

**Matter of Woman's Club of Great Neck, Inc. v County  
of Nassau**

2010 NY Slip Op 32379(U)

August 24, 2010

Supreme Court, Nassau County

Docket Number: 8484/10

Judge: Denise L. Sher

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 OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER  
Acting Supreme Court Justice

In the Matter of the Complaint and Application of

WOMAN'S CLUB OF GREAT NECK, INC.,

Petitioner,

For Judicial Review of Denial and Full Exemption of Real Property Under Real Property Tax Law 420-a, pursuant to Article 7 of the Real Property Tax Law and For Judgment Under CPLR Article 78 Directing That Petitioner Receive a Full Exemption For the Subject Premises

TRIAL/IAS PART 32  
NASSAU COUNTY

Index No.: 8484/10  
Motion Seq. No.: 01  
Motion Date: 06/05/10  
**XXX**

- against -

COUNTY OF NASSAU, THADDEUS J. JANKOWSKI, JR.,  
NASSAU COUNTY ASSESSOR, THE NASSAU COUNTY  
DEPARTMENT OF ASSESSMENT, THE ASSESSMENT  
REVIEW COMMISSION OF NASSAU COUNTY and  
OFFICE OF HE NASSAU COUNTY TREASURER,

Respondents,

**The following papers have been read on this motion:**

	Papers Numbered
Notice of Application, Verified Petition, Affidavit and Exhibits	1
Petitioner's Memorandum of Law	2
Verified Answer, Affidavit and Exhibits	3
Respondent's Memorandum of Law	4
Petitioner's Reply Memorandum of Law	5

Upon the foregoing papers, it is ordered that the application is decided as follows:

In this Article 78 proceeding petitioner, Woman's Club of Great Neck, Inc. ("Woman's Club") seeks a determination reversing respondents' denial of a full exemption under Real Property Tax Law 420-a for petitioner's property at 94 Old Mill Road, Great Neck, New York for the 2009/10 tax year and subsequent tax year.

Woman's Club is an organization that has been in existence for approximately ninety years. According to its constitution and by-laws (Exhibit C to the Petition), its purpose is to "promote, perform or assist all kinds of charitable, scientific, literary and educational activities, including the encouragement of art." In practice, it collects monies to give to local charities. In the 1930s, a benefactor deeded to Woman's Club the premises, which was especially built for Woman's Club as a clubhouse. For all the years that Woman's Club has owned the premises it always received a full tax exemption until the 2009/10 tax year.

In June 2008, Woman's Club received notice that it would be granted only a partial tax exemption on the 2009/2010 tax roll, because some rooms on the second floor of the clubhouse are rented to private individuals. Woman's Club rejects this position, and argues that the rooms are used by "resident members" of the Woman's Club, who pay a usage fee to the Woman's Club in consideration of their usage.

There are seven rooms at issue on the second floor of the clubhouse. Six are one-bedrooms without private bath or kitchens/eating areas. The usage fee for each of these rooms is \$475.00 per month. There is one larger room with a private bath, for which the fee is \$600.00 per month. The rooms are used on a month-to-month basis. Woman's Club places restrictions on the use of rooms and requires all resident members to be recommended, interviewed, and approved.

The Woman's Club argues that allowing resident members to use their facilities in exchange

for a below-market-rate usage fee accomplishes two objectives. First, it allows the Woman's Club to help single women who have fallen into financial difficulty and need inexpensive housing. Second, it produces income that is used to offset the expenses of maintaining the clubhouse. According to the Woman's Club, expenses exceed income, so profit is not an issue.

Respondents' first defense is that this special proceeding is time-barred. The limitations period for an Article 78 proceeding is four months (CPLR § 217), and, according to respondents, that limitations period was triggered by their letter of June 9, 2008. *See* Exhibit A to the Petition.

Judicial review of an administrative determination in an Article 78 proceeding may not be maintained where a petitioner has failed to exhaust administrative remedies. *See Henderson v. Zoning Board of Appeals*, 72 A.D.3d 684, 897 N.Y.S.2d 518 (2d Dept. 2010). An Article 78 proceeding challenging the legality of a municipal tax assessment must be commenced within four months after the determination to be reviewed becomes final. *See Level 3 Communications, LLC v. DeBellis*, 72 AD3d 164, 895 N.Y.S.2d 110 (2d Dept. 2010), *lv app dsmd* 14 N.Y.3d 855 (2010).

Here, Woman's Club proceeded to exhaust its administrative remedies by appealing to the Assessment Review Commission. Respondents' determination of partial exemption became final when the Assessment Review Commission denied the appeal by letter dated February 26, 2010. *See* Exhibit 4 to the Petition. This letter contains the following heading: "FINAL DETERMINATION OF THE 2009/10 EXEMPTION APPEAL." Under these circumstances, where respondents' determination became final on February 26, 2010, and this proceeding was commenced on April 30, 2010, this proceeding is timely.

Moving on to the substance of this controversy, where a municipality seeks to withdraw a previously granted tax exemption, the municipality bears the burden of proving that the property

[\* 4]

is subject to taxation. *See Lackawanna Community Development Corp. v. Krakowski*, 12 N.Y.3d 578, 883 N.Y.S.2d 168 (2009); *Otrada, Inc. v. Assessor, Town of Ramapo*, 41 A.D.3d 678, 839 N.Y.S.2d 123 (2d Dept.2007), *lv app den* 9 N.Y.3d 811 (2007). It is respondents' burden to establish that the challenged use of a portion of the property is inconsistent with the primary tax-exempt purpose of the owner. *See Congregation Rabbinical College of Tartikov, Inc. v. Town of Ramapo*, 72 A.D.3d 869, 900 N.Y.S.2d (2d Dept. 2010).

The Court begins its analysis with the statutory provision granting the subject tax exemption:

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.

*See* Real Property Tax Law 420-a(1)(emphasis added). The words "used exclusively" have been construed to mean "used principally." *See Lackawanna Community Development Corp. v. Krakowski, supra* at 581 *citing Symphony Space, Inc. v. Tishelman*, 60 N.Y.2d 33, 466 N.Y.S.2d 677 (1983). Purposes and uses merely "auxiliary or incidental to the main and exempt purpose and use will not defeat the exemption." *See Hapletah v. Assessor of the Town of Fallsburg*, 79 N.Y.2d 244, 582 N.Y.S.2d (1992), *citing Association of Bar of City of New York v. Lewisohn*, 34 N.Y.2d 143, 356 N.Y.S.2d 555 (1974).

The charitable purpose for which Woman's Club was organized is not at issue. Instead, respondents seek to divide the property by use, and deny the charitable exemption for that portion of the Woman's Club property available for residential use. Respondents argue that the Woman's Club leases its upper floor to private individuals to generate revenue to offset its operating expenses and that this is a commercial transaction, not a charitable one. This Court disagrees.

Providing housing to poor people at below market rates is plainly a charitable purpose. *See Adult Home at Erie Station, Inc. v. Assessor*, 10 N.Y.3d 205, 856 N.Y.S.2d 515 (2008). Here,

where respondents have not established that petitioner is providing housing at below-market rates to women without financial difficulties, it appears that both the principle and auxiliary purpose of the use of the property at the Woman’s Club is charitable.

Respondents continue their argument by pointing to the absence of proof of financial difficulties of resident members. Assuming *arguendo*, because the Woman’s Club does not limit the income of its resident members, nor require them to turn over their assets, the purpose of the residential use of the property in this case has not been shown to be strictly “charitable,” denial of a full tax exemption is nevertheless unwarranted. Respondents admit that residential use of a portion of a property may be found exempt if the residential use is “reasonably incidental to furthering the exempt organizations (sic) purpose.” See Respondents’ Memorandum of Law p.8. See generally *Hapletah v. Assessor of the Town of Fallsburg, supra* at 251 (portions of property used for residential purposes found “necessary and reasonably incidental” to primary use of the property as a religious educational facility); *Sephardic Congregation of South Monsey v. Town of Ramapo*, 47 A.D.3d 915, 849 N.Y.S.2d 662 (2d Dept. 2008)(residential use by rabbi and his family of upper floors of premises used for synagogue was necessary and incidental to primary religious purpose).

The critical inquiry is how the property is used, not whether it is profitable. See *Adult Home at Erie Station, Inc. v. Assessor, supra* (claim rejected that 30-40% of contract occupants who are not SSI recipients are not poor enough to meet exemption for charitable purpose); *Congregation Rabbinical College of Tartikov, Inc. v. Town of Ramapo, supra* (operation of religious summer camp consistent with intended principal use of property as a religious college). Indeed where the owner derives some profit from the use of a portion of the property a tax exemption pursuant to RPTL 420-a(1) is not defeated, so long as the primary or principal use of the property is for a tax-exempt purpose. See *Congregation Rabbinical College of Tartikov, Inc. v. Town of Ramapo, supra*.

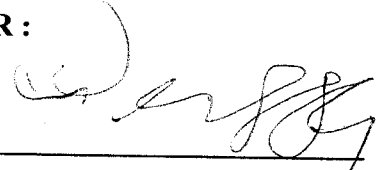
At the very least, that is the case here. The auxiliary purpose of the residential use does not defeat a full tax exemption because the Woman’s Club needs the funds produced by the residential use of resident members to offset expenses of the clubhouse generally, especially during the “economic down-turn of recent years” which has resulted in “reduced contributions from the community” See Feaster affidavit, par. 12. Respondents’ sudden conclusion to the contrary is completely unsupported.

On this record, the Court finds that respondents have failed to meet their burden of showing

that the residential use of a portion of the subject property is other than necessary and reasonably incidental to furthering the Woman's Club's primary exempt purpose, thereby qualifying the premises for a full tax exemption under RPTL 420-a(1) for the years at issue. *See Sephardic Congregation of South Monsey v. Town of Ramapo, supra; Otrada, Inc. v. Assessor, Town of Ramapo,, supra.* Accordingly, the petition is granted.

This constitutes the Decision and Order of this Court.

ENTER:



DENISE L. SHER, A.J.S.C.  
XXX

Dated: Mineola, New York  
August 24, 2010

**ENTERED**  
AUG 26 2010  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE