

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

**FILED AND
ENTERED ON
DATE
February 3, 2005
WESTCHESTER
COUNTY CLERK**

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MIRIAM OSBORN MEMORIAL HOME ASSOCIATION,

Petitioner,

Index No: 17175/97
18077/98
16567/99
16113/00
16626/01
18115/02
16987/03

-against-

THE ASSESSOR OF THE CITY OF RYE, THE
BOARD OF ASSESSMENT REVIEW OF THE CITY
OF RYE, AND THE CITY OF RYE,

Respondents,

DECISION & ORDER

-and-

THE RYE CITY SCHOOL DISTRICT,

Intervenor-Respondent.

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DICKERSON, J.

TRIAL ORDER OF PROOF

In 1908 the Miriam Osborn Memorial Home Association [" the
Osborn "] started operating a home for " the aged on its campus
providing both residential and nursing care services to its residents "¹.

The genesis of the Osborn was the Last Will and Testament of Miriam A. Osborn executed on June 2, 1888 which provided for the care and " Relief of Respectable, Aged, Indigent Females in the City of New York ". In furtherance thereof " Mrs. Osborn bequeathed property and funds for the creation of a physical home on the property that she conveyed " ². For some 88 years the Osborn " provided full nursing care for those elderly residents in need thereof and assisted living facilities for those elderly not yet in need of full nursing care " ³ and was exempt from real property taxation. In 1996 the Assessor of the City of Rye [" the Assessor "] " revoked the Osborn's exemption, in its entirety, and placed all of the Osborn's property on the City of Rye tax roll.

[Subsequently] the City of Rye Board of Assessment Review modified the Assessor's action and recognized as tax exempt only a portion of The Osborn's property-\$581,700 of the assessed value, or 20%...In 2002, however, the Assessor increased the overall assessed value of the property, thereby reducing the percentage of the partial exemption from 20.8% to approximately 18% " ⁴.

The Trial

On February 14, 2005 the trial of this matter will commence. At issue will be whether and to what extent the Osborn's real property should be exempt from taxation pursuant to R.P.T.L. § 420-a[1](a) and, should there be a finding that some or all of the subject property is

not tax exempt, then what is the market value of the real property for tax assessment purposes.

The Burden Of Proof On The Tax Exemption Issue

It is clear that the Respondents have the burden of proof on the tax exemption issue [see Matter of Miriam Osborn Memorial Home Association v. Assessor of the City of Rye, 275 A.D. 2d 714, 713 N.Y.S. 2d 186 (2D Dept. 2000) (" Where, as here, a municipality seeks to withdraw an existing exemption under RPTL 420-a(1), the burden is with the municipality to prove that the petitioner is no longer entitled to the exemption "); Matter of Botanical Garden v. Assessor of the Town of Washington, 55 N.Y. 2d 328, 434 N.E. 2d 703, 449 N.Y.S. 2d 467 (1982) (" Generally, the burden of proof lies with the taxpayer who is seeking to have real property declared tax exempt...However, under the circumstances presented here, in which the municipality, pursuant to its power under section 420 (subd 1, para (b)), is seeking to withdraw a previously granted tax exemption, the municipality bears the burden of proving that the real property is subject to taxation ")].

Who Should Go First?

This Court, pursuant to C.P.L.R. § 4011, " may determine the sequence in which the issues shall be tried and otherwise regulate the

conduct of the trial in order to achieve a speedy and unprejudiced disposition of the matter at issue " .

After careful consideration of the issues to be tried herein, and upon consent of the parties, it would be efficient and fair to require the Respondents to go first and present their case on why the Osborn's real property is " no longer entitled to [a tax] exemption ", in whole or in part [see Roberts v. St. Francis Hospital, 96 A.D. 2d 272, 274, 470 N.Y.S. 2d 716 (3d Dept. 1983) (" Ordinarily, the party bearing the burden of proof is obligated to complete his prima facie case before the opposing party must present his proof ")]. At the end of Respondent's case on the tax exemption issue, the Petitioner may, if it so chooses, make a motion to dismiss on the grounds that Respondents have not carried their burden and made out a prima facie case [see Roberts, supra, at 96 A.D. 2d 274 (" Had defendant been permitted to hear all of plaintiff's case against her, she might have moved upon the close thereof for a nonsuit on the ground that plaintiff had not proven a prima facie case (CPLR 3212). She might also have been so confident of the weaknesses of plaintiff's case that she would have chosen to proceed to the jury without presenting any proof on her behalf. Defendant should have had the opportunity to exercise these options after hearing all of plaintiff's case ")]. Were such a motion to be granted and the Osborn's 100% tax exempt status restored then there would be no further need for evidence on the issue of market value for assessment purposes. However, if such a motion is denied, then the trial will continue with the

Petitioner presenting its case on the tax exemption issue after which the Petitioner shall present its case⁵ on the valuation issue followed by the Respondents' case.

The foregoing constitutes the decision and order of this court.

Dated: White Plains, N.Y.
February 3, 2005

HON. THOMAS A. DICKERSON
JUSTICE SUPREME COURT

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ENDNOTES

1. Petition's Pre-Trial Memorandum dated January 14, 2005 [" P. Memo. "] at p. 1.

2. Intervenor-Respondent The Rye City School District's Pre-Trial Memorandum of Law dated January 14, 2005 [" R. Memo. "] at p. 1.

3. Miriam Osborn Memorial Home Association v. Assessor of the City of Rye, Index No: 17175/97 slip op (J. Palella) July 23, 1999, aff'd 275 A.D. 2d 714, 713 N.Y.S. 2d 186 (2d Dept. 2000).

4. P. Memo at p. 1.

5. The Petitioner must rebut the presumption of validity of the Respondent's assessment. A party seeking to overturn an assessment must first overcome this presumption of validity through the submission of substantial evidence [See e.g., See Matter of FMC Corp. [Peroxygen Chems. Div.] v. Unmack, 92 NY2d 179, 187, 677 N.Y.S. 2d 269 (1998)(" ` In the context of tax assessment cases, the ` substantial evidence ` standard merely requires that petitioner demonstrate the existence of a valid and credible dispute regarding valuation. The ultimate strength, credibility and persuasiveness are not germane during this threshold inquiry...a court should simply determine whether the documentary and testimonial evidence proffered by petitioner is based on ` sound theory and objective data ` "); Matter of Niagara Mohawk Power Corp. v Assessor of the Town of Geddes, 92 NY2d 192, 196, 677, NYS 2d 275 (1998)("In the context of a proceeding to challenge a tax assessment, substantial evidence proof requires a detailed, competent appraisal based on standard, accepted appraisal techniques and prepared by a qualified appraiser ")].