

**Matter of Holy Spirit Assn. for the Unification of  
World Christianity**

2019 NY Slip Op 31678(U)

June 13, 2019

Supreme Court, New York County

Docket Number: 151624/2019

Judge: Barbara Jaffe

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. BARBARA JAFFE **PART** **IAS MOTION 12EFM**

*Justice*

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**INDEX NO.** 151624/2019

In the Matter of the Application of

**MOTION DATE** \_\_\_\_\_

THE HOLY SPIRIT ASSOCIATION FOR THE  
UNIFICATION OF WORLD CHRISTIANITY,

**MOTION SEQ. NO.** 001

Petitioner,

For Approval To Mortgage Real Property Located in  
the City and County of New York Pursuant to Section  
12 of the Religious Corporation Law and Sections 510  
and 511 of the Not-for-Profit Corporation Law.

**DECISION AND JUDGMENT**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 26, 27, 28, 29,  
30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45

were read on this petition for \_\_\_\_\_ misc. special proceeding \_\_\_\_\_.

Pursuant to New York’s Not-for-Profit Corporation Law (N-PCL) §§ 510 and 511,  
petitioner seeks approval for a mortgage on real property it owns.

I. BACKGROUND

On September 18, 1961, petitioner filed with the California Secretary of State articles of  
incorporation under and pursuant to the General Nonprofit Corporation Law of California. The  
primary purpose of the corporation as set forth in article II is the “worship of GOD and the study,  
teaching, and practical application of Divine Principles.” Among its other purposes are “to  
acquire . . . . and cause to be conveyed, such property, real and personal, as may be necessary or  
useful to carry out any or all of the purposes and powers” of the corporation. (NYSCEF 3).

On July 3, 1968, by unanimous consent of the petitioner’s directors, article II of the  
articles of incorporation was amended, in pertinent part, to prohibit the corporation from  
engaging “in any activities, except to an insubstantial degree, which is not in furtherance of its

primary religious purposes.” (*Id.*).

## II. VERIFIED PETITION (NYSCEF 1)

Petitioner, sole and direct owner of Operations Holding, Inc., seeks an order pursuant to sections 510 and 511 of the Not-for-Profit Corporation Law and section 12 of the Religious Corporation Law approving a \$20 million mortgage loan on its Manhattan real property located at 311-321 West 34th Street, New York, NY 10001, which is leased by Manhattan Center Studios, Inc. (MCS). The lender is MCR MC Finance LLC.

Operations Inc. is the sole and direct owner of, among other subsidiaries, MCNY Group, Inc. (MCNY), which is the sole and direct owner of New Yorker Hotel Management Company Inc. (NYHM) and Manhattan Center Studios, Inc. (MCS). Operations, MCS, MCNY, and NYHM are all for-profit entities. Petitioner owns the New Yorker Hotel. Of the \$20 million, \$18.5 million will be used to finance the buyout of employment contracts of certain union members employed by the hotel. The remainder will be used for transaction costs. Petitioner claims that the buyout will improve the profitability of the hotel and thereby further its purposes. (NYCSEF 1).

## III. POSITION OF THE OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL (NYSCEF 28)

By notice of appearance and affirmation, an assistant attorney general in the charities bureau of the New York State Attorney General’s Office (OAG) advises that the OAG cannot approve petitioner’s application and thus defers it to my discretion. Although the OAG acknowledges that the transaction appears to be fair and reasonable to petitioner, it adds that the mortgage does not appear to be in furtherance of petitioner’s primary religious purpose, that petitioner provides no evidence as to how improved profitability of the hotel will further petitioner’s religious mission or specific programs, and that it “believes that the “primary

business of [petitioner] is not religious in nature and therefore [petitioner] is acting outside the scope of its religious mission.” It points out that funds spent and earned by petitioner on religious programs account for a small percent of its main activities, which are in real estate, with interests in media, advertising, real property management, and outside activities. Moreover, the sole members of petitioner are the directors.

The OAG otherwise claims that the petition lacks required (1) resolutions of the Congregation approving the transaction, (2) an explanation of petitioner’s operations which are religious in nature, and (3) proof of funds from the entity which provides the funding that show no investment or relationship between petitioner, MCR NYH or MCR MC.

#### IV. SUBMISSIONS IN RESPONSE TO THE OAG’S OBJECTIONS

Thereafter, by affidavit, petitioner’s attorney explains, as it had previously explained to the OAG by email dated October 9, 2018, that pursuant to petitioner’s bylaws, approval of the transaction by vote of the members of the congregation is not required, and he cited two decisions in support thereof. As proof that there is no relationship between petitioner and lender MCR and petitioner and MCR NYH Management LLC, he provides, as he had in an email to the OAG dated December 10, 2018, MCR’s operating agreement dated July 31, 2018, which is signed by its managing member R. Tyler Morse, the certificate of incorporation and bylaws of MCNY Group, Inc., and an organizational chart reflecting petitioner’s subsidiaries. He states, as he had in the previous email, that that “there is no relationship or affiliation between Petitioner and the entities MCR MC Finance LLC and MCR NYH Management LLC,” and that MCR is a limited liability company the sole member of which is MCR Investors LLC, which has a single member, R. Tyler Morse who is not a director, officer or “key person” of petitioner, nor does a director, officer or “key person” of petitioner have a direct or indirect financial interest in MCR.

(NYSCEF 29).

By affidavit, petitioner's corporate secretary denies the OAG's statement that petitioner's headquarters is not a church, and asserts that it is used for religious purposes as a house of worship since 1975, offering the most recent certificate of occupancy which describes the building as a "church with accessory chapel," with a dining room, offices, pastor's apartment, and dormitory rooms. There is also a place of assembly permit issued for the first floor of the building by the Department of Buildings. As a member of petitioner's congregation, the "Family Church of New York City," she states that weekly Sunday services have been conducted there since 2013, and that "worship services" were conducted in the ground floor chapel at various times from 1975 through 2008. The offices and residence of the Family Church's pastor are on the seventh floor, and since 2000, the Unification Theological Seminary founded by petitioner uses rooms in the building for teaching and offices. Petitioner also rents space to other non-profit organizations. (NYSCEF 32).

Petitioner's president offers, by affidavit, evidence of events and activities sponsored by petitioner, a national organization, throughout 2018 purporting to demonstrate that petitioner is involved "on a national scale" in promoting its religious mission. He also states that in 2018, petitioner received, through its local churches, approximately \$5.7 million from congregants. (NYSCEF 36).

At oral argument of the petition, petitioner's counsel explained that petitioner has no members. Rather it has "worshippers and congregants" who are not voting members. The OAG neither appeared (NYSCEF 45) nor submitted additional papers.

#### V. ANALYSIS

Pursuant to N-PCL § 511(d), if the court is satisfied that, as pertinent here, "the purposes

of the corporation or the interests of the members will be promoted,” it may approve the mortgage.

Thus, the issue is whether petitioner demonstrates that it is not prohibited by article II, section h, of its articles of incorporation from taking out a mortgage to finance a buyout of employment contracts of union members who work at its hotel. Given the negative prohibition set forth in section h, petitioner essentially asserts that the activity in issue furthers its primary religious purposes, and to the extent that it does not, it does not do so to a substantial degree.

In *Holy Spirit Ass’n for Unification of World Christianity v Tax Commission of City of New York*, the Appellate Division affirmed a special referee’s determination that the New York City Tax Commission had not arbitrarily and capriciously denied petitioner a tax exemption, based on a finding that petitioner was “so inextricably interwoven with political motives and activities” as to warrant denial of the tax exemption. The Court of Appeals reversed, holding as follows:

In determining whether a particular ecclesiastical body has been organized and is conducted exclusively for religious purposes, the courts may not inquire into or classify the content of the doctrine, dogmas, and teachings held by that body to be integral to its religion but must accept that body’s characterization of its own beliefs and activities and those of its adherents, so long as that characterization is made in good faith and is not sham. On this principle it must be concluded that the Unification Church has religion as its “primary” purpose inasmuch as much of its doctrine, dogmas, and teachings and a significant part of its activities are recognized as religious, and in good faith it classifies as religious the beliefs and activities which the Tax Commission (Commission) and the court below have described as political and economic.

(55 NY2d 512, 518-519 [1982]).

Here, as in its case before the Court of Appeals, petitioner’s evidence shows that it engages in many kinds of activities, some religious, some not. Bearing in mind that I may not examine the content of petitioner’s doctrine, dogmas, and teachings and must accept its characterization of its beliefs and activities and those of its adherents as long as it is in good faith

and not a sham, and absent any affirmative evidence of sham or bad faith, I find that to the extent that the transaction in issue does not further petitioner’s primary religious purposes, it is insubstantial and thus in compliance with section h of article II of petitioner’s articles of incorporation. As the purposes of the corporation or the interests of its members will be promoted to the extent that the transaction will enrich petitioner, it is approved.

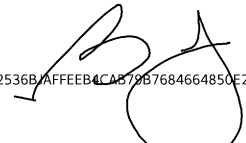
VI. CONCLUSION

Accordingly, it is hereby

ORDERED, that the petition is granted; and it is further

ORDERED, that the proceeds of the loan be used in the manner proposed by petitioner.

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6/13/2019  
DATE

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BARBARA JAFFE, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  OTHER  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT  REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: