Court of Appeals stated at 3 N.Y. 3d 460 that " Those lower courts that have addressed the issue have uniformly applied the correct test ", specifically referring to Temple Beth Shalom, Inc. Of Roslyn, N.Y. v. Nassau County Dept. Of Assessment, Bur. Of Exemptions, 2001 N.Y. Slip Op. 50147(U), 2001 WL 34728527 (Nassau Sup. 2001), wherein an " assistant rabbi was held to be officiating clergy where he was employed *full time* [emphasis added] by the synagogue, conducted secondary services on Sabbath and all holidays, taught Sisterhood and Men's Club classes during the year, supervised youth groups, conducted weddings, funerals and baby namings when the rabbi was not available, and visited members of the synagogue in hospitals and in their homes after the death of family members " .

After approving of lower court decisions which make no mention of additional employment the Court of Appeals then addressed the facts of Matter of Word of Life Ministries, supra, at 3 N.Y. 3d 460-461 finding that " All of the pastors, including those living at the residences in question, were ordained and *held no outside employment* [emphasis added]. All took part in church services and shared in the preaching. All provided marital counseling, officiated at marriages and funerals, administered the sacraments recognized by the church. They also ministered to the youth of the church and took part in outreach to the homeless...Because the pastors' salaries are low, respondent provides

them with housing, located near the church. We thus reject the Village's argument that the residents in question are not officiating clergy " .

Broadening The Definition Of Officiating Clergy

Stated, simply, it is clear that the Court of Appeals meant to broaden the definition of " officiating clergy " [See Matter of Word of Life Ministries, supra, at 3 N.Y. 3d 458 (" we construe ` officiating ` as looking outward to a cleric's relationship with his or her congregation "] by defining the term as including any " full-time ordained member of the clergy who presides over an established church's ecclesiastical services and ceremonies ". It is not clear, however, that the Court of Appeals also meant to restrict " officiating clergy ", in every instance, to only those full-time clergy with " no outside employment " .

The Standard For Summary Judgment

Summary judgement is appropriate if there are no factual issues in dispute [See e.g., Andre v. Pomeroy, 35 N.Y.2d 361, 364, 362 N.Y.S.2d 131 (1974) (" Summary judgement is designed to expedite civil cases by eliminating from the Trial Calendar claims that can be properly resolved as a matter of law. Since it deprives the litigant of his day in court it is considered a drastic remedy which should only be

employed when there is no doubt as to the absence of triable issues...")]. The moving party bears the initial burden of making a *prima facie* showing of entitlement [See e.g., Bowen v. Dunn, 306 A.D.2d 929, 762 N.Y.S.2d 465 (4th Dept 2003)], which burden then shifts to the opposing party to come forward with proof to demonstrate the existence of an issue of fact [See e.g., Marinelli v. Shifrin, 260 A.D.2d 277, 288, 688 N.Y.S.2d 72 (1st Dept 1999); New York Service Higher Education Corp. V. Ortiz, 104 A.D.2d 684, 479 N.Y.S.2d 910 (3d Dept 1984); Stern v. Stern, 87 A.D.2d 887,888, 449 N.Y.S.2d 534 (2d Dept 1982)].

Factual Issues In Dispute

Both Petitioner and Respondents have summary judgement motions before this court. This matter, however, cannot be summarily resolved as a matter of law, since the parties have demonstrated the existence of factual issues sufficient to warrant a trial. These issues include, but are not limited to, who owns the subject property, whether Rabbi Schabes is an officiating clergyman of the Congregation, whether he serves full-time in that capacity and whether his weekday job as a teacher in another religious institution is full-time or part-time and whether and to what extent his weekday teaching positions impact upon his position as an officiating clergyman for the Congregation.

Accordingly, Respondents Motion for Summary Judgement and Petitioner's Cross-Motion for Summary Judgement are both denied in their entirety.

Dated: White Plain, New York
August 2, 2005

HON. THOMAS A. DICKERSON
JUSTICE SUPREME COURT

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ENDNOTES

1. Generally, requests for real property tax exemptions are based upon R.P.T.L. § 420-a(1)(a). See e.g., Matter of Adult Home At Erie Station, Inc., v. Assessor of City of Middletown, 8 Misc. 3d 1010(A), 2005 WL 1552847 (West. Sup. 2005)(not-for-profit adult home not tax exempt); Matter of Miriam Osborn Memorial Home Association v. The City of Rye, 6 Misc. 3d 1035(A), 2005 WL 562748 (West. Sup. 2005)(discussion of the burden of proof of " charitable " use and " hospital " use tax exemptions); Matter of Gemilas Chasudim Keren Eluzer, Inc. v. Assessor of the Town of Ramapo, 5 Misc. 3d 1026(A), 2004 WL 2852658 (West. Sup. 2004) (Free Loan Society not tax exempt).
2. See Matter of Word of Life Ministries v. Nassau County, 3 N.Y.3d 455, 460, 787 N.Y.S.2d 705 (2004).
3. Respondents' Notice of Motion dated March 17, 2004 [" Respondent's Motion "] together with Affirmation in Support of Michael B. Specht dated March 17, 2005 [" Specht Aff. "].
4. Petitioner's Notice of Cross Motion dated April 5, 2005 [" Petitioner's Cross Motion "] together with Affirmation of Bernard Weinreb dated April 5, 2005 [" Weinreb Aff. " } and Affirmation of Rabbi Chaim Schabes dated April 5, 2005 [" Schabes Aff. "] and Petitioner's Memorandum of Law dated April 5, 2005 [" P. Memo. "] and the Affirmation in Opposition to Cross Motion of Michael B. Specht dated April 28, 2005 [" Specht Opp. Aff. "].
5. See N. 16, *infra*.
6. Respondent's Motion, Ex. B, Dep. Trans. at p. 12.
7. Respondent's Motion, Ex. B, Dep. Trans. at pp. 8-9.
8. Respondent's Motion, Ex. B, Dep. Trans. at p. 11.
9. Respondent's Motion, Ex. B, Dep. Trans. at p. 12.
10. Respondent's Motion, Ex. B, Dep. Trans. at p. 12.
11. Respondent's Motion, Ex. B, Dep. Trans. at p. 8.
12. Schabes Aff. at p. 2.

13. Respondent's Motion, Ex. B, Dep. Trans. at p. 9.
14. Respondent's Motion, Ex. B, Dep. Trans. at p. 5.
15. Respondent's Motion, Ex. B, Dep. Trans. at p. 6.
16. Respondent's Motion, Ex. B, Dep. Trans. at p. 6.
17. Who owns the subject property? If it is Rabbi Schabes does the Congregation have standing to file the instant R.P.T.L. Article 7 Petition on his behalf? Compare the financial relationship between Rabbi Schabes and the Congregation with that between Gemilas Chasudim Keren Eluzer, Inc. and its Executor Director as described in Matter of Gemilas Chasudim Keren Eluzer, Inc. v. Assessor of the Town of Ramapo, 5 Misc. 3d 1026(A), 2004 WL 2852658 (West. Sup. 2004)(Gemilas bought the house owned by the Executive Director's in-laws and instead of paying him for services rendered Gemilas paid the mortgage on the house).
18. Respondent's Motion, Ex. B, Dep. Trans. at p. 8.
19. Respondent's Motion, Ex. B, Dep. Trans. at p. 11.
20. P. Memo. at p. 4.
21. P. Memo. at p. 4.
22. P. Memo. at p. 5.
23. P. Memo. at pp. 5-6; Shabes Aff. at pp. 2-3.
24. Specht Aff. at para. 12.
25. Specht Aff. at para. 12.
26. Specht Opp. Aff. at para. 6.