

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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ROCKLAND HEBREW EDUCATIONAL CENTER, INC.

**DECISION/ORDER/
JUDGMENT**

Plaintiff,

Index No:
4789/07

-against -

THE VILLAGE OF SPRING VALLEY, THE
ASSESSOR OF THE VILLAGE OF SPRING
VALLEY, AND THE BOARD OF ASSESSMENT
REVIEW FOR THE VILLAGE OF SPRING
VALLEY,

Defendants.

-----X
LaCAVA, J.

The trial of this Real Property Tax Law (RPTL) Article 4 and Civil Practice Law and Rules (CPLR) Article 78 proceeding, challenging the revocation by the Village of Spring Valley (Village) of the real property tax exemption enjoyed by petitioner Rockland Hebrew Educational Center, Inc (Center), for the Tax Assessment Years commencing in 2007, through and including the date of trial (2009), for the premises designated on the Town tax map as Section 50.45, Block 1, Lot 3, and known as and located at 485 Viola Road, Spring Valley, Town of Ramapo, New York (the parcel or subject property), took place before the Court on May 7 and May 8, 2009. In addition the following post-trial papers numbered 1 to 2 were considered in connection with the trial of this matter:

PAPERS

NUMBERED

PLAINTIFF'S POST TRIAL MEMORANDUM OF LAW
DEFENDANT'S POST TRIAL MEMORANDUM OF LAW

1
2

BACKGROUND

The subject property is a residential parcel purchased by petitioner in March 1983. From the time it purchased the parcel, petitioner's principal, Rabbi Naftali Weinstein, both resided in the premises with his family, and operated petitioner, a religious

and educational not-for-profit corporation, on the subject property. The corporate functions conducted on the premises include numerous acts in furtherance of the petitioner's non-profit religious and educational purposes, including the conduct of religious services on occasions; outreach education with un-affiliated Jewish children and families; preparation for the leading of religious services, which services are then conducted in other premises; the authoring of religious books and pamphlets; production and delivery of Jewish holiday goods; counseling people on religious matters; and engaging in fund raising activities related to and in furtherance of the above religious activities. Rabbi Weinstein also conducted religious services at the subject premises for approximately 25 persons on Friday evenings, Saturday mornings and evenings, and other holy days. Rabbi Weinstein received no salary for his service as Executive Director of the petitioner, but he was compensated by being allowed to reside in and use the subject premises.

In or about early 2007, and prior to the taxable status date for that year, petitioner duly filed an application with respondent to continue the total exemption from property taxes on the subject premises pursuant to RPTL 420-a. The only use of the premises continued to be the religious corporate uses set forth above. Shortly thereafter, the Village revoked the previously-held religious exemption for the parcel for the 2007 tax year. Petitioner then commenced the instant action, seeking a declaratory judgment and determination that the revocation was not proper.

FINDINGS OF FACT

Based upon a consideration of the credible evidence adduced at the trial of this matter, the arguments of respective counsel, and the post-trial submissions, the Court makes the following findings of fact:

Rockland Hebrew Educational Center, Inc, a religious and educational corporation incorporated under §402 of the Not-For-Profit Corporation Law, operated a religious and educational corporation on the subject property between 1983, when it purchased the property, and the date of the trial. During that time period, from 1984 to and including the date of trial, the parcel enjoyed a tax exemption from the Town pursuant to RPTL §420-a pursuant to Decision, Judgment and Order of this Court, dated June 1, 1984 (Marbach, J.). Petitioner is likewise a religious corporation incorporated in August 1982 under §402 of the Not-For-Profit Corporation Law. Its purpose or purposes "...are to encourage and develop belief and Jewish living in traditional Judaism and further

the work of the Lubavitcher movement....".

The Village presented testimony from the Village Building Inspector, Joseph Jacaruso, who testified to past occupancy status of the subject property, that he had never been inside of the property, and that no zoning code violations had been issued against the property. Respondent also called Lawrence Holland, the Village Tax Assessor. Holland testified that an application had been filed with the Village prior to April 1, 2007 for a religious exemption for the premises for the tax year 2007, which application was denied by the Village. Similarly, prior to April 1, 2008, petitioner applied for a religious exemption for the property for the tax year 2008; in furtherance of ruling on that tax exemption application for the premises, in late 2007 Holland visited the premises and spoke to petitioner's principal, Rabbi Naftali Weinstein. During that visit, he observed that the property was a residence being used by Weinstein and his family, and saw books in Hebrew in many parts of the house. Holland was also informed by the Rabbi, regarding a large library in the downstairs portion of the property, that this was where he conducted outreach to the community by preparing pamphlets, writing scholarly works, and other similar activities for the Center. Holland in fact observed many pamphlets in Hebrew throughout the downstairs area. Holland stated that he found no evidence of the property being used for religious purposes, concluded that the subject property was not being so operated, and thereby denied the exemption. Notably, respondent failed to introduce any of the exemption applications which were denied, nor did they introduce any evidence as to the grounds for the denial in 2007.

The Village also called Rabbi Weinstein. Weinstein testified to his conducting considerable religious activity on the property, including the outreach noted above; the conduct of religious services; the writing of religious books and pamphlets; the distribution of substantial amounts of goods at religious holiday times, including Passover; the preparation for his part in religious services including Torah readings and sermons; the preparation for mailing of religious materials; engaging in fund-raising activities related to the Center; and the conduct of a telephone service for religious education and counseling by telephone as well. Weinstein was also asked numerous questions about his business and personal finances, his activities outside of the subject premises, and his non-Center activities¹.

¹ As set forth in greater detail below, the Village served a *Subpoena Duces Tecum* upon petitioner personally, not counsel, on or about May 1, 2009, for production of, *inter alia*, business and tax records at the trial, which records were the subject of some of the questioning of Weinstein.

CONCLUSIONS OF LAW

The Court makes the following Conclusions of Law:

The Subpoena Duces Tecum

As set forth previously, the Village served a *Subpoena Duces Tecum* upon petitioner personally, not upon counsel, on or about May 1, 2009, for production of, *inter alia*, business and tax records at the trial on the following Thursday, May 7. The Village, upon production of only a small amount of the materials sought by petitioner, stated that the Court should take such non-production into consideration, as if to request an adverse inference against petitioner for such non-compliance. Counsel for petitioner, however, rightly complains that such service was improper and any failure to comply irrelevant. Indeed, CPLR §2303(a) provides that:

A copy of any subpoena duces tecum served in a pending civil judicial proceeding shall also be served, in the manner set forth in rule twenty-one hundred three of this chapter, on each party who has appeared in the civil judicial proceeding so that it is received by such parties promptly after service on the witness and before the production of books, papers or other things.

CPLR §2103(b) further provides:

Upon an attorney. Except where otherwise prescribed by law or order of court, papers to be served upon a party in a pending action shall be served upon the party's attorney.

Counsel for petitioner therefore correctly argues that the *Subpoena* served by the Village upon petitioner personally was served improperly. To be sure, after a one-day adjournment of the proceedings, petitioner was able to secure and produce a significant amount of business records (particularly banking statements) for respondent. Thus, both due to the impropriety of the service of the *subpoena*, and petitioner's earnest efforts nevertheless to comply with it, the Court will not take an adverse inference against petitioner for any alleged failure to produce all of the materials sought by the Village.

The Burden of Proof

Religious corporations incorporated under Section 402 of the Not-For-Profit Corporation Law are organizations eligible for tax exemption. (Cf. *Waltz v. Tax Commission of City of New York*, 24 N.Y.2d 30 [1969]). It appears undisputed that petitioner center is such a corporation, and that, in addition, it is similarly recognized by the Internal Revenue Service as a not-for-profit religious corporations by its IRC 501(c)3 designation.

This Court has frequently held that, while the burden of proof lies with a petitioner who seeks an initial property tax exemption (See *People ex rel. Watchtower Bible & Tract Soc. v. Haring*, 8 N.Y.2d 350 [1960]), where a petitioner is the subject of a revocation of an existing tax exemption, the burden of proof is on the municipality to justify the revocation. (See *New York Botanical Garden v. Assessors of Washington*, 55 N.Y.2d 328 [1982]; *Watchtower Bible & Tract Soc. v. Lewisohn*, 35 N.Y.2d 92 [1974]).

Accordingly, the burden of proof is on the Village to establish that the revocation of the exemption previously granted to petitioner was proper.

The Denial of the 2007 and 2008 Applications

As noted above, upon the denial of an application for continuation of an exemption by a charitable business, the burden of proof is on the municipality denying renewal of the exemption, to explain the grounds for the denial of the application for the renewed exemption. Here, however, respondent Village not only failed to introduce into evidence either of the renewal applications whose denial were challenged herein, the applications for the 2007 and 2008 tax years, but they also failed to introduce any testimony whatsoever as to the grounds for the denial of the renewal in 2007. Furthermore, the sole evidence introduced with respect to the denial of the renewal application in 2008 is that, upon a single inspection by the assessor of the premises, there was "no religious activity observed". He fails to note the date he visited; the day of the week; the time of the visit; or the length of time visiting. And neither did respondent place in evidence the actual written denials. In all respects, this fails to meet respondent's burden to set forth the grounds for the denial of the application to renew the exemption.

The Religious Exemption

In any event, absent those failings, RPTL §420-a(1) provides that:

1. (a) 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.

Therefore, the burden of proof is upon the Village here to demonstrate, pursuant to RPTL §420-a(1), that:

1. The real property at issue here is not 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; or

2. The owning corporation did not use the real property exclusively for carrying out thereupon one or more of such purposes.

Ownership by the Religious Organization

The Court finds that, since the Village has in essence conceded the ownership of the subject property by the Center, and their status as a religious not-for-profit corporation, the Village has failed to establish by a fair preponderance of the evidence that the subject premises was not owned by the religious corporation, namely the Center, during the tax assessment years in question.

**Exemption Under RPTL §420-a(1)--Religious Use
by the Owning Corporation**

Besides ownership of the property by a religious organization, in order to demonstrate non-eligibility for the religious exemption under RPTL §420-a(1), respondent must show that the owning

corporation did not exclusively use the premises for carrying out thereupon its religious purpose. "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'". (*Matter of Adult Home at Erie Sta., Inc. v. Assessor, City of Middletown*, 10 N.Y.3d 205, 208 [2008].)

Here, it is alleged by the Center, a religious non-profit corporation, that the Center operated a religious corporation solely on the property as an extension of its avowed religious purposes, and thus is entitled to an exemption for the property. The Village, conversely, argues that the Center cannot avail itself of the exemption, since the operation of the Center on the property is not religious in nature, and thus not in furtherance of petitioner's religious purposes.

As set forth in greater detail above, the only evidence presented by the Village with respect to the activities which were conducted on the property was that they were religious in nature. Weinstein testified that he conducted, *inter alia*, the outreach for which the Center was founded, including a telephone service for religious education and telephone counseling; the writing of religious books and pamphlets, and the preparation for mailing of these materials; the distribution of goods at religious holiday times; his preparation for his role in religious services including Torah readings and sermons; and engaging in fund-raising activities for the Center, all on the subject premises. And the Village, further, failed to demonstrate that these activities were not the primary use to which the premises were put by Weinstein, since they largely failed to inquire of him when these activities took place, whether by date, time, or part of the year, except for his characterization of the amount of time as "quite a few hours a week." Nor was there testimony that the aforementioned activities were limited to particular rooms or areas of the house. On the other hand, the only evidence presented by the Village to the contrary was that Holland, on a single visit at an un-named time, and on an unnamed date, saw no religious activity on the premises, although he concededly saw a considerable amount of books and pamphlets, and although Weinstein stated to him that these involved the religious work of the Center.

However, despite the absence of evidence sufficient to disprove the conduct of religious activity on the premises, or that it was not the primary use of the subject, there was one issue that respondent did actively contest: for the first time at trial, the Village argued that, among the religious activities occurring on the premises, Weinstein also conducted religious services, which respondent argues was in violation of the zoning code. Weinstein,

in fact, conceded that he did so. Respondent has introduced as further evidence relative to the zoning code violation, a prior denial by the Village of a request by petitioner for permission to conduct such services on the premises, urging the Court to find that that constitutes evidence of knowing violations of the code, which, they assert, precludes a grant of (in fact is a complete defense to an application for) a tax exemption for a premises (see *Congregation Or Yosef v. Town of Ramapo*, 48 A.D.3d 73 [2nd Dept 2008]).

To be sure, petitioner in fact immediately objected to this late asserted defense by the Village, and the Court is fully cognizant that, liberal answering requirements of the RPTL notwithstanding, assertion of such a defense by a municipality, for the first time at trial, may be manifestly unfair to a petitioner who has relied on a respondent's prior statements as to the grounds for the denial of the application. Nevertheless, this Court previously held at trial in *Congregation Or Yosef*, (13 Misc 3d 1214A [Supreme Court, Rockland County, 2006]), under nearly identical circumstances (namely, that petitioner previously applied for a variance; that such variance was denied; and that religious services were thereafter conducted on the premises in knowing violation of the zoning code) that an application to assert such a defense by a municipality was proper and must be granted. That holding has since been affirmed by the Second Department in *Congregation Or Yosef v. Town of Ramapo*, *supra*. And, as in *Or Yosef*, there has been no court or administrative finding of a zoning violation (although in *Or Yosef* the Town did issue a citation, whereas here no such citation was issued). Thus, and despite the significant evidence of primary religious activity taking place on the premises, the Village here did meet its burden of disproving petitioner's eligibility for an exemption pursuant to RPTL §420-a (1) in one respect, by demonstrating, through Weinstein's own testimony, that he was holding services on the premises in knowing violation of the Village zoning code, which under *Or Yosef* is a complete bar to eligibility for a 420-a (1) exemption.

The "Parsonage Exemption" under RPTL 462

The Center, based on the undisputed nature of the subject property as a residence, has also sought the so-called "parsonage" exemption provided for in RPTL §462².

² At trial, petitioner asserted for the first time that exemption under RPTL § 462 was also appropriate. Notably, petitioner failed to plead this statute in his petition; rather, the petition merely asserted ownership of the premises by a religious corporation, and use for a religious purpose, which to

RPTL §462 provides:

§462. Religious corporations; property used for residential purposes

In addition to the exemption provided in section four hundred twenty-a of this article, property owned by a religious corporation while actually used by the officiating clergymen thereof for residential purposes shall be exempt from taxation.... The application shall be filed with the assessor of the appropriate county, city, town or village on or before the taxable status date of such county, city, town or village.

Of course, as set forth in greater detail above, respondent failed to introduce the applications for 2007 and 2008 (indeed, they assert that they have become missing), and therefore there is no affirmative evidence of the timely application for such exemption, much less that petitioner ever actually applied for this exemption at all (although the Village's assertion in denying the application, that proof submitted by petitioner in support of the application, as to his status as "officiating clergy", was "inadequate", infers that such an application was made, at least on one occasion). Nevertheless, respondent has failed to contest these issues, and, it being their burden as set forth above, the court takes such failure to contest as a concession on these points.

The essential elements of this exemption, then, are, in light of the burden (as set forth above), on the Village to disprove that

1. the property is owned by a religious corporation;
2. that it is actually used by the officiating clergyman of

the Court is an assertion of an illegal assessment pursuant to RPTL § 420-a (1). The Court has grave doubts whether such a pleading (which was, indeed, also inaccurate to the extent it alleged that such corporation was a religious corporation, since it is not a business incorporated under the Religious Corporation Law) adequately informed respondent of the nature of petitioner's claim, and that therefore such an application is proper (*see Congregation Or Yosef v. Town of Ramapo, supra*), but any such reservations were resolved by respondent conceding to an amendment at trial of the petition to assert that the corporation was instead a Religious Corporation under the Not-for-Profit Corporation Law, and respondent conceding that the claim under RPTL § 462 for the parsonage exemption, while not previously pled, was proper.

that religious corporation for residential purposes; and

3. that the application was filed prior to the taxable status date.

Ownership by the Religious Corporation

As set forth above, the Village has essentially conceded, by failing to contest, Center's ownership claim, and their status as a religious not-for-profit corporation³. The Village thus has failed to meet its burden that the subject premises was not owned by the religious corporation, namely the Center, during the tax assessment years in question.

Residence at the Premises by the Officiating Clergyman

The Court also finds that the Village has failed to prove by a preponderance of the evidence that Rabbi Weinstein is not the officiating clergyman, and that he did not properly reside at the premises prior to the taxable status date. Respondents in fact have not seriously challenged Weinstein's testimony that he is a clergyman who officiates for the "Shebele" (Congregation Nusach Ari), which is a part of a religious corporation, in this case the Center. This is further evidenced by the joint checking account held in the name of the Center and the Congregation. Nor do they contest that he resides in the premises (indeed, they appear not to contest that he has resided in the premises for many years). Simply put, the Village has neither contradicted the testimony of Weinstein on these issues, nor presented any affirmative evidence to contest them.

Respondent did, however, question Weinstein extensively on his outside activities, and the Village's Post-Trial Memo argues that Weinstein was not the officiating clergyman because he was not a "full-time" official. Respondent cites no cases, relying instead on the Rabbi's testimony to conclude that his extensive outside activities preclude him being an officiating clergyman. Indeed, Weinstein testified to many other activities which he participated in, besides those religious activities conducted for the Center and Congregation Nusach Ari. This Court has previously considered the issue of part time/full time clergymen, and whether they could in the former case be officiating clergymen within the meaning of RPTL §462 in *Congregation Knesset Israel v. Town of Ramapo*, 8 Misc.3d

³ While respondent's Post-trial Memo suggests an objection to petitioner's claimed status as a religious corporation under the Not-for-Profit Corporation Law, this is in the face of the above-mentioned concession on the issue.

1021 (A) (Supreme Court, Rockland County, 2005), noting

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 v. Nassau County*, 3 N.Y.3d 455, 458 [2004]) ("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".

In the case at bar, respondent has failed to prove that Weinstein is not a full-time, ordained member of the clergy (indeed, the evidence is clearly that he is); or that he does not preside over the Congregation's services and ceremonies (again, the evidence is that he does). Further, the Court in *Word of Life*, as quoted above, stressed the clergyman's relationship with his congregation, whereas here respondent failed to prove that Weinstein was not the Congregation's primary clergyman. Rather, based on the absence of any evidence of any other clergymen, it appears that he is their primary, if not only, clergyman. Notably, *Word of Life*, and other similar cases, address also the clergy member who, like Weinstein, may be a full-time clergyman because he conducts clerical work on a full-time basis, but who does not officiate at ecclesiastical ceremonies and services full time, simply because those services and ceremonies occur periodically, and on a less than a full-time basis. In short, although asserting that denial of the application herein was proper because Weinstein is not the officiating clergyman of Congregation Nusach Ari, they have failed to meet their burden of proof by demonstrating that he is not such a clergyman.

Consequently, the Village has failed to meet its burden of proving that Weinstein did not reside at the premises, or that he did not preside as clergyman for the Center. As they have failed also to meet their burden on the other issues associated with the parsonage exemption, including the ownership of the premises, and the proper and timely filing of an application for an exemption, they have failed to meet their burden of demonstrating that their denial of the application for an exemption pursuant to RPTL §462 was proper.

CONCLUSION

The Court finds that, as a matter of law, respondent did meet

its burden of showing by a fair preponderance of the evidence that the denial of the Center's renewal application for an exemption under RPTL 420-a(1) was proper, but did not meet its burden of demonstrating that the denial of the Center's renewal application for an exemption pursuant to RPTL §462 was proper.

Upon the foregoing papers, and the trial held before this Court, it is hereby

ORDERED, that the petition by petitioner for an Order granting its petition seeking the renewal of a religious exemption pursuant to RPTL §420-a(1), for the tax years commencing in 2007 and up until the date of trial (May 8, 2009), is denied; and it is further

ORDERED, that the petition by petitioner for an Order granting its petition seeking the renewal of a religious exemption pursuant to RPTL §462, for the tax years commencing in 2007 and up until the date of trial (May 8, 2009), is granted; and it is further

ORDERED, that respondent Village shall grant the tax exemption sought by petitioner pursuant to RPTL §462, for the parcel designated on the Town of Ramapo tax map as Section 50.45, Block 1, Lot 3, and known as and located at 485 Viola Road, Spring Valley, Town of Ramapo, New York, for the tax years at issue in the instant petition, namely 2007 through and including 2009; and it is further

ORDERED, that the assessment rolls are to be corrected accordingly, and overpayments of taxes, if any, are to be refunded with interest.

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

Dated: White Plains, New York
September 8, 2010

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

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