

**Pointes of Faith Dancers, Inc. v Board of
Assessment Review**

2009 NY Slip Op 31465(U)

July 2, 2009

Supreme Court, Wayne County

Docket Number: 59759/2006

Judge: Daniel J. Doyle

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STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE
POINTES OF FAITH DANCERS, INC.,

Plaintiff/Petitioner,

Index# 59759

2006

-vs-

THE BOARD OF ASSESSMENT REVIEW AND
THE TOWN OF LYONS,
Defendants/Respondents.

APPEARANCES:

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Attorneys for Plaintiff

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DECISION

DANIEL J. DOYLE, J.

Points of Faith Dancers, Inc. commenced this action by summons and complaint filed with the Wayne County Clerk's Office on July 14, 2006. Thereafter, under the same index number, it filed a Notice of Petition and Petition in the Wayne County Clerk's Office on August 3, 2006. The Court converted the action to a special proceeding under Article 7 of the Real Property Tax Law by Order dated May 4, 2007. Pointes of Faith Dancers, Inc. (hereinafter referred to as Petitioner) seeks a determination that its property located at 55 William Street in the Town of Lyons, New York is real property tax exempt pursuant to Real Property Tax Law §420-a .

The subject property was purchased for \$50,000 by the Petitioner on December 7, 2007 from Rachael Platt, née La Valley. In addition to the dance studio, the building contains two apartments. At the time of hearing, one of the two apartments was let at a rate of \$275 monthly.

The Pointes of Faith Dancers, Inc. was formed, under section 402 of the Not-for-Profit Corporation Law by Certificate of Incorporation dated November 21, 2000. An IRS letter ruling, dated March 24, 2005, classified the Petitioner as a Public Charity under section 509 (a)(2) of the Internal Revenue Code and as such exempt for Federal income tax under section 501(c) (3) of the Code.

In support of its claim for an exemption under section 420-a of the Real Property Tax Law, the Petitioner argues (1) that the decisions of the IRS and New York State Department of Taxation are determinative of the issue for the purpose of the real property tax exemption and (2) that it is organized and conducted exclusively for an exempt purpose as defined by the statute and that the property is used exclusively for carrying out that purpose and as such is entitled to an exemption from real property taxes.

Respondents argue that the Petitioner's use of the property is not a charitable use entitled to an exemption. Respondents also argue that even if the property is used for an exempt purpose, the property is not used "exclusively " for this purpose.

Contrary to Petitioner's contention, the Petitioner's classification by the IRS as a public charity exempt from payment of income taxes is probative, but not conclusive, on the

issue of a real property tax exemption (See, *Swedenborg Foundation, Inc. v. Lewisohn* 40 NY2d 87 [1976], *Church Home of Protestant Episcopal Church v. Wagner*, 58 A.D.2d 972 [4th Dept 1977]).

Section 420-a of the Real Property Tax Law allows for an exemption from payment of real property taxes in the proper case. It provides, in pertinent part, as follows:

1. (a) Real property owned by a corporation or association organized or conducted exclusively for religious, charitable, hospital, educational, or moral or mental improvement of men, women or children purposes, or for two or more such purposes, **and used exclusively for carrying out thereupon one or more of such purposes** either by the owning corporation or association or by another such corporation or association as hereinafter provided shall be exempt from taxation as provided in this section (Emphasis added).

A taxpayer seeking to have the real property declared tax exempt bears the burden of proof (*Matter of Lackawanna Cmty. Dev. Corp. v. Krakowski*, __ NY3d __, 2009 NY Slip Op 4738 [2009]). The petitioner must show first that the organization is organized or conducted “exclusively” for an exempt purpose (see *Monhonk Trust v. Board of Assessors*, 47 NY2d 476 [1979]) and second that the property for which the exemption is sought is used exclusively for an exempt purpose.

Applying the first prong of the test, the Court must determine whether the corporation is organized or conducted exclusively for its claimed charitable purpose.

The corporate purpose set forth on the Certificate of Incorporation are as follows:

1. To bring the Tidings of Goods (sic) News about Jesus Christ to those individuals of society who are in need of hope, love and the source of power to help change their lives.

2. To deliver the Tidings of Good News about Jesus Christ through the medium of modern dance, contemporary ballet, theater, music and other performing arts.
3. To promote public awareness and interest in Christian dance and to develop audiences knowledgeable in Christian dance techniques.
4. To provide quality professional development through training, choreographing and otherwise enlightening individuals in Christian dancing.
5. To cultivate, promote, foster, sponsor and develop the understanding tastes and love for the art of dance.
6. To do all such acts as are necessary or convenient to attain the objects and purposes herein set forth , to the same extend and as fully as any natural person could or might do, as are not forbidden by law, this certificate of incorporation or the by-laws of this Corporation.
7. In addition to the foregoing corporate purposes, the Corporation shall have an exercise all of the general and special powers of corporation set forth in section 202 of the Not-for-Profit Law.

The application completed by the Petitioner and submitted to the town was made on the official forms promulgated by the New York State Board of Real Property Services. That application is a two-part form consisting of Part I, designated as form "RP-420-a/b-Org (1/95)" and Part II, designated as form "RP-420-a/b-Use (11/04)." Although the information requested on Part I of the application is loosely arranged to outline corporate purposes that would qualify for the exemption under Real Property Tax Law §420-a, Mr. La Valley testified that the questions posed on the application did not apply to his organization and he had difficulty completing the form. In an effort to more fully explain the answers to the questions, the Petitioner attached various statements including a statement entitled "POINTES OF FAITH DANCERS, INC.'S PURPOSE FOR EXISTENCE In response to questions 2a, b and c of RP-420-a/b Org (1/95)." That statement included the

following:

...we have a number of charitable purposes, such as : religious and educational . We pray that all of our activities will dovetail to promote spiritual growth and direction, as well as , foster moral improvement for all of those we serve.... the main mission of the professional dance company...and its performing arts school,to use the art of dance, movement, music and the other theater arts as a conduit to deliver the life changing message of hope, love, forgiveness, deliverance and healing through the Gospel of our Lord and Savior, Jesus Christ, to audiences who are in need of His powerful Good News....Our audiences...have been and will include: nursing homes, private schools, correctional facilities, festivals, public markets, churches, the professional dance company's concerts and the company's performing art school's recitals....

The statements lists the following secondary goal

to educate, cultivate, promote sponsor and develop an understanding, taste and love for dance, movement, music and other theater arts. We believe that the theater arts should not only provides a means for artistic expression; the arts, intertwined with the Gospel of Jesus Christ, should promote spiritual and emotional healing though worshipful expression and edifying experiences.

The statement also identifies numerous free concerts, benefit concerts for mission groups and other performances given throughout Western New York to advance the organization's mission.

At trial, Mr. La Valley testified that the dance company performs in nursing homes, schools and correctional facilities all to spread the "good news" through dance and theatrical productions. He further testified that tuition waivers are given to those who cannot afford tuition, that admission is charged only when the organization has to rent a performance facility, that there are no full time employees and the part-time employees are paid "token amounts."

The Petitioner also introduced into evidence, and the Court has reviewed, its Short Form Returns of Organization Exempt for Income Tax, form 990 EZ, filed by the Petitioner

for years 2004-2006. The gross receipts and expenses were as follows: 2004 receipts of \$29,505 and expenses of \$22,864; 2005 receipts of \$22,818 and expenses of \$22,320; 2006 receipts of \$26,743 and expenses of \$26,599.

The Court finds that organizational documents and the activities conducted by supports the conclusion that the Petitioner is organized or conducted exclusively for a one of more of the following purposes: religious, charitable, educational, or moral or mental improvement of men, women or children.

Next, the Court must determine whether or not the Petitioner has shown that the property located at 55 William Street is used exclusively for carrying out thereupon its exempt purposes. The statute's "used exclusively" language should be understood to mean "used principally" (*Matter of Lackawanna Cmty. Dev. Corp. v. Krakowski*, __ NY3d __, 2009 NY Slip Op 4738 [June 11, 2009] citing *Matter of Symphony Space v Tishelman*, 60 NY2d 33, 38, [1983]). Although exemptions must be construed strictly against a taxpayer an "interpretation so literal and narrow that it defeats the exemption's settled purpose is to be avoided" (*Symphony Space v. Tishelman* 60 NY2d 33 [1983]). The Court in *Symphony Space* opined that the word "exclusive" has been held to connote 'principal' or 'primary.' The Court of Appeals in *Symphony Space* recognized a performing arts organization as qualifying for an exemption under Real Property Tax Law 420-a and specifically dismissed the lower Courts reasoning that the petitioner was not exempt because it rented its theater to outside groups and often charged admission. (*Symphony Space v. Tishelman* 60 NY2d

33[1983]; See also, *Chautauqua Institution v. Chautauqua*, 35 A.D.2d 1 [4th Dept 1970]).

Except for that portion of the property that consists of apartments, the Court finds that Petitioner proved that the property is used exclusively for carrying out its charitable purpose. The portion of the building used as an apartments is not exempt and is subject to taxation pursuant RPTL 240-a[2] which provides in pertinent part:

If any portion of such real property is not so used exclusively to carry out thereupon one or more of such purposes but is leased or otherwise used for other purposes, such portion shall be subject to taxation and the remaining portion only shall be exempt...

The board never reached this issue and the evidence before the court is insufficient to make a determination as to the allocation of value between the exempt and non-exempt uses of the property. Accordingly, the matter is remitted to the Board to make such a determination.

Now therefore, it is

ORDERED, that the Petitioner's request for an Order granting an exemption from real property taxes for the 2006 tax years for that portion of its building located at 55 William Street in the Town of Lyons is granted to the extent that the property is used to house the Pointes of Faith Dancers, Inc., and it is further

ORDERED, the matter is remitted to the Board to determine the allocation between that portion of the property used for the exempt purpose and the portion used as rental property.

Dated: July 2, 2009



Hon. Daniel J. Doyle, JSC