

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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In the Matter of the Application of
THE FAITH MISSION CHRISTIAN FELLOWSHIP
CHURCH, INC.,

Petitioners,

-against -

**DECISION/ORDER/
JUDGMENT**

Index No:
4774/04

THE ASSESSOR AND THE BOARD OF ASSESSMENT
REVIEW OF THE TOWN OF CLARKSTOWN,

Respondents.

-----X
LaCAVA, J.

The trial of this Real Property Tax Law (RPTL) Article 4 proceeding, challenging the denial by the Town of Clarkstown (Town) of the real property tax exemption sought by petitioner Faith Mission Christian Fellowship Church, Inc. (Faith Mission) for the Tax Year 2004¹, for the premises designated on the Town tax map as Section 34.7, Block 1, Lot 5, and known as and located at 10 Glen Eagles Court, New City, New York, took place before the Hon. Thomas A. Dickerson on December 19 and December 21, 2006². In addition to the transcribed minutes of the trial, the following post-trial papers numbered 1 to 6 were considered in connection with this

¹While a petition challenging the 2006 tax year assessment on the same grounds is apparently now pending, it was not consolidated for trial with the instant matter and remains open.

²By stipulation entered into between the parties and so-ordered by the Court on March 19, 2007, the parties agreed to have this Court rule on the instant matter, notwithstanding that the matter was tried before Justice Dickerson.

matter:

<u>PAPERS</u>	<u>NUMBERED</u>
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Petitioner Faith Mission is a not-for-profit, religious corporation pursuant to NPCL Article 1, which is also recognized pursuant to IRC 501 (c) 3 as a non-profit corporation. The corporation is led by a Board of Directors, which includes the presiding pastor, Rev. Kerry Gulston, his wife Valorie, and another person. The corporation has a church located at 160-164 West 129th Street, New York, NY, and also a residential premises at 17 Alexander Avenue, Spring Valley, New York. The latter location was, for some time up to and including early 2003, the "parsonage" or pastoral residence of Rev. Gulston. In 2003, Faith Mission determined to purchase a new residence for Rev. Gulston, and entered into a contract to purchase 10 Glen Eagles Court, New City, New York (the subject parcel).

Shortly prior to closing, however, the institution from whom Faith Mission sought to secure a mortgage declined to make a loan to the petitioner. Subsequently, Rev. Gulston sought and obtained a personal mortgage commitment from Greenpoint Mortgage Funding, Inc. for the premises, and, on or about August 27, 2003 Rev. Gulston personally purchased the subject premises.

Faith Mission has subsequently paid this mortgage, as well as the property taxes, the maintenance and repair expenses, and the homeowners insurance for the premises. In the fall of 2003, Rev. Gulston also took up residence in the premises with his wife. Finally, on or about February 25, 2004, Rev. Gulston deeded the premises to Faith Mission, which deed was recorded two days later.

Faith Mission then applied for a "parsonage" exemption for the subject premises, pursuant to RPTL § 462, which application was denied by the Town due to the alleged failure of Rev. Gulston to reside there. Faith Mission appealed the denial to the Board of Assessment Review on May 26, 2004, which body likewise denied the application, citing, *inter alia*, that Rev. Gulston had failed to cancel the previously-granted STAR exemption (see RPTL 425) on the Spring Valley premises. The Board additionally considered the non-assignability of the Greenpoint mortgage, which, in their opinion, called into question the true ownership of the subject premises.

Petitioner Faith Mission then commenced the instant action.

As stated above, the matter was tried before Justice Dickerson on December 19 and 21, 2006. The sole witness for the petitioner was Rev. Gulston; the sole witness for respondent was the assessor, Cathy Conklin.

FINDINGS OF FACT

The Court makes the following Findings of Fact:

The Court credits Rev. Gulston's testimony regarding the ownership of the subject parcel. As set forth generally above, when Faith Mission was unsuccessful in its attempt to secure financing for the purchase of the parcel prior to the August 2003 closing, Rev. Kerry Gulston was forced to arrange for personal financing with a mortgage company. The closing was then conducted with his personal purchase of the premises; however, Faith Mission was later deeded the property by Rev. Gulston on February 25, 2004. That deed was then recorded on February 27, 2004, prior to the Town's taxable status date of March 1, 2004.

Respondent sought to undermine the second transaction, however, alleging that Rev. Gulston, as the initial purchaser and mortgagor, had no right, pursuant to the mortgage contract, to assign said mortgage to Faith Mission, thus failing to properly transfer ownership to Faith Mission. Respondent's position is belied, however, by the fact that it not only failed to attack the February 25, 2004 deed transfer to Faith Mission, but the town assessor even conceded in her testimony that title had passed to Faith Mission prior to March 1, 2004. (Tr, 237-8). The Court credits her testimony in this regard, as well as the fact that she denied the initial exemption application solely on the basis of Rev. Gulston's alleged failure to reside in the premises on March 1, 2004, and not based on issues of ownership. The Court also credits Rev. Gulston's testimony that title was properly transferred to Faith Mission on February 25, 2004, and notes, as well, the fact that this transfer was pursuant to written contract. Finally, the Court notes Faith Mission's proof that it has always paid, and now continues to pay, the mortgage, the taxes, maintenance and repair expenses, and insurance premiums for the premises.

The Court also finds that Rev. Gulston, as Faith Mission's officiating clergyman, resided prior to the taxable status date at the subject parcel. Rev. Gulston demonstrated first that he is the officiating clergyman of his church, an issue which the Town concedes by not contesting it. Rev. Gulston's credible testimony

also demonstrated his residence at the subject premises dating from October or November of 2003. While the Town asserted that prior inconsistent statements by Rev. Gulston call his actual date of residence into question, such statements actually fail to support the Town's position. The Town, to be sure, argues that Rev. Gulston testified before the Board of Assessment Review that he commenced residence on February 27, 2004, but now at trial states that he commenced residence in October or November. However, petitioner properly points out that the former statement was made by counsel and not Rev. Gulston, and in any event the Court views the discrepancy, if it exists, as *de minimis*, since in either case it merely supports residence by Rev. Gulston prior to the taxable status date as required by the statute.

The Town also urged the Court to take notice of Rev. Gulston's 2003 federal tax filing, which was filed in mid-2004. The tax return listed his address at that time as the prior, Spring Valley location, which, it is argued, is indicative of his residence elsewhere than the subject premises at that time. As petitioner argues, however, and the Court credits, such filing was made by a tax preparer of long standing, whose filing for Rev. Gulston could have listed the prior address in error.

Finally, while the Court recognizes, as argued by respondent, that Rev. Gulston apparently failed to cancel a STAR exemption in his name on the Spring Valley home until the summer of 2004, and that STAR exemptions are limited to a tax-payer's primary residence, the Court credits Rev. Gulston's testimony that he simply forgot to cancel the STAR exemption on the Spring Valley property until it was pointed out to him that it was still in existence at his BAR challenge in May 2004. Significantly, the Town has also offered no evidence specifically demonstrating that Rev. Gulston continued to reside in the Spring Valley premises after March 1, 2004.

CONCLUSIONS OF LAW

The Court makes the following Conclusions of Law:

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 Faith Mission is such a corporation, and that, in addition, they are similarly recognized by the Internal Revenue Service as a not-for-profit

religious corporation by their IRC 501 (c) 3 designation³.

This Court has frequently held that the burden of proof lies with a petitioner who seeks an initial property tax exemption. (See *Legion of Christ v. Town of Mount Pleasant* [Supreme Court, Westchester County, LaCava, J., July 10, 2007]; see also *People ex rel. Watchtower Bible & Tract Soc. v. Haring*, 8 N.Y.2d 350 (1960)). Thus, here the burden of proof is on Faith Mission to establish entitlement to treatment as an exempt institution.

The Religious Exemption

RPTL § 420-a (1) provides that a non-profit corporation is entitled to an exemption if it owns real property and demonstrates that it is

1) conducted exclusively for religious, charitable, hospital, educational, or moral or mental improvement of men, women or children purposes, [and that] 2) the property is used exclusively for carrying out thereupon one or more of such purposes.

Additionally, RPTL § 420-a (3) provides that a non-profit corporation owning unimproved property not in actual use qualifies for a tax exemption upon demonstrating that "the construction of such buildings or improvements is in progress or is in good faith contemplated."

Finally, 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

³Respondent argues at some length that Faith Mission failed to demonstrate that it is a non-profit organization, in particular due to alleged failures of Faith Mission to provide financial information satisfactory to respondent. However, said argument is irrelevant. Pursuant to RPTL § 462, the issue is whether Faith Mission is a religious corporation, not a not-for-profit corporation (and certainly not a "non-profit" corporation, as erroneously asserted by the Town), since it is only religious corporations in particular, and not not-for-profit or non-profit corporations in general, which are eligible for the parsonage exemption. Faith Mission has adequately demonstrated its status, pursuant to New York State law, as a religious corporation. In any event, Faith Mission also demonstrated by a clear preponderance, while not required to, that Faith Mission was founded as and continues to be a not-for-profit religious institution.

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.

Faith Mission, based on the undisputed nature of the subject property as a residence, has sought the so-called "parsonage" exemption provided for in RPTL § 462. The essential elements of this exemption, then, are that

1. the property be owned by a religious corporation;
2. that it be actually used by the officiating clergyman of that religious corporation for residential purposes; and
3. that the application be filed prior to the taxable status date.

Ownership by the Religious Organization

The Court finds that Faith Mission has established by a preponderance of the credible evidence that the subject premises was owned by the religious corporation, namely Faith Mission, on the date of the exemption application. Respondents in essence concede the status of Faith Mission as a religious corporation by failing to contest its initial designation as such, or its current operation as a church. As set forth generally above, Faith Mission has also demonstrated that, prior to the expected August 2003 closing on the sale of the property to the church, it attempted to secure financing for its purchase of the premises. However, in the end such financing was unable to be achieved. In order to go forward with the purchase, Rev. Gulston secured personal financing, and the closing was conducted with his personal purchase of the premises. Faith Mission further showed that Rev. Kerry Gulston, in turn, transferred the property to it on February 25, 2004, and that the deed recording that transaction was duly recorded on February 27, 2004. As set forth previously, the taxable status date was March 1, 2004. As petitioners correctly argue, a deed is, in fact, the best evidence of ownership of real property. (*Cf Jenkins-Watson v. Golabi Holdings*, 26 A.D.3d 467 (2nd Dept. 2006)). Additionally, the Court notes that there is ample proof in the record that the mortgage and all other expenses of the property have been consistently paid by Faith Mission, both before and after the second deeding. The Court thus concludes that Faith Mission has met its burden, and demonstrated that the religious corporation owned the subject premises on March 1, 2004.

Residence at the Premises by the Officiating Clergyman

The Court also finds that Faith Mission has proven by a preponderance of the credible evidence that Rev. Gulston is the officiating clergyman, and that he properly resided at the premises prior to the taxable status date. Respondents have not seriously challenged Rev. Gulston's testimony that he is the officiating clergyman of the church. And, as set forth previously, neither the prior testimony of Rev. Gulston, nor his 2004 federal income tax filing, nor the STAR exemption on the Spring Valley premises, preclude a finding that he resided in the premises prior to the taxable status date. Indeed, the STAR status for a separate premises has no effect on petitioner's instant exemption application itself, since RPTL § 462 merely requires that the officiating clergyman reside in the premises, not that it be his primary residence. In addition, one may, of course, maintain more than one residence at the same time. (*Cf. Matter of Johnson v. Simpson*, Supreme Court, Queens County, O'Donoghue, J., August 17, 2007, *aff'd*, 2007 NY Slip Op 6486 [2nd Dept. August 22, 2007]). Finally, the Court notes that respondent has put forth no direct evidence in opposition to Rev. Gulston's credible testimony that he resided in the premises prior to March 1, 2004. In her testimony, respondents' assessor admitted that she simply did not know whether he lived there by that date or not.

Conclusion

The Court credits Rev. Gulston's testimony that the property was owned by a religious corporation, petitioner Faith Mission, prior to the taxable status date; that he is the officiating clergyman of that religious corporation; that he used the premises for residential purposes prior to the taxable status date; and that he filed a timely application for an exemption pursuant to RPTL § 462. Therefore, petitioner Faith Mission has demonstrated by a fair preponderance of the credible evidence that it was entitled to an exemption pursuant to that statute for the taxable status year 2004.

Upon the foregoing papers, and the record of the trial held before the Hon. Thomas A. Dickerson on December 19 and 21, 2006, it is hereby

ORDERED, that the petition for an Order granting a religious exemption pursuant to RPTL §§ 462, is hereby granted; and it is further

ORDERED, that respondent Town shall grant the tax exemption

sought by petitioner pursuant to RPTL § 462, for the parcel designated on the Town tax map as Section 34.7, Block 1, Lot 5, and known as and located at 10 Glen Eagles Court, New City, New York, for the tax year at issue in the instant petition, namely 2004; 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 , 2007

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

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