

**Matter of Avenue B Christian Ctr., Inc. v New York  
State Off. of the Attorney Gen.**

2020 NY Slip Op 31392(U)

May 14, 2020

Supreme Court, Kings County

Docket Number: 510178/2019

Judge: Kathy J. King

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 64 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 14<sup>th</sup> day of May, 2020.

PRESENT:  
HON. KATHY J. KING,  
Justice.

-----X  
In the Matter of the Application of  
Avenue B Christian Center, Inc.,  
  
Petitioner,

For the approval to sell Real Property  
Pursuant to Religious Corporation Law § 12 and  
Not for Profit Corporations Law §§ 510 and 511

- against -

New York State Office of the Attorney General  
  
Respondent.  
-----X

DECISION/ORDER  
  
Index No. 510178/2019

The following papers number 1 to 3 read herein:  
  
Petition/Affidavit (Affirmation) \_\_\_\_\_  
Opposing Affidavits (Affirmations) \_\_\_\_\_

<u>Papers Numbered</u>	
	1-2
	3

Upon the foregoing papers, Petitioner, Avenue B Christian Center, Inc. ("The Christian Center"), seeks judicial approval of the sale of the property located at 9302 Avenue B, Brooklyn, New York ("the subject property") pursuant to the Religious Corporation Law § 12. Respondent, New York State Office of the Attorney General, opposes the motion.

The Christian Center is a religious organization whose objective is to establish and maintain a church for religious worship and prayer, to conduct and maintain services for divine worship and religious observance, and to provide for the good and welfare of the community.

Rita Lewis ("Lewis") is the President and member of the Board of Directors of petitioner. In Lewis' affidavit in support of the motion, she states that the sale of the subject property will provide needed support for The Christian Center.

Lewis was the original title of the subject property when it was purchased in 1998. Pursuant to a motion to reform and correct by Lewis, the court issued a declaration, by order dated June 18, 2013 (Solomon. J), that The Christian Center is the title owner of the subject property. However, Lewis did not record a deed reflecting the correction of ownership to the subject property. In early 2016, at a special meeting of the board of trustees, the sale and lease of the subject property was approved. In October 2017, Lewis executed a contract of sale to sell the subject property to Jack Berger ("Berger") for \$750,000, wherein Berger made a down payment of \$100,000 toward the purchase price. The contract of sale also provides that Berger can take back a purchase money mortgage in the amount of \$650,000, which would allow the petitioner to remain in the possession of the property and, at the same time, collect rental income to sustain its operations. Thereafter, Lewis' role as the special representative on behalf of the petitioner to enter into a contract of sale and lease the subject property was approved by petitioner retroactively on January 15, 2019. Lewis asserts she is holding title as nominee of the petitioner and intends to convey a deed of the property into the petitioner upon the Court's determination of the within motion.

In anticipation of seeking Court approval and in accordance with the contract of sale, petitioner had a "hypothetical appraisal" conducted in 2018 which assessed the fair market value of the subject property at \$845,000. While petitioner asked Berger to increase the contract price based on this appraisal, the purchaser declined.

Petitioner now commences the instant action for court approval of the proposed sale of the subject property. Respondent contends it cannot consent to the requested relief because the proposed sale does not conform to the criteria set forth in Not-For-Profit Corporation Law (“N-PCL”) § 511 (d).

It is well settled that transactions by religious organizations involving fundamental changes, such as the sale, lease or other transfer of any assets, either Attorney General approval or court approval on notice to the Attorney General, is required under the N-PCL and RCL to authorize such transactions (*see* N-PCL §§ 511, 511-a, 907, 1002(d)(1) and 1003(b)(2)). The Attorney General's role is to protect the charitable mission and the interests of charitable beneficiaries, and to ensure that charitable assets are used solely for charitable purposes and not for private benefit and to prevent the waste or dissipation of charitable assets (*see Church of God v. Fourth Church of Christ, Scientist*, 76 Ad2d 712, 716 [2d Dept 1908]).

Religious Corporations Law § 12(1) provides that in order to sell any of its real property, a religious corporation must apply for, and obtain, leave of court pursuant to N-PCL § 511; (*see Congregation Nachlas Jacob Anshe Sfard of Jackson Hgts. v Schwarz*, 152 AD3d 647, 647 [2d Dept 2017]). N-PCL 511 (d) provides a two prong test which states “if it shall appear, to the satisfaction of the court, that the consideration and the terms of the transaction are fair and reasonable to the corporation and that the purposes of the corporation or the interests of the members will be promoted, it may authorize the sale, lease, exchange or other disposition of all or substantially all the assets of the corporation, as described in the petition, for such consideration and upon such terms as the court may prescribe.” “The purpose of this requirement is to protect the members of the religious corporation, the real parties in interest, from loss through unwise bargains and from perversion of the use of the property”

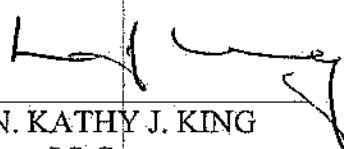
(*Congregation Nachlas Jacob Anshe Sfard of Jackson Hgts. v Schwarz*, 152 AD3d 647, 647 [2d Dept 2017] citing *Church of God of Prospect Plaza v Fourth Church of Christ, Scientist, of Brooklyn*, 76 AD2d 712, 716 [2d Dept 1980], *affd.* 54 NY2d 742 [1981]).

Contrary to petitioner's contentions, the Court finds that the contract of sale terms are not fair and reasonable, since the purchase price included in the contract of sale is below the fair market value as calculated in the appraisal and the contract provides for petitioner to take back a \$650,000 purchase money mortgage. Given these terms, the Court finds that the financial benefit to petitioner is questionable.

The Court also finds that petitioner has failed to show how the interests of the corporation and its members will be promoted by the proposed sale. According to petitioner's by-laws, the organization does not have the authority to distribute the proceeds resulting from the proposed sale to various national charities or to collect rental income by leasing the premises to a day care center. Respondent's opposition papers indicate that petitioner did not seek respondent's approval prior to leasing to the day care center, and that petitioner has not been holding worship services at the subject property. Significantly, petitioner's financial statements do not disclose any charitable or religious activity.

Based on the foregoing, the Court finds the proposed sale of the subject property fails to meet the statutory criteria in accordance to N-PCL 511(d), and the petition is denied.

ENTER,

  
HON. KATHY J. KING  
J.S.C.