

**Matter of Jewish Natl. Fund, Inc. v Board of  
Assessors of County of Nassau**

2008 NY Slip Op 30093(U)

January 7, 2008

Supreme Court, Nassau County

Docket Number: 9538-07/

Judge: William R. LaMarca

Republished from New York State Unified Court  
System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for  
any additional information on this case.

This opinion is uncorrected and not selected for official  
publication.

**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK  
COUNTY OF NASSAU - PART 17**

**Present: HON. WILLIAM R. LaMARCA  
Justice**

**In the Matter of the Application of  
THE JEWISH NATIONAL FUND, INC.**

**Motion Sequence # 001  
Submitted October 19, 2007  
XXX**

**Petitioner,**

**For a Judgment pursuant to Article 78 of  
the Civil Practice Law and Rules,**

**-against-**

**INDEX NO: 9538/07**

**THE BOARD OF ASSESSORS OF THE COUNTY  
OF NASSAU,**

**Respondent.**

**The following papers were read on this motion:**

<b>Notice of Petition and Verified Petition.....</b>	<b>1</b>
<b>Petitioner's Memorandum of Law.....</b>	<b>2</b>
<b>Verified Answer.....</b>	<b>3</b>
<b>Petitioner's Reply Affidavit.....</b>	<b>4</b>
<b>Petitioner's Reply Memorandum of Law.....</b>	<b>5</b>

Petitioner, JEWISH NATIONAL FUND, INC. (hereinafter referred to as the "JNF"), petitions the Court for an order, pursuant to CPLR Article 78, annulling a determination of the respondent, THE BOARD OF ASSESSORS OF THE COUNTY OF NASSAU (hereinafter referred to as the "BOARD OF ASSESSORS"), dated February 1, 2006, which, *inter alia*, denied its application for a real property tax exemption pursuant to Real

Property Tax Law § 420-a.

In December of 2006, the JNF, a New York not-for-profit corporation, applied for a tax exemption pursuant to Real Property Tax Law §§ 420-[a], [b] with respect to certain real property located in the Incorporated Village of Rockville Centre. JNF's application materials indicate that it engages in fund-raising and donates the funding obtained to a broad range of educational and "charitable activities world wide", including the areas of forestry, ecology, land and water use and preservation community development, security, education, research and the development of tourism and recreation (Petition., ¶ 7).

JNF's original certificate of incorporation further identifies its objectives, purposes and mission as, *inter alia*, "to appeal for and accept and receive from any person, from corporation \* \* \* contributions, pledges, or donations \* \* \* to be devoted to and expended in the purchase of land in Palestine and in promoting and furthering the religious cultural, social, social agricultural and general welfare of Jewish settlers and inhabitants of Palestine \* \* \* and to aid, encourage and promote the development of Jewish Life in Palestine" (Petition., Exhibit "B").

According to JNF's Chief financial Officer, (1) the recipients of JNF's funds include both domestic and foreign agencies and institutions legally entitled to receive charitable donations (Rosensweig Reply Affidavit, ¶¶ 6-9); (2) JNF allocates and monitors the funding it distributes to ensure resources are properly used for tax exempt purposes (Rosensweig Reply Affidavit, ¶¶ 10-21); (3) its activities and fund raising functions are not discriminatory in scope or affect (Rosensweig Reply Affidavit, ¶¶ 10-21); and (4) the subject Rockville Centre property is devoted exclusively to the furtherance of the petitioner's qualifying, tax

exempt activities (Rosensweig Reply Affidavit, ¶¶ 32-37).

The petitioner further advises that (1) it has been accorded tax exempt status by the Internal Revenue Service since 1953, (2) that certain property which it owns in Manhattan has been declared tax exempt in 1972, and (3) that the subject Rockville Centre property itself has been granted tax exempt status by the Incorporated Village of Rockville Centre (Pet., ¶¶ 13-18).

By letter dated February 1, 2007, the respondent BOARD OF ASSESSORS denied the petitioner's application for tax exempt status for the 2007-2008 tax year, advising in a one-sentence decision that, "[t]he documentation which you have submitted does not demonstrate that the owner is organized for an exempt purpose" (Petition, Exhibit "A"). The respondent's letter contains no references to the relevant facts, makes no factual findings, and contains no reasoning which explains the rationale underlying its denial.

Thereafter, the petitioner commenced the within proceeding pursuant to CPLR Article 78, for judgment annulling the BOARD OF ASSESSORS' determination and granting the subject exemption.

RPTL§ 420-a(1)(a) provides a mandatory real property tax exemption for property used exclusively for charitable purposes (*Legion of Christ, Inc. v Town of Mount Pleasant*, 1 NY3d 406, 774 NYS2d 860, 806 NE2d 973 [C.A.2004]; *Hapletah v Assessor of Town of Fallsburg*, 79 NY2d 244, 582 NYS2d 54, 590 NE2d 1182 [C.A.1992]; *World Buddhist Ch'an Jing Center, Inc. v Schoeberl*, \_\_\_AD3d\_\_\_, 846 NYS2d 392 [3<sup>rd</sup> Dept. 2007]; see also *S.N.H.N.C. Y.I., Inc. v City of Mount Vernon*, 5 AD3d 495, 722 NYS2d 593 [2<sup>nd</sup> Dept. 2004]).

“The term ‘exclusively’, in this context, 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’” (*Hapletah v Assessor of Town of Fallsburg, supra*, at 249, quoting from, *Matter of Association of Bar v Lewisohn*, 34 NY2d 143, 356 NYS2d 555, 313 NE2d 30 [C.A.1974]).

Notably, while exemption statutes are, in general, to be strictly construed against the taxpayer (*Charter Development Co., L.L.C. v City of Buffalo*, 6 NY3d 578, 815 NYS2d 13, 848 NE2d 460 [C.A.2006]), and although a challenged determination will be sustained where there is “a rational basis for denial of an exemption” (*Ecclesia Word Ministries Intern., Inc. v Brophy*, 21 AD3d 372, 798 NYS2d 915 [2<sup>nd</sup> Dept. 2005]), nevertheless “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’” (*Hapletah v Assessor of Town of Fallsburg, supra*, at 249, quoting from, *People ex rel. Watchtower Bible & Tract Society. v Haring*, 8 NY2d 350, 207 NYS2d 673, 170 NE2d 677 [C.A. 1960]; *Congregation Machne Chaim, Inc. v Kwak*, 3 AD3d 708, 770 NYS2d 770 [3<sup>rd</sup> Dept. 2004]).

Preliminarily, the respondent’s vacant, one-sentence denial does not explain precisely why it denied the petitioner’s application, thereby complicating the Court’s task of reviewing the propriety and rationality of the challenged determination (see, *Paloma Homes, Inc. v Petrone*, 10 AD3d 612, 781 NYS2d 675 [2<sup>nd</sup> Dept.2004]; *Perrella v Suffolk County Classification and Salary*, 117 AD2d 603, 498 NYS2d 70 [2<sup>nd</sup> Dept. 1986]; see also, *Montauk Improvement v Proccacino*, 41 NY2d 913, 394 NYS2d 619, 363 NE2d 344

[C.A.1977]; *Bierenbaum v Goord*, 13 AD3d 945, 787 NYS2d 438 [3<sup>rd</sup> Dept. 2004]).

Notably, "[f]indings of fact which show the actual grounds of a decision are necessary for an intelligent judicial review of a[n] \* \* \* administrative determination" since they ensure that a challenged decision was "not reached arbitrarily or influenced by extra-legal considerations" (*In re New York Water Service Corp.*, 283 NY 23, 23 NE2d 221 [C.A.1940]; see also, *Montauk Improvement v Proccacino*, *supra*, at 914; *Paloma Homes, Inc. v Petrone*, *supra*; *Badrow v Common Council and City Clerk of City of Tonawanda*, 26 AD2d 611, 271 NYS2d 57 [4<sup>th</sup> Dept. 1966]).

In any event, the Court finds that the petitioner has carried its burden of demonstrating entitlement to the exemption, *i.e.*, the petitioner's submissions have established through relevant sworn averments and probative supporting documentary evidence that it is entitled to the tax exemption sought (*Pets Alive, Inc. v Wanat*, 288 AD2d 386, 732 NYS2d 862 [2<sup>nd</sup> Dept. 2001]; see also, *Congregation Machne Chaim, Inc. v Kwak*, *supra*, at 709; *Upstate New York Laborers' Educ. and Training Fund by Shannon v Oswego Town Assessor's Office*, 224 AD2d 1029, 637 NYS2d 588 [4<sup>th</sup> Dept. 1996]; *cf.*, *Otrada, Inc. v Assessor, Town of Ramapo*, 41 AD3d 678, 839 NYS2d 123 [2<sup>nd</sup> Dept. 2007]).

Specifically, the petitioner has asserted that its fund raising resources are devoted to a broad array of charitable and educational causes and that the subject property is utilized exclusively in furtherance of those activities within the meaning of RPTL § 420-a (see generally, *S.N.H.N.C.Y.I., Inc. v City of Mount Vernon*, *supra*; see also, *Adult Home at Erie Station, Inc. v Assessor and Bd. of Assessment, Review of City of Middletown*, 36

AD3d 699, 828 NYS2d 459 [2md Dept. 2007], *lv granted*, 8 NY3d 814 [2007]; *Otrada, Inc. v Assessor, Town of Ramapo, supra*). The Court notes that the respondent's denial letter does not address the issue of the subject property's use, but merely declares, without explanatory discussion, that the petitioner is not organized for an exempt purpose.

The respondent's currently advanced assertions, *inter alia*, that the petitioner "discriminates" against non-Jews in its activities and/or that it exists solely as a "conduit" to channel funds to the State of Israel, are unsupported by the administrative record which was before the assessor. The documents presently relied upon by the respondent do not establish otherwise.

Indeed, respondent's opposing exhibits read as an inconclusive melange of articles, internet excerpts and court documents drawn from other proceedings. The papers further rely, in part, on an affidavit originally executed over twenty-two (22) years ago by a now-deceased affiant known for his definitive views concerning middle east politics, who offers subjectively framed opinions with respect to the petitioner's relationship to the State of Israel and its charitable status *e.g.*, Affidavit of W. T. Mallison, Jr. *see, Curtis, In Memoriam, William Thomas Mallison, Jr. (1917-1997)* <http://www.wrmea.com/backissues/0198/9801063.htm> (Respondent's Exhibits. "12," "13", Exhibit, "C", *see also*, W. Lehn Affidavit, dated December, 1997).

Assuming that these post-determination submissions can even be viewed as comprising part of the "facts and record adduced before the agency" (*Matter of Yarbough v Franco*, 95 NY2d 342, 717 NYS2d 79, 740 NE2d 224 [C.A.2000]), the Court finds that they fail to create a viable evidentiary basis supporting the rational denial of the application.

The Court has considered the respondent's remaining contentions and concludes that they are insufficient to defeat the petitioner's entitlement to a tax exemption pursuant to Real Property Tax Law § 420-a.

Accordingly, it is hereby


**ORDERED** that the verified petition is granted, the respondent's determination dated February 1, 2007 is vacated and annulled, and it is declared that the subject property is exempt from real property taxes pursuant to RPTL §420-a for tax years 2007/2008.

All further requested relief not specifically granted is denied.

The foregoing constitutes the decision and order of the Court.

Submit Judgment on notice.

Dated: January 7, 2008

  
\_\_\_\_\_  
WILLIAM R. LaMARCA, J.S.C.

TO: Meyer, Suozzi, English & Klein, PC  
Attorney for Petitioner  
990 Stewart Avenue, Suite 300  
Garden City, NY 11530

Lorna B. Goodman, Esq.  
Nassau County Attorney  
Attorney for Respondent  
1 West Street  
Mineola, NY 11501

**ENTERED**

JAN 14 2008

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**