

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

FILED AND
ENTERED
ON
December 14, 2004
ROCKLAND
COUNTY CLERK

-----X
In the Matter of the Application for a Review
Under Article 7 of the Real Property Tax Law
of Tax Assessments

CONGREGATION SHERITH YISROEL VILEDNIK,

Petitioner,

DECISION & ORDER
Index Nos. 4703/04

- against -

THE TOWN OF RAMAPO, THE ASSESSOR OF THE
TOWN OF RAMAPO, ROCKLAND COUNTY, and THE
BOARD OF ASSESSMENT REVIEW OF THE TOWN OF
RAMAPO,

Respondents.

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DICKERSON, J.

DEPOSING THE TAX ASSESSOR

The Petitioner, Congregation Sherith Yisroel Vilednik [" the
Congregation "], a religious corporation, is the owner of real property
located at 4 Roman Boulevard, Monsey, New York [" the subject
property "] which has been used to provide accommodations for Rabbi and
Dean Herman Oberlander [" Rabbi Oberlander "] and two faculty members

of the Petitioner's school. From 1995 to 2003 the Congregation was exempt from the payment of real property taxes in the Town of Ramapo. The Congregation's tax exemption for 2004 was denied by the Respondents, the Assessor of the Town of Ramapo¹ and the Board of Assessment Review of the Town of Ramapo². In July of 2004 the Congregation filed a Summons and Complaint³ seeking a declaration that the subject property " was totally exempt from real property taxation...pursuant to Section 420-a and 420-b of the (RPTL) as it was property owned by a religious corporation and used from non profit, exempt purposes...". In response the Respondents served a Verified Answer, a Demand for Bill of Particulars, a Demand for Discovery and Inspection and a Notice to Take Oral Deposition⁴. Thereafter the Congregation served upon Respondents Interrogatories⁵ and a Cross Notice of Deposition⁶.

The Cross Notice Of Deposition

The Congregation's Cross Notice of Deposition seeks to take the deposition of " The Assessor of the Town of Ramapo, any employee of the Assessor who examined the property during 2003 and 2004 and the Chairman of the Board of Assessor Review "⁷. The Respondents are unwilling to produce the Assessor for a deposition but have agreed to produce the " Office of the Assessor employee who actually conducted any inspections "⁸ of the subject property.

Petitioner's Motion To Compel

In the instant motion the Congregation seeks to compel Respondents to answer its Interrogatories and produce the Assessor of the Town of Ramapo and any employee of the Assessor who inspected the subject property. For the purposes of the instant motion the Congregation waives its demand for a deposition of the " Chairman of the Board of Assessment Review " ⁹. With respect to the Congregation's Interrogatories the Respondents assert that they " are working on the responses...and that same would be served prior to defendant requiring Plaintiff to produce witnesses at deposition " ¹⁰. The Respondents are instructed to produce their answers to the Congregation's Interrogatories within thirty days of receipt of this Decision and Order.

The Deposition Of The Tax Assessor

The Congregation seeks to take the deposition of the Assessor of the Town of Ramapo because it does not know " whether the application for exemption was denied because it is claimed " that the Congregation does not qualify as an exempt organization or the property has not been used in furtherance of exempt purposes or the renewal application was not properly completed or an inability to gain access to the subject premises for an inspection ¹¹.

The Burden Of Proof

Although the Congregation is correct that the respondents have the burden of proving that the Congregation is no longer entitled to its tax exemption [see e.g., Matter of New York Botanical Garden v. Town of Washington, 55 N.Y. 2d 328, 334, 449 N.Y.S. 2d 467, 434 N.E. 2d 703 (1982) (" However, under the circumstances presented here, in which the municipality...is seeking to withdraw a previously granted tax exemption, the municipality bears the burden of proving that the real property is subject to taxation ") ; Matter of Miriam Osborn Memorial Home v. City of Rye, 275 A.D. 2d 714, 716, 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 ")], it does not follow that it needs to or should be permitted to take the deposition of the Assessor of the Town of Ramapo.

Judicial In Character

First, the duties of tax assessors are judicial in character and their thought processes are not the proper subject of an examination before trial [see e.g., Blooming Grove Properties, Inc. v. Town of Blooming Grove, 34 A.D. 2d 953, 312 N.Y.S. 2d 86 (2d Dept. 1970) ("...the duty of assessors is judicial in character and that when acting

in this capacity they should not be examined before trial as to their mental processes and formulae in arriving at their determinations...The reason for this is that whether or not a specific assessment is assailable is tested not by the formula used by the assessors but the fairness and reasonableness of their conclusion "); Limerick v. City of Troy, 29 Misc. 2d 185, 220 N.Y.S. 2d 865 (Rensselaer Sup. 1961)("...assessors act in a quasi-judicial capacity and should not be examined before trial as to the mental processes and formulae used in arriving at their determinations "); Bell Aircraft Corp. v. City of Buffalo, 204 Misc. 951, 126 N.Y.S. 2d 64, 67 (Eire Sup. 1953)(liberal discovery rules recently enacted do not " include...pre-trial examination of quasi judicial officers as to the mental processes and formula used in arriving at their final determination as to the taxable value of a parcel of real property ").

Statutory Duties Must Be Performed

Second, to allow tax assessors to be deposed could bring the important process of tax assessment to a halt [see e.g., Blooming Grove Properties, Inc. v. Town of Blooming Grove, 34 A.D. 2d 953, 312 N.Y.S. 2d 86 (2d Dept. 1970) (" In addition, we are mindful of the numerous proceedings brought every year to review municipal tax assessments each year; and to subject the assessors to examinations before trial would severely impede the proper performance of their statutory duties ");

Limerick v. City of Troy, 29 Misc. 2d 185, 220 N.Y.S. 2d 865

(Rensselaer Sup. 1961)(" The respondent Commissioner is charged with the duty to ascertain yearly, by diligent inquiry, all of the real property located in the city and the names of the owners thereof; to prepare the assessments roll and to perform other duties mandated by the statute, some of which are governed by fixed time limitations. To subject him to examinations before trial in this context would palpably impede the proper performance of his statutory duties ").

There Is No Mistake

Third, and lastly, there is no issue regarding a " mistake " by the tax assessor [see e.g., Aluminum Co. of America v. Town of Massena, 238 A.D. 2d 858, 656 N.Y.S. 2d 555 (3d Dept. 1997)(" Here, contrary to petitioner's argument, the Town does not maintain that a mistake was made...The discovery sought by petitioner goes directly to the processes and formula used to arrive at the final assessment; that information is generally recognized to be beyond the scope of disclosure "); New York Telephone Co. v. Village of Lynbrook, 70 Misc. 2d 559, 561, 334 N.Y.S. 2d 462 (Nassau Sup. 1972)("...the petitioner herein, does not seek to examine into the mental processes used by the assessor in arriving at his valuation. Simply stated, the assessor says that he was mistaken when he prepared the tax rolls in question and he intended to set forth higher assessments than he actually used. Petitioner disputes this

position. It is, therefore, relevant and proper to inquire into his intent at the time he prepared the tax rolls...The court recognizes that in the ordinary assessment review proceeding permission is not usually granted to examine the assessor before trial for the reason that he is a quasi-judicial officer ")] or a lack of identification [see e.g., Niagara Mohawk Power Corp. v. City of Saratoga, 2 A.D. 2d 953, 767 N.Y.S. 2d 683 (3d Dept. 2003)(" This discovery bears on a crucial fact in any tax certiorari proceeding-the identification of the real property included in the assessment rolls ")].

Accordingly, the Petitioner's motion is denied to the extent that it seeks permission to take the deposition of the Assessor of the Town of Ramapo; granted, on consent, to the extent that it seeks to take the deposition of the employee of the Assessor who inspected the subject property; and granted in that Respondents are to serve answers to the Petitioner's Interrogatories within thirty days of receipt of this Decision and Order.

Dated: White Plains, New York
December 14, 2004

THOMAS A. DICKERSON
JUSTICE SUPREME COURT

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ENDNOTES

1. Affirmation of Joel L. Scheinert undated [" Scheinert Aff. I "] at Ex. A [" 2004 renewal application for exemption-denied-occupan(c)y statement and inspection do not show property used for exempt purpose "].
2. Scheinert Aff. at Ex. B [" The tentative assessed value of 73800 for this property: Has Not Been Reduced...Factors in addition to or other than those listed that affected the determination were: No evidence submitted "].
3. Scheinert Aff. I at Ex. C.
4. Scheinert Aff. I at Ex. D.
5. Scheinert Aff. I at Ex. E.
6. Scheinert Aff. I at Ex. F.
7. Id.
8. Affirmation in Opposition of Janice Gittleman dated November 15, 2004 [" Gittleman Aff. "] at para. 5.
9. Scheinert Aff. I at p. 2.
10. Gittleman Aff. at para. 4.
11. Scheinert Reply Affirmation dated November 17, 2004 [" Scheinert Aff. II "] at p. 2.