

**Matter of Brooklyn Assembly Halls of Jehovah's
Witnesses, Inc. v Department of Environmental
Protection of the City of New York**

2005 NY Slip Op 30298(U)

October 25, 2005

Supreme Court, Queens County

Docket Number: 11993/05

Judge: Janice A. Taylor

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M E M O R A N D U M

SUPREME COURT: QUEENS COUNTY
IA PART: 15

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In the Matter of the Application
of BROOKLYN ASSEMBLY HALLS OF
JEHOVAH'S WITNESSES, INC.,

INDEX NO. 11993/05

BY: TAYLOR, J.

Petitioner,

DATED: OCTOBER 25,

2005
for a Judgment under Article 78
of the Civil Practice Law and Rules

-against-

THE DEPARTMENT OF ENVIRONMENTAL
PROTECTION OF THE CITY OF NEW YORK,
THE EXECUTIVE DIRECTOR OF THE NEW
YORK CITY WATER BOARD, THE CITY
OF NEW YORK, AND MICHAEL R. BLOOMBERG,
MAYOR,

Respondents.

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In this Article 78 proceeding, petitioner Brooklyn
Assembly Halls of Jehovah's Witnesses, Inc. seeks a judgment (1)
annulling and vacating respondent New York City Department of
Environmental Protection (DEP)'s determination dated January 27,
2005 which upheld the June 14, 2002 determination that petitioner
was not exempt from water and sewer charges; (2) annulling and
vacating the decision of respondent Executive Director of the New
York City Water Board (Water Board) dated June 15, 2005 which
denied petitioner's appeal of February 18, 2005 and affirmed the
DEP's determination of January 27, 2005; (3) directing and

compelling respondents to approve and grant petitioner's application for exemption from water and sewer charges submitted on June 2, 2002; and (4) directing and compelling respondents to reimburse the sum of \$12,980.08 paid by petitioner, under protest, for water and sewer charges since June 4, 2002.

Petitioner Brooklyn Assembly Halls of Jehovah's Witnesses, Inc. is a Not-For-Profit Corporation organized for religious purposes. Petitioner acquired the premises known as 973- 981 Flatbush Avenue, Brooklyn, New York, pursuant to a deed dated January 3, 1990. The premises are also known as the Brooklyn Assembly Hall of Jehovah's Witnesses (Assembly Hall). The Assembly Hall is used as a house of worship for Jehovah's Witnesses and interested members of the public who convene weekly to participate in public worship. A certificate of occupancy dated December 24, 1991, describes the subject real property as consisting of a boiler room, a basement with religious meeting halls and overflow seating, religious assembly halls and storage areas on the first floor, an apartment and dining rooms on the second floor, an apartment and dining rooms on the third floor, and a balcony with offices and storage rooms. A maximum of 500 persons is permitted for the basement, 1,484 persons for one of the first floor assembly halls and 1,182 persons for another of the first floor assembly halls, 420 persons for the second floor apartment and dining rooms, 640 persons for the third floor

apartment and dining rooms, and 8 persons for the balcony offices.

Petitioner filed an application, dated January 8, 1991, with the DEP for an exemption from water and sewer fees charges under the provisions of Chapter 893 of the Laws of 1980 (Chapter 893) and section 24-514(e) of the Administrative Code of the City of New York. The application stated that the building is used as follows: "Basement: Five congregations of Jehovah's Witnesses who share two meeting halls, each having about 5 meetings per week in Bible education and training to be more effective ministers. Floors 1-4 of the building are used by groups of 10 congregations (about 1500 people) on weekends approximately 8 months each year, for larger assemblies with the same training involved. There are 2 apartments for 2 caretakers." The application asked if any portion of the premises was used for dwelling purposes and, if so, the applicant was to describe the occupant's affiliation with the organization. Petitioner, in response to this question, stated that there were: "Two apartments on premises-One is for the manager and his wife. The second apartment is for the technical maintenance caretaker and his wife. All are ministers." The DEP, in a letter dated April 19, 1991, denied the application, stating that only a portion of the premises qualified for an exemption and that in order to have a partial exemption a branch meter must be installed. The DEP stated that the portion that qualified was the basement, first and second

floor area and that "Only one dwelling is allowed for a caretaker."

Petitioner submitted a second application for an exemption from water and sewer charges to the DEP, dated June 4, 2002. Petitioner, in its cover letter, stated that its "large facility is approximately 100,000 square feet. There are regularly scheduled events 30 weekends per year with approximately 1500-2000 in attendance per day at each event. Due to the size of our facility, maintenance and security needs, and insurance requirements a caretaker must be on the premises 24 hours a day, seven days a week. Therefore, two caretakers are needed to live on the premises." The DEP's Bureau of Customer Service, in a notice dated June 14, 2002, declined to process the application, stating that the use of the building had not changed and, therefore, the property was still not eligible for an exemption.

Petitioner's counsel, in a letter dated May 31, 2004, stated that it disagreed with the DEP's Bureau of Customer Service (BCS) determination of June 14, 2002 and, therefore, filed a formal complaint on behalf of the Assembly Hall to contest the June 14, 2002 determination. Petitioner's counsel stated that the BCS was required to provide a written reply within 90 days. Petitioner's counsel in a letter addressed to the DEP BCS, dated January 3, 2005, stated that its written

complaint contesting the DEP's June 14, 2002 denial was within the two-year deadline for customer complaint resolution section of Title 15, Appendix A, Part IX of the Rules and Regulations of the City of New York, and that pursuant to these Rules the DEP was required to provide a written reply within 90 days of receipt of the request. Counsel stated that neither he nor the Assembly Hall had received a response to its letter of May 31, 2004 and, therefore, requested a formal reply within 10 days.

The DEP's exemption manager, in a letter dated January 27, 2005, denied petitioner's appeal, stating that "[t]he original application filed in 1991 was denied because there were two dwellings on the property, one for the manager and one for the caretaker rendering it ineligible. At the time the church was given the option to install a branch meter and the eligible portion of the building would be granted. This option was not followed up on, accordingly the subsequent application filed in 2002 was returned. I have reviewed the history of this case and the current inspection done on January 18, 2005. I find that in addition to the two caretaker's apartments there are now guest rooms located on the 4th floor. The law states 'property used **exclusively** as a place of public worship is eligible for exemption.' One dwelling only is allowed for a caretaker. Many of our not-for-profit religious organizations are of considerable size, and have one caretaker or install a separate meter. We cannot make an exception based on the size of the building."

On February 22, 2005, petitioner filed a final appeal with the New York City Water Board (Water Board) dated February 18, 2005, in which it asserted the DEP's Deputy Commissioner failed to correctly interpret and apply the applicable law. It asserted that although the provisions of Chapter 893 requires the exclusive use of exempt property "as a place of public worship" it does not prohibit or limit an exemption based upon the presence of any residences on the property. Petitioner's counsel briefly discussed several tax exemption cases in which residences on exempt property which were found to be incidental to the primary usage of the exempt property, and asserted that these cases were sufficiently analogous to the issue presented here. Petitioner's counsel also discussed in detail three cases involving water and sewer exemptions, where the exempt property contained more than one residence or guest rooms. In two of these cases-- Chung Te Buddhist Association of New York, Inc. v Kusterbeck, and Bathelite Community Church, Great Tomorrows Elementary School v Department of Environmental Protection - the Supreme Court, New York County rejected the agency's position that only a single caretaker's residence was eligible for exemption, and found that the religious organization was entitled to a full exemption. Petitioner's counsel enclosed an affidavit from the president of the Assembly Hall in which he asserted that all of the housing provided by the Assembly Hall is directly related to its religious purposes.

The Water Board failed to render a written decision within 60 days after receipt of the final appeal. Petitioner, therefore, commenced the within Article 78 proceeding on May 27, 2005, and seeks a judgment vacating and annulling the DEP's decisions of June 14, 2002 and January 27, 2005, and compelling the Water Board to render a decision on the final appeal filed on February 22, 2005. This proceeding was adjourned by the court to July 5, 2005. On June 15, 2005, David B. Tweedy, the Executive Director of the Water Board, issued a decision denying the appeal and affirming the determination of January 27, 2005. Mr. Tweedy stated that "[an] organization may be exempt from water and sewer charges if certain conditions are met. One condition is that the premises must be used exclusively for a qualifying purpose, or if the premises is not used exclusively for a qualifying purpose, the non-qualifying portion must be separately metered. For this premises, neither condition is met as the meter records consumption on both the part that may qualify (the assembly hall) and the non-qualifying portion (the additional caretaker apartment and two guest rooms). A single room or small apartment for the caretaker is considered incidental; accommodations for an additional caretaker and two additional guests are not a qualifying exempt use. You have the option of separately metering the water service to the non-exempt portion. If this is done, an exemption may then be applied for on the qualifying portion of the premises, and if granted, will be applied on a

prospective basis only.”

Petitioner, thereafter, served an amended petition and now seeks a judgment annulling and vacating the DEP's decision of January 27, 2005 and the Water Board's decision of June 15, application for exemption from water and sewer charges submitted on June 2, 2002, on the grounds that respondents' determinations are arbitrary and capricious and contrary to law. Petitioner asserts that it is well settled law that a religious organization's use of its property to provide housing which is incidental and necessary to its primary religious use falls within the bounds of Chapter 893's "exclusive use" exemption. It is asserted that the record establishes that the two caretaker apartments and the two guest rooms used by visiting ministers and their spouses located within the Assembly Hall are exclusively used in the furtherance of petitioner's religious purposes. Petitioner, therefore, asserts that the entire property is entitled to an exemption under Chapter 893. It is further asserted that the determinations of January 27, 2005 and June 15, 2005 were untimely. Finally, petitioner asserts that as it paid the sum of \$12,980.08 for water and sewer charges, under protest, since June 4, 2002, it is entitled to recover this sum.

Respondents have served an answer to the amended petition and assert that the determinations are neither arbitrary nor capricious, and are not affected by an error of law. It is asserted that the determination that the exemption provision of

Chapter 893 applies only to space occupied as a place of public worship and uses incidental to the operation of a place of public worship, and does not, by its terms apply to residential uses by clergy members, is a reasonable and rational interpretation of this statute, and a proper exercise of the Water Board's discretion. Respondents further assert that if a place of public worship contains living quarters for a single caretaker, such as a janitor or engineer whose responsibility is to maintain the place of public worship and the spaces incidental thereto, the use of water services by this single residential unit will be deemed incidental and necessary to the operation of the place of public worship. In addition, respondents assert that if a minister or clergy person living on the premises also is the caretaker, this person's status as a member of the clergy will not defeat the exemption. It is asserted that the subject premises were inspected on January 18, 2005, at which time the DEP's inspector found that the first floor contained, among other things, a number of bathrooms and a laundry room with two 30-pound washing machines; that the second floor contained an apartment and bathrooms; that the third floor contained an apartment; and that the fourth floor or balcony level contained guest rooms and a 30-pound washing machine. Respondents assert that they were unaware of the guest rooms on the fourth floor or balcony until it conducted the inspection and that this usage is in violation of the certificate of occupancy.

The New York City Municipal Water Finance Authority Act is encompassed in Public Authorities Law §§ 1045-a et seq. Section 1045-g(4) of the Public Authorities Law empowers the Water Board to set fees, rates and charges for water and sewerage, and Subsection 1045-j(5) provides, in pertinent part, that: "...Tax exempt organizations shall be charged according to the provisions of chapter six hundred ninety-six of the laws of eighty-seven, as amended by chapter eight hundred ninety-three and eight hundred ninety-four of the laws of nineteen hundred eighty and by provisions which may by law extend the provisions of such chapters from time to time..."

Chapter 893 of the New York Laws of 1980, provides, in pertinent part, that: "...the real estate owned by any religious corporation located in the City of New York as now constituted, actually dedicated and used by such corporation exclusively as a place of public worship...[is] hereby exempt from the payment of any sum of money, whatsoever to said city, for the use of water taken by same from said city..." 24 NYCRR 514(e) exempts from sewer rents or charges "any real property which is entitled to an exemption from the payment of water rents or charges."

It is undisputed that petitioner, as a religious organization, is exempt from water and sewer charges for the property used for worship, and for the portion of the property which is used as the home of one caretaker and the caretaker's spouse, both of who are ministers. Respondents, however, refuse

to exempt that portion of petitioner's property which provides housing for a second caretaker/minister, as well as guest rooms that may be used by visiting ministers. Respondents support their position by arguing that Chapter 893 of the Laws of 1980 must be strictly construed and that exemptions granted for water and sewer charges are to be distinguished from laws exempting religious institutions from property taxes. This argument was previously raised by the respondents in two very similar cases, litigated in the Supreme Court, New York County, and rejected by the court therein. (See, Matter of Bathelite Community Church, Great Tomorrows Elementary School v Department of Environmental Protection of the City of New York, 8 Misc 3d 274 [2004]; Matter of Chung Te Buddhist Association of New York, Inc., Petitioner, v Kusterbeck, 2003 NY Slip Op 51432U; 2003 NY Misc LEXIS 1475 [decided September 8, 2003]). Respondents assert that Bathelite and Chung Te were wrongly decided. However, the court's judgments in these cases were not appealed and, therefore, are binding on the Water Board and DEP. This court finds the court's reasoning in Bathelite and Chung Te to be persuasive.

In Hapletah v Assessors of Fallsburg, (79 NY2d 244, 249 [1992]), the Court of Appeals, in interpreting a real property tax exemption statute (Real Property Tax Law § 420-a), stated that the term "exclusively," 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 Association of Bar v Lewisohn, 34 NY2d 143, 153; see also Matter of Rochester Christian Church v State of New York Pub. Serv. Commn., 55 NY2d 196, 203; Greater N. Y. Corp. of Seventh-Day Adventists v Town of Dover, 29 AD2d 861, appeal dismissed 23 NY2d 682). Although exemption statutes are to be strictly construed against the taxpayer, the interpretation of those statutes "should not be so narrow and literal as to defeat [their] settled purpose, ... that of encouraging, fostering and protecting religious and educational institutions" (People ex rel. Watchtower Bible & Tract Socy. v Haring, 8 NY2d 350, 358; see also Matter of Association of Bar v Lewisohn, 34 NY2d 143, 153, supra). The Court of Appeals determined that the test for an entitlement to a tax exemption where the property was "used exclusively" for religious purposes "is whether the particular use is "reasonably incidental' to the [primary or] major purpose of the [facility]" " " ' "whether its primary use is in furtherance of the permitted purposes." " ". (Hapletah v Assessors of Fallsburg, id. at 250, citing to St. Lukes Hosp. v Boyland, supra 12 NY2d 143 and Genesee Hosp. v Wagner, 47 AD2d 37, 44, [1975], affd 39 NY2d 863 [1976]). The Court of Appeals went on to find that housing provided the staff, who lived on the premises and devoted its time fully to the religious institution, was exempt from the property tax since that housing was clearly incidental to the purpose of the facility. Hapletah, supra, has been followed

consistently by courts determining property tax exemption cases (S.N.H.N.C.Y.I., Inc. v City of Mt. Vernon, 5 AD3d 495, 772 [2004]; Cong. Machne Chaim v Kwak, 3 AD3d 708 [2004]; Greentree Found. v Assessor of Nassau, 302 AD2d 523 [2003]; Pets Alive, Inc. v Wanat, 288 AD2d 386 [2001]) and has been interpreted to apply to New York City water charge cases. (Matter of Bathelite Community Church, Great Tomorrows Elementary School v Department of Environmental Protection of the City of New York, supra; Chung Te Buddhist Assoc'n. of NY v Kusterbeck, supra; see also YM-YWHA'S of Greater New York v D'Angelo, 38 Misc 2d 1082, 239 [1963] [statute providing water charge exemption for charitable institution "devoted exclusively" to social settlement work should be liberally construed in keeping with intent of Legislature]).

The court, therefore, finds that insofar as the exemption here applies to property used by a religious corporation "exclusively as a place of public worship," it should be interpreted as applying to all property used in furtherance of the corporation's purpose. Petitioner, in its applications, stated that the premises were used by several congregations for weekend worship meetings and for Bible study and training of ministers on weekdays. Respondents are not entitled to draw any distinctions regarding the number of weekends the property is used for public worship, as regardless of permanent use or occasional, the law is clear in stating "real estate used

exclusively for public worship is entitled to exemption." In this case, that would include the housing provided its two caretakers and their spouses, all of whom are ministers. To the extent that the premises' certificate of occupancy does not permit the balcony to be used as "guest rooms," petitioner may not house visiting clergy or members in these rooms. However, petitioner may house guests in the two apartments on the premises, as this would not violate the certificate of occupancy, and would not militate against a tax exemption.

In view of the foregoing, the court finds that the Water Board and the DEP's decision to deny the requested exemption was arbitrary and capricious and contrary to law. Therefore, the within petition to vacate the Water Board's decision of June 15, 2005, and to vacate the DEP's decision dated January 27, 2005, is granted. Respondents are directed to approve and grant petitioner's application for exemption from water and sewer charges submitted on June 2, 2002, and to remit to petitioner the sum of \$12,980.08 it paid, under protest, for water and sewer charges since June 4, 2002.

Settle judgment.

J.S.C.