

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

GEMILAS CHASUDIM KEREN ELUZER, INC.,

Petitioner,

DECISION & ORDER
Index Nos. 5408-02
4126-03

- against -

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

Respondents.

-----X
DICKERSON, J.

THE FREE LOAN SOCIETY

The Petitioner, Gemilas Chasudim Keren Eluzer [" Gemilas "]
claims that it is entitled to a real property tax exemption pursuant to
Real Property Tax Law [" R.P.T.L. "] § 420(a)(1)(a) for the years 2002
and 2003 for its property which is located at 564 West Central Avenue,

FILED AND
ENTERED
ON
December 10, 2004
ROCKLAND
COUNTY CLERK

Monsey, New York within the Town of Ramapo. Gemilas was organized as a religious corporation, the Certificate of Incorporation of which provides " The principal objects and purposes for which the corporation is formed are as follows: To conduct and maintain a house of worship in accordance with the traditions of the Hebrew faith, and to conduct all communal affairs necessary for a viable community...(including) charitable (purposes)"¹.

At the time of its incorporation, Gemilas operated both as an orthodox synagogue and as a free loan society [" Free Loan Society "] with its sole office in Brooklyn, New York. The orthodox synagogue is no longer in existence, but Gemilas continues to operate the Free Loan Society including the maintenance and storage of all corporate books and records and the issuance of loan checks² from its main office in Brooklyn. Gemilas is run by its President, Elias Gluck, the father of Sandor Gluck, Gemilas' Rockland County Executive Director, who resides, along with his wife and family and in-laws, the Glaubers, in the subject property.

A Tradition Hundreds Of Years Old

The concept of a Free Loan Society is a tradition in the orthodox Jewish community³ going back " hundreds of years " and is " very important in our community. There are a lot of people (who) don't have collateral, they don't (know) where to go when they need money, and it's very embarrassing and it hurts them when they don't know where to turn for a

small amount of money...my father and grandfather told me, there was always such an organization which was busy lending loans for needy people for short periods of time "4. Free Loan Societies exist in various orthodox Jewish communities⁵ and even on the Internet⁶. Gemilas is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code⁷.

How The Free Loan Society Works

The definition of a Free Loan Society, according to the Petitioner, is a society commonly organized by orthodox synagogues for the purpose of loaning money to needy applicants who are not able to obtain loans from commercial enterprises⁸. For Gemilas to operate its Free Loan Society, it must have the necessary capital with which to make such loans⁹. It obtains this capital by securing non-interest bearing loans from donors

["(We) need to find people who (want) to do good deeds with their money by lending it to Gemilas "¹⁰]. Then Gemilas offers loans on a word of mouth basis to needy individuals after an investigation into their credit worthiness. The security of 4 to 6 co-makers is also required for individuals to qualify for the loan¹¹.

Loan Qualifications And Repayment Schedules

The loan applicants do not have to provide tax return information on the application, nor must they state the level of their need and income¹².

Mr. Gluck testified that he bases his determination of need on conversations he has with other community members regarding the applicants [" we find out where he goes to pray, which synagogue he goes (to and talk to people that know the applicant) "¹³]. Mr. Gluck also stated that he believes that only a needy person would come to him to ask him for a loan [" And is that based upon your opinion that it was embarrassing for the individual to come to you and ask for money? "]¹⁴. The loans provided by Gemilas are generally for a sum of up to \$3,000 although larger loans are available under appropriate circumstances¹⁵ and they must be repaid over a time period of 6 months to one year¹⁶. The applicants provide Gemilas with post dated checks, and each check is for an equal portion of the loan payment¹⁷.

Financial Difficulties

In early 2001, the subject premises was owned by Mr. Gluck's in-laws, Mr. and Mrs. Glauber. They resided in the subject premises along with Mr. Gluck, his wife and children. In the fall of 2001, Mr. Gluck left his longtime employment and began working at a job for fewer hours and at a lower salary¹⁸. During that same time period, Mr. Glauber's jewelry business began to decline and he mortgaged the subject premises for \$304,000 to save his business. Eventually, as Mr. Glauber began having difficulty making the mortgage payments, he contemplated selling the

subject premises. The Gluck and Glauber families appeared to be experiencing a great deal of financial difficulty¹⁹.

Rockland County Executive Director

Mr. Gluck testified that during that same time period his father Elias Gluck approached him about becoming the Rockland County Executive Director of Gemilas and gradually assuming the duties of President of Gemilas. Orthodox Jews were continuing to move from Brooklyn to Rockland and Orange Counties and Elias Gluck, at 81 years of age, was thinking about retiring²⁰. Sandor Gluck became the Rockland County Executive Director of Gemilas in the Fall of 2001.

Gemilas Buys The Glaubers' House

Rather than accepting the offered salary of \$35,000 per year from Gemilas, Mr. Gluck requested, as an alternative, that Gemilas purchase the subject premises from the Glaubers for no cash payment, except to assume the payments on the outstanding mortgage²¹. As part of the agreement, the Glaubers were required to pay rent to Gemilas in an amount between \$5,000 and \$10,000 a year. The Glaubers were not employed by nor did they have a business relationship with Gemilas.

Gemilas' Rockland County Operations

Mr. Gluck testified that he operated the Rockland Office of Gemilas out of a room on the upper floor of the subject premises. That room contains a desk, chairs, table, a file cabinet, and a phone that is used for Gemilas business and used by the Gluck and Glauber families as well²². This room is also used by Mr. Glauber for non-corporate purposes, e.g., he uses the podium for prayer and studies the Torah, approximately, five to ten hours a week²³. Mr. Gluck testified that he would, at times, use the dining room or a downstairs room to conduct Gemilas business, particularly during instances where the upstairs room was messy or if business activity might disturb the Glaubers²⁴.

Mr. Gluck does not conduct any Gemilas business from Friday night through Saturday. He testified that he usually conducts the Gemilas meetings in the subject premises at varying days and times, working anywhere between the hours of 7:00 PM to 11:00 PM²⁵ [Mr. Gluck works during the day in private industry, approximately, 25 to 35 hours per week].

The Annual Number Of Loans

As a whole, Gemilas makes, approximately, 50 loans a year, with the majority of the loans generated by Elias Gluck in the Brooklyn office²⁶. Mr. Gluck testified that in 2002, the Rockland Office of Gemilas made 5

loans, which were generated from, approximately, 10 to 20 loan applications. In 2003, Mr. Gluck made 10 loans, which were generated from slightly more applications than were received in 2002²⁷. Copies of Gemilas index cards²⁸, which reflect payments made and any outstanding loans, indicate that as of December 31, 2003 there were only 3 outstanding loans made by Mr. Gluck as Rockland County Executive Director of Gemilas.

DISCUSSION

Rules Of Construction

Real Property Tax Law § 420-a(1)(a) provides that " Real property owned by a corporation...organized or conducted exclusively for religious, charitable...purposes...and used exclusively for carrying out thereon... such purposes...shall be exempt from taxation...". To be entitled to such a tax exemption the Petitioner has the burden [see e.g., Matter of Marble Masonic Historical Society v. Tuckahoe, 262 A.D. 2d 487, 488, 691 N.Y.S. 2d 786 (2d Dept. 1999) (" party seeking an exemption...bore the burden of establishing its entitlement to an exemption "); (Matter of Long Island Foundation For Education v. Michael, 97 A.D. 2d 843, 844, 469 N.Y.S. 2d 85 (2d Dept. 1983)] of demonstrating that it is (1) organized exclusively for tax exempt purposes and (2) that the subject property is used exclusively for exempt purposes [see e.g., American-Russian Aid

Association v. City of Glen Cove, 41 Misc. 2d 622, 246 N.Y.S. 2d 123, 126 (Nassau Sup. 1964)(RPTL § 420-a(1)(a) " impose(s) two requirements-first that the property be owned by a non-profit exempt organization and secondly that the property be used exclusively for one or more of those exempt purposes recited in the Certificate of Incorporation...' When the purpose accomplished is that of public usefulness unstained by personal, private or selfish considerations, its charitable character insures its validity ' "), *aff'd* 23 A.D. 2d 966, 260 N.Y.S. 2d 589 (2d Dept. 1965)].

The Petitioner must come forward with convincing evidence, any ambiguity of which will be strictly construed against it [Matter of City of Lackawanna v. State of Equalization & Assessment, 16 N.Y. 2d 222, 230, 264 N.Y.S. 2d 528, 212 N.E. 2d 42 (1965)(" ' Tax exemptions...are limitations of sovereignty and are strictly construed...If ambiguity or uncertainty occurs, all doubt must be resolved against the exemption'")] although the interpretation of exemption statutes " ' should not be so narrow and literal as to defeat [their] settled purpose...that of encouraging, fostering and protecting religious and educational institutions ' " [Matter of Yeshivath Shearith Hapletah v. Assessor of Town of Fallsburg, 79 N.Y. 2d 244, 249, 582 N.Y.S. 2d 54, 590 N.E. 2d 1182 (1992)]. The term " exclusive " as it appears in RPTL § 420-a(1)(a) has been " broadly defined to connote ' principal ' or ' primary ' such that purposes and uses merely ' auxiliary or incidental to the main and exempt

purpose and use will not defeat the exemption ' " [Matter of Yeshivath, supra, at 79 N.Y. 2d 249].

A Free Loan Society Is A Charitable Activity

The Petitioner's Free Loan Society meets a traditional and long standing need amongst members of orthodox Jewish communities for small, interest free loans, guaranteed by community members, repayable in a short period of time and used by the recipients for a variety of purposes²⁹. Respondents' assertion that such uses lack sufficient public purpose³⁰ simply, reflects, a lack of sensitivity to the needs and traditions of orthodox Jewish communities. What is important is the absence of profit [see e.g., Doctors Hospital, Inc. v. Sexton, 267 A.D. 736, 48 N.Y.S. 2d 201, 207 (1944) (" The determination of the Special Term suggests that tax exemption may be granted only upon a quid pro quo basis, that is, that the grant of exemption must have some relation to the amount of free charitable work rendered...We find that since 1932...that no pecuniary profit accrued to any of its officers...that it was conducted upon a nonprofit basis "), *aff'd* 295 N.Y. 553, 64 N.E. 2d 273 (1945)] and the desire to help members of the community who need help.

Equally important is the need for members of orthodox Jewish communities to either give or donate money, interest free, to a Free Loan Society, to be used to make interest free loans ["(We) need to find people who (want) to do good deeds with their money by lending it to

Gemilas "³¹] [see e.g., Schneebalg v. Commissioner of Internal Revenue, 1988 WL 131483 (U.S. Tax. Ct. 1988)(" Petitioner testified that the vast majority of the bank deposits into his bank accounts were loan proceeds from religious ' free loan societies '. He states that these loans were made by members of his Jewish community to assist his failing business...explained that a free loan society is a Jewish community group that makes short-term, interest-free loans to assist the needy members of their community as a noble form of charity ")].

The Provident Loan Society of New York

The only New York case which deals with the charitable aspects of loaning money is Provident Loan Society of New York v. Chambers, 196 Misc. 367, 88 N.Y.S. 2d 459 (N.Y. Sup. 1949), *rev'd* 276 A.D. 757, 92 N.Y.S. 2d 919 (1st Dept. 1949), *aff'd* 301 N.Y. 575, 93 N.E. 2d 455 (1950). The Provident Loan Society was incorporated in 1894 for the purpose of " ' aiding such persons as said society shall deem in need of pecuniary assistance, by loans of money at interest, upon the pledge or mortgage of personal property ' "³². Two years earlier the idea for the Provident Loan Society was discussed in a report of the Charity Organization Society which recommended " the formation of a corporation to ' lend money at reasonable rates upon pledges of personal property with a view to correcting the evils then attached to the pawnbrokerage business and thereby improving the condition of the poor '. The report contemplated

' that the operations of the (Provident Loan Society) will be conducted on the principle of charging as low a rate of interest as may be found compatible with entire safety and the necessary development of the business, in order that the main end in view may always be the greatest practicable benefit to the borrowing class ' "³³. The evil sought to be addressed was the extraordinarily high interest rates charged poor people by pawnbrokers [" 3% per month for the first six months on loans under \$100 secured by a pledge of tangible property "] and loan sharks [" interest rates amounting to from 60% to 1000% on assignment of wages and on chattel mortgages, the majority of such loans being for less than \$50 each "³⁴].

On the issue of whether a charitable organization could charge interest and still be tax exempt the trial court held that " The expressed object and purpose of the Society is not as respondents urge, to lend money at interest, but rather to aid those needing financial assistance. The lending of money at interest is merely the means adopted to achieve the end desired, viz., the rendering of financial aid...What controls is not the receipt of income, but its purpose. Income added to the endowment helps to make it possible for the work to go on. It is only when income may be applied to the profit of the founders that business has beginning and charity an end ".³⁵

The Provident Loan Society during a period of 53.6 years made 20,682,038 loans for a total of \$1,096,721,803.50 with an average loan of \$53. In finding a charitable activity the trial court held that " The

lending of money to those applying for pecuniary assistance upon the security of pledged articles of personalty, at rates less than those charged by other available sources for such loans...constitutes the doing of charity where no private gain can result...(And) is not affected by the fact that the lending is not free or exclusively restricted to the poor "36.

The Appellate Division³⁷ reversed without explanation and the Court of Appeals³⁸ affirmed again without explanation. To the extent that the Appellate Courts were of the view that loaning money at any rate of interest is, simply, beyond the commonly accepted understanding of what a charity does, the Petitioner's Free Loan Society does not loan money at any interest rate nor does it require or accept any collateral. This Court finds that the Petitioner's Free Loan Society is a charitable activity and meets the first test for tax exemption under RPTL § 420-a, i.e., Gemilas is organized exclusively for tax exempt purposes.

Subject Property Is Not Used Primarily For Tax Exempt Purposes

Unfortunately, the Petitioner does not meet the second test for tax exemption because the subject property is not primarily used for a tax exempt charitable purpose. In fact, Petitioner concedes this very issue [" it is conceded that the major use of the premises is as a residence for Mr. And Mrs. Gluck and family including...Mr. And Mrs. Glauber "39]. The facts overwhelmingly demonstrate that the subject premises are almost

exclusively used for purposes other than the business of Petitioner's Free Loan Society. First, at least 50% of the subject premises is rented to the Glaubers [for \$5,000 to \$10,000 a year] who have no connection whatever with Gemilas and the Free Loan Society [see e.g., Marble Masonic Historical Society v. Tuckahoe, 262 A.D. 2d 487, 488, 691 N.Y.S. 2d 786 (2d Dept. 1999) (" Given that Marble...presented no evidence concerning a tenant who occupied up to 40% of the premises...(tax exemption denied) ")]. Second, one room, a study [sometimes the dining room] was used sporadically, during the evenings, but not on Friday or Saturday, on varying days and during varying times [7:00PM to 11:00PM] by Mr. Gluck who was employed in private industry 25 to 35 hours per week [see e.g., Yehudi v. Town of Ramapo, 109 A.D. 2d 744, 745, 486 N.Y.S. 2d 63 (2d Dept. 1985) (" Petitioner employs a maintenance person who devotes approximately two or slightly more days to his employment with petitioner. In exchange for his maintenance services, the employee is given the property in question, rent-free, for use as a residence for him and his family. In addition, the part-time employee is self-employed as a house painter...The primary use of the property furnished as a convenience for the employee is residential...and such use is not necessary or incidental to carrying out the purposes for which petitioner was organized ")]. Third, the study was also used by Mr. Glauber for prayer and reading the Torah and the phone was used by family members and for Gemilas business. Fourth, the actual productivity of Mr. Gluck was small, indeed, with 5 loans out of 10 to 20 applications in 2002 and 10 loans out of slightly

more applications in 2003 [index cards⁴⁰ indicate, however, that only 3 loans were outstanding as of December 31, 2003]. Fifth, Gemilas offered Mr. Gluck a salary of \$35,000 to be its Rockland County Executive Director and not free residence in the subject premises in lieu of salary. It was Mr. Gluck who suggested free residence as an alternative form of compensation as part of a plan to help his in-laws, the Glaubers, save their home.

Under these circumstances it is clear that the subject premises was not being used primarily for the charitable activities of Petitioner's Free Loan Society [see e.g., Holy Trinity Orthodox Church of East Meadow v. O'Shea, 186 Misc. 2d 880, 720 N.Y.S. 2d 904 (Nassau Sup. 2001) (" 379 Green Avenue is used for a variety of primarily religious purposes including choir rehearsals, bible study classes, retreats and religious meetings. The fact that it is used for residential purposes by the choir director, who provides liturgical music at all weekend services and sacramental ceremonies, and occasionally by visiting clergy, is plainly incidental to the religious purpose of the building "); Chung Te Buddhist Association of New York, Inc. v. Kusterbeck, 2003 WL 22798826 (N.Y. Sup. 2003) (14 rooms used as overnight residences for visiting priests; "...it is clear that providing a place for visiting religious scholars and priests to stay in close proximity to the site at which religious worship and instruction is taking place constitutes an incidental use that does not disqualify the premises from the benefit of the exemption "); St. Luke's Hospital v. Boyland, 15 AD. 2d 776, 777, 224 N.Y.S. 2d 695 (1st

Dept. 1962)(" Property used for residential purposes is entitled to exemption when the use is necessary to carry out the corporate purpose...or the residential use is actually part of the charitable and benevolent work of the exempt corporation "), *mod'd* 12 N.Y.S. 2d 135, 237 N.Y.S. 2d 308, 187 N.E. 2d 769 (1962); Matter of Yeshivath Shearith Hapletah v. Assessor of Town of Fallsburg, 79 N.Y. 2d 244, 250, 582 N.Y.S. 2d 54, 590 N.E. 2d 1182 (1992)(" subject housing facilities are occupied exclusively by staff, teachers, Rabbis and families, members of which are either students at the yeshivah or parents of students...If the petitioner was unable to provide residential housing accommodations to its faculty, staff, students and their families, its primary purposes of providing rigorous religious and educational instruction at the yeshivah would be seriously undermined "); International Fellowship, Inc. v. Comerford, 2001 WL 1750612 (Chautauqua Sup. 2001)(" The primary use of the property at issue, however, is as a residence for petitioner's officers...Petitioners have made no showing that the corporate purposes are served by providing a residence to its officers. Rather, it appears that the officers decided that it would be more convenient for them if the corporation was operated from their home, instead of from the separate office in Buffalo, where it had functioned for a number of years...")].

Accordingly, the Petitions are denied in all respects.

Dated: White Plains, NY
December 10, 2004

HON. THOMAS A. DICKERSON
Supreme Court Justice

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ENDNOTES

1. Pet. Tr. Ex. 1.

2. Tr. Trans. pp. 120-121.

3. Free loan societies are mentioned in these New York cases; Congregation Bnai Jacob-Tifereth Israel v. Stolitsky, 3 Misc. 3d 54, 151 N.Y.S. 2d 143, 144 (1956)(" The agreement ...provides that the \$10,000 was given to the Congregation to be held as a separate fund to be known as the ' Free Loan Fund ' and to be used only for the purpose of loans to ' worthy applicants ' repayable without any interest "); Matter of Solomon Shapiro, 134 Misc. 363, 366 (N.Y. Cty. Sur. 1929)(" by paragraph 3 he gives general legacies to specific charities...a free loan association in his native town of Zosli..."); Matter of Edith Cohen, 196 Misc. 599, 600 (N.Y. Cty. Sur. 1949)(the Hebrew Free Loan Society appeared as a respondent); In re Wolinsky's Estate, 73 N.Y.S. 2d 757, 758 (N.Y. Sup. 1947)(the Hebrew Free Loan Society appeared as a respondent); In re Nevins' Estate, 196 Misc. 599, 92 N.Y.S. 2d 65, 66 (1949)(the Hebrew Free Loan Society appeared as a respondent); Teichner v. Commissioner of Internal Revenue Service, 453 F. 2d 944, 947 (2d Cir. 1972) (the Hebrew Free Loan Society mentioned in footnote 6).

4. Tr. Trans. pp. 39-40.

5. See e.g., Rashes, Try, Try, Try Again: The Kiryas Joel Village School District And The Separation Of Schul, School And State, 29 U. Tol. L. Rev. 485 (1998)(" FN65...Although the Satmar Hasidim share to some degree in community funds made available by various government agencies-they pay taxes, after all, like everyone else-they prefer self-help to reliance on outsiders. They not only run their own school system out of Satmar funds, but also operate a walk in clinic, a nursing service, and emergency first-aid and ambulance service, a private community bus service, a summer camp system, an employment agency and a free-loan society ").

6. See e.g., The Hebrew Free Loan Association [" HFLA "] located at 131 Steuart Street, Suite 425, San Francisco, California with a web site at www.hflasf.org (last visited December 7, 2004). HFLA began " In 1897, in the vestry of a small synagogue in the South Market Area of San Francisco... Guided by the spirit of Chevra Gemilius Chasodim, translated as *Deeds of Loving Kindness*, this group of Jews aimed to make interest-free loans to fellow Jews in need...HFLA is a 501(c)(3) nonprofit organization funded entirely by private donations and is the only interest-free loan

agency in Northern California...". HLFA makes a variety of loans including emergency, personal, student, home buyer, debt consolidation, life cycle, business, adoption, institutional, special needs. HLFA requires applicants to sign a promissory note with 2 to 4 cosigners. Repayment schedules range from 2 to 5 years.

7. Pet. Tr. Ex. 2.

8. Tr. Trans. pp. 39-40.

9. Tr. Trans. p. 41.

10. Tr. Trans. p. 41.

11. Tr. Trans. pp. 43, 49.

12. Tr. Trans. p. 94. R. Tr. Ex. E, P. Tr. Ex. 3.

13. Tr. Trans. pp. 47-48.

14. Tr. Trans. pp. 47-48, 117.

15. Tr. Trans. pp. 44-45, 115.

16. Tr. Trans. pp. 42, 98.

17. Tr. Trans. pp. 97-98.

18. Tr. Trans. pp. 87-88.

19. Tr. Trans. p. 89.

20. Tr. Trans. p. 51.

21. Tr. Trans. pp. 55-56, 58. P. Tr. Exs. 4, 5.

22. Tr. Trans. pp. 64-65. R. Tr. Exs. B, C & D.

23. Tr. Trans. pp. 86, 112.

24. Tr. Trans. pp. 65-66.

25. Tr. Trans. pp. 89-90.

26. Tr. Trans. p. 60.

27. Tr. Trans. pp. 62, 68-69.
28. R. Tr. Ex. F.
29. Tr. Trans. pp. 32-34. See N. 6, supra.
30. R. Post Trial Memo. p. 11 (" Petitioner has failed to demonstrate what public purpose is served by Petitioner's making interest free loans to individuals regardless of actual need and regardless of the use to which the loan proceeds are to be used ").
31. Tr. Trans. p. 41.
32. Provident Loan Society of New York v. Chambers 196 Misc. 367, 88 N.Y.S. 2d 459, 463 (N.Y. Sup. 1949).
33. Id. at 88 N.Y.S. 2d 462.
34. Id. at 88 N.Y.S. 2d 463.
35. Id. at 88 N.Y.S. 2d 466-468.
36. Id. at 88 N.Y.S. 2d 469.
37. Provident Loan Society of New York v. Chambers, 276 A.D. 757, 758, 92 N.Y.S. 2d 919 (1st Dept. 1949)(" we are of the opinion that relator was not organized and does not use its property exclusively for charitable purposes ").
38. Provident Loan Society of New York v. Chambers, 301 N.Y. 575, 93 N.E. 2d 455 (1950).
39. P. Tr. Memo. at p. 2.
40. R. Tr. Ex. F.