

**Matter of Harrison Orthodox Minyan Inc. v
Town/Village of Harrison**

2020 NY Slip Op 35750(U)

November 12, 2020

Supreme Court, Westchester County

Docket Number: Index No. 67431/15

Judge: Bruce E. Tolbert

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

P R E S E N T: HON. BRUCE E. TOLBERT, J. S. C.

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In the Matter of the Application of,	Index Number
HARRISON ORTHODOX MINYAN Inc., d/b/a	67431/15
YOUNG ISRAEL OF HARRISON	67103/19

Petitioner,

-against -

THE TOWN/VILLAGE OF HARRISON , a Municipal Corporation, the ASSESSOR’S OFFICE OF THE TOWN/VILLAGE OF HARRISON, and THE BOARD OF ASSESSMENT REVIEW OF THE TOWN/VILLAGE OF HARRISON,

Respondents,

-and-

THE HARRISON CENTRAL SCHOOL DISTRICT,
Intervenor -Respondent,

For A Review Under Article 7 of the Real Property Tax Law of the State of New York of the assessments of certain real property situated in Respondent Municipal Corporation located in the County of Westchester and State of New York.

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The following documents numbered 1- 29 were read on Petitioner’s Motion for Summary Judgment and Respondents’ Cross Motion for Summary Judgment:

	<u>DOCUMENTS NUMBERED</u>
Petitioner’s Motion, Affidavits and Exhibits	1 - 11
Petitioner’s Memorandum of Law	12
Respondents’ Joint Cross- Motion, Affirmation and Exhibits	13 - 21
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The Petitioner, Harrison Orthodox Minyan Inc. d/b/a Young Israel of Harrison, moves herein as a religious organization, that has Not-For-Profit Tax Exempt status. The petitioner was incorporated for the purpose of founding an Orthodox Jewish Synagogue. The Petitioner is herein seeking not an exemption for the principal premises located at 91 Union Avenue in Harrison New York, which it already receives, but rather an exemption of another property located at 2 Ramapo Circle in Harrison, New York. The latter property, located at Tax Map Parcel ID 0441,-122, is a residential property, not of the Rabbi, instead it is the residence of another employee, known as the Torah Reader, Mr. Efraim Marcus.

Petitioner alleges that because it is an Orthodox Synagogue and it is being operated as such, there is a need for a Torah Reader, which is integral to the operation of the synagogue. It is not for this Court to question what employees are needed by a synagogue, however, in this light it is this Court's responsibility to question whether the residence of the Torah Reader should be given tax exemption status.

On or about December 24, 2014, the house which is the residence in question was purchased by a member of the synagogue, and then donated to the Petitioner. Soon thereafter the Torah Reader and his family moved into the residence.

In 2015, the Petitioner applied to the Assessor for a Tax Exemption for Non Profit Organizations pursuant to RPTL Section 420-a, seeking to qualify the residence as an exempt property. This application was denied by the Assessor, finding that said property was not being used for an exempt purpose. Thereafter, the application came for review by the Board of Assessment Review where again it was denied. When Harrison's final Tax Roll was filed in 2015, said property was not given the exempt status. Article 7 petitions were filed in 2015 and again in 2019 as indicated herein. The Petitioner in this action filed a Petition for review of a tax assessment of real property under Article 7 of the Real Property Tax Law of New York. The Article 7 Petition seeks a review of the tax assessment for the real property in question, seeking said assessment to be corrected, modified or vacated.

Petitioner seeks in this motion for Summary Judgment to have this Court establish the exemption of this property because movant believes that they are entitled to such as a matter of law. Respondents filed a cross motion seeking a denial of the exemption entirely .

The Petitioner is a corporation duly in operation pursuant to Section 402 of the Not-for-Profit Corporation Law of New York State.

The Respondents in their defense of these petitions, unequivocally contend that the exemption pursuant to New York State Real Property Tax Law Section 420-a, was not met, based upon the Petitioner's failure to establish what is required by the statute. Whether a property's use is "exclusive" for purposes of the statute has been broadly defined and dependent on whether the primary use of the property is in furtherance of permitted purposes. See, Matter of Greater Jamaica Development Corporation v. New York City Tax Commission, 25 N.Y.2d 3d 614 (2015)

The three part essential test of Section 420-a sets forth that the basis to enable a property to receive an exemption pursuant to the statute is non profit status, organizational purpose and property use. This property serves as the practical residence of the Torah Reader and his family. Based upon the the Orthodox nature of the synagogue, it is imperative that the Torah Reader is also Orthodox. What this means simply is that where the Torah Reader resides is best served by being in walking distance of the synagogue, because driving is prohibited on the Sabbath and also during other time periods in the Jewish religion, specifically holidays.

Moreover, the statute requires that the property must be "used exclusively" for exempt purposes to receive an exemption. Exclusively in this context has been broadly defined to mean "principal" or "primary". See, In the Matter of Yeshivath Shearith Hapletah v Assessor of the Town of Fallsburgh, 79 NY2d 244(1992). In that case, the Court granted exemption status, however the facts are clearly and boldly distinguishable. In *Yeshivath* the real estate in question was a not-for-profit religious corporation, whose primary purpose was teaching Judaism, an educational facility. It operates a school in Brooklyn and

conducts religious educational programs at a 31 acre property located in Sullivan County. The Sullivan County parcel is used mostly during summer months providing a rigorous religious and educational instruction seven days a week. The participants in the summer program also attend the Brooklyn facility or an affiliated organization.

The Sullivan County facility did include housing facilities occupied by the Rabbis, teaching staff, their wives and children, all of whom receive religious instruction. Included are married students and their families, single students and families with very young students, whose mothers serve as volunteers for the yeshivah and whose fathers participate in Sabbath prayer and religious educational program during the weekend. One of the trailers was provided to the caretaker who in exchange for housing for himself maintains the property and provides year round security. The religious instruction was provided by members of the Yeshivah only and not open to the general public. They are made available as housing for teachers and is included as a component of the annual tuition. In its analysis the Court cited People ex. rel Watchtower Bible and Tract Society v. Haring, 8 NY2d 350 (1960), and in that case the Court looked at a school operated by a church, and said the school deserved exempt status as it intimately related to the religious objectives. In the case at bar, such is not present in that the residential facilities are not clearly linked with the religious objectives of the synagogue. The Torah Reader having a residence may be of import, but how is it that it must be provided by the synagogue?

The Appellate Division observed that the uncontradicted record demonstrated that the subject housing facilities are occupied by staff, teachers, Rabbis, and families, members of which are either students at the yeshivah or parents of students too young to attend the school without parental supervision. The Court of appeals agreed, that if the Petitioner was unable to provide residential housing accommodations to its faculty, its primary purpose of providing rigorous religious and educational instruction at the yeshivah would be seriously undermined. The Court of Appeals held that these housing facilities are necessary and reasonably incidental to the primary purpose of the Sullivan County parcel.

The Court of appeals agreed, that if the Petitioner was unable to provide residential housing accommodations to its faculty, its primary purpose of

providing rigorous religious and educational instruction at the yeshivah would be seriously undermined. The Court of Appeals held that these housing facilities are necessary and reasonably incidental to the primary purpose of the Sullivan County parcel. The facts as presented herein are quite different. Moreover, the necessity of having a separate and distinct Torah Reader is the decision of the congregation, but not one that the surrounding taxpayers of Harrison need to be burdened by.

The exemption statutes are to be strictly construed against the taxpayer, and the interpretation of those statutes are not to be so narrow and literal as to defeat their settled purposes, that of encouraging, fostering and protecting the religious and educational institutions. See, People ex. rel. Watchtower Bible & Tract Society v. Haring, 8 NY2d 350 (1960).

The core issue herein is whether the subject property is an integral part of the religious purpose of the Petitioner. The necessity of a Torah Reader for the congregation does not automatically imply a residential necessity. The Petitioner as part of their case relies on St. Luke's Hospital v Boyland, 12 NY2d 776 (1962). Said case is for hospital employees and is easily distinguishable as such. St. Luke's left us with the language of reasonably incident not-for-profit's organizational purpose. The torah reader is a part time position and other people can in fact read the torah. It is not like the position of a Rabbi nor like the position of a priest in their holy establishments. In this case this congregation has chosen to have the job of the Torah Reader be a distinct and separate position, and then supply that part time employee with a residence. The Torah Reader was given a home, by the generosity of the congregation and now what is expected is for the generous taxpayers of Harrison should be the property taxes. Other than providing the Torah Reader a residence, there is no further connection of this property to the activities of the synagogue, this property is residential in nature. See, Yeshivas Bais Yehdi v Assessor of Town of Ramapo, 109 A.D. 2d 744 (2d Dept 1985). In Holy Trinity Orthodox Church of East Meadow v. O'Shea, 186 Misc 2d 880 (Nassau County Supreme Court, 1981), the Court did provide exempt housing to an employee. The Court found that the residence was used for a variety of primarily religious purposes including choir rehearsals, bible study classes, retreats and religious meetings. The Court held that the fact that it is used for residential purposes by the choir director, who provides liturgical music at all weekend services and sacramental ceremonies,

and occasionally by visiting clergy, is plainly incidental to the religious purposes of the building. 186 Misc 2d at 884. In the case at bar, the residence is in fact a residence for the Torah Reader and his family.

As to tax exemptions for Real Property, it is obvious and apparent that the intent of the statute was not to allow exemptions to enable the “net” to be cast so wide that almost any property related to at not for profit entity can be awarded the exempt status. Clearly, the legislative intent was not to have such exemptions granted on a wide spread basis. Moreover, a wide spread granting of such exemptions would also infer that the tax liability would be for other taxpayers to make up, increasing their tax burden.

Clearly, the denial of the exemption in 2015, by the municipality, was a thought out decision, knowing that the ramifications could lead to court proceedings, challenging their determination. The municipality is aware, as is this Court that each taxable year is distinct and separate. See, Legion of Christ v. Mount Pleasant, 1 NY3d 406 (2004). Moreover, it is the assessor’s job to have an on- going independent obligation each year to evaluate the validity of the exemptions. An adjudication that a property is tax-exempt in one year does not bind decisions in future years, the issues are not the same and each year depends on what took place that year. See, People ex re. Watchtower Bible & Tract So., Inc. v. Haring, 286 A.D. 676, 680 (3rd Dept. 1955)

Furthermore, if the movant demonstrates that no triable issues of fact exist they would be entitled to move for and be granted Summary Judgment. See, Matter of the Trustees of the Sailors’ Snug Harbor in the City of New York v Tax Commission of the City of New York, 26 N.Y. 444 (1970). However, the municipality has affirmatively raised issues which this Court cannot ignore.

It is long settled law that Summary Judgment is designed to expedite cases from the trial calendar, claims that can be properly resolved as a matter of law. See, Andre v. Pomeroy, 35 NY2d 361 (1974) and Hantz v. Fishman 155 A.D. 2d 415 (2nd Dept. 1989). Summary Judgment is an appropriate remedy that should be granted where there are not triable issues of fact. See, Suffolk County Department of Social Services v. James M., 83 N.Y. 2d 178 (1994). This

Court, as it is obligated to do, must scrutinize the papers in light most favorable to the non-movant. See, Negriz v Stop & Shop, Inc. 65 N.Y. 2d 625 (1985) and Judice v. DeAngelo, 271 A.D. 2d 583 (2nd Dept. 2000) In a motion for summary judgment facts and circumstances will be construed in a light most favorable to the opposition. See, Corvino v. Mount Pleasant Central School District, 305 A.D. 2d 364 (2d Dept 2003).

The Court must search the record for triable issues of fact without determining the strength of either parties' case. Cross v. Cross, 112 A.D. 2d 62 (1st Dept. 1985). This court must search evidentiary facts sufficient to defeat a Motion for Summary Judgment. It is interesting that issue finding, rather than issue determination, is the standard of review of a motion for Summary Judgment and the mere existence of a material issue of fact should lead to the denial of the motion. See, Downing v. Schreiber, 176 A.D. 2d 781 (2nd Dept. 1991), See Also, Dyckman v. Barrett, 187 A.D. 2d 553(2nd Dept. 1992).

It is well established that a proponent in a Summary Judgment Motion bears the burden of proving *prima facie* entitlement to judgment in its favor as a matter of law without the need for a trial. Alvarez v. Prospect Hospital, 68 NY2d 320(1986); See Also, Hartz Mountain Corp.v. Allou Distributors, Inc., 173 A.D. 2d 440 (2d Dept 1991). Failure to prove such requires a denial of the motion. See, Winegrad v New York University Medial Center, 64 NY2d 320 (1985)

Even if this burden is met, the party opposing Summary Judgment must establish, through admissible evidence, the existence of material issues of fact to preclude Summary Judgment. Zuckerman v. City of New York, 49 NY2d 557 (1980). To defeat Summary Judgment the opponent must present evidentiary facts sufficient to raise a triable issue of fact, and averments merely stating conclusions of fact or of law, are insufficient. Mallard Construction Corp. v. County Federal Savings and Loan Assn., 32 N.Y.2d 285 (1973). See Also, Indig v. Finkelstein, 23 N.Y. 2d 728 (1968).

In a proceeding pursuant to Article 7 of the Real Property Tax Law, Summary Judgment is properly granted when there is no genuine issue of material fact and the petitioner is entitled to judgment as a matter of law on

the issue of their entitlement to a reduction in the challenged assessment. See, Panorama Flight Service, Inc. v. Town/Village of Harrison, 25 Misc. 3d 1201 (Sup. Ct. Westchester County 2009). It is clear that as applied to tax exemption issues, the statutes must be read narrowly, not broadly, strictly construing the statute against those seeking the exemption, with any and all ambiguities resolved in favor of taxation. See, City of Lackawanna v State Board of Equalization, 16 NY2d 222(1965).

This Court finds that in the case at bar, Summary Judgment is not warranted for the Petitioner. The Respondents have come forward with a strong and successful opposition to this Motion. This Court finds that the municipality has in fact been successful in offering a substantial case. Looking to the Cross Motion, this Court finds that Respondents' motion is partially granted in that this Court determines that the Municipality's determination of the property as non-exempt is in fact warranted. The Respondents have in fact met their burden. There is no basis for any further determination on that issue. There are no triable issues of fact that have been raised specific to the determination of the establishment of a tax exemption. As to the underlying Article 7 Petition, the issue remains as to the tax assessment of the property in question.

Article 7 of the Real Property Tax Law, governs tax grievances for property owners. That is the proper channel and venue by which to challenge the assessment and its fairness. The determination of market value of a property is essentially a question of fact. Grant Co. V. Sgroi, 52 N.Y.2d 496 (1981). In an Article 7 Proceeding, Full opportunities are given to litigants to file their own appraisal of the property in question and in addition the use of comparable properties and their assessments come into play. It has been said that Article 7 of the RPTL is in fact the exclusive procedure for review of property assessment, unless otherwise provided by law. See, Niagara Mohawk Power Corp. v. School District of City of Troy, 59 NY2d 262(1983). That challenge by the Movant will be fully assessed by the Court, with a right to a trial on the issues if not addressed in a settlement.

The only petitions filed are 67431/15 and 67103/19. The 2015 index number is viable for an Article 7 application and will remain pending upon entry of this decision.

However, the 2019 index number is not viable. Pursuant to RPTL Section 706(2) a petition must show that a compliant was made in due time to correct such assessment. It is a condition precedent to the judicial review process that there was in fact participation in the assessment review process. Such is required by statute. It is jurisdictional in nature in that no subject matter jurisdiction has been satisfied. See, Matter of Oneora Club v Board of Assessors of Town of Hunter, 13 NY 2d 1170 (1964). Moreover, the jurisdictional statutory requirement of serving an Article 7 Petition on the School District has also not been met by that petition, as such is codified in RPTL Section 708 (3).

It is hereby,

Ordered, that Petition number 67103/19 is dismissed pursuant to RPTL Section 706(2) and RPTL Section 708(3); and it is further

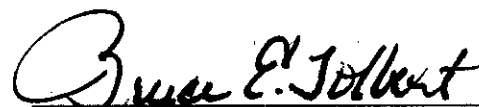
Ordered, that Petitioner's Motion for Summary Judgment is denied. Respondent's Cross Motion is granted specifically in that the exempt status of the property is denied; and it is further

Ordered, that all parties are directed to appear before this Court, located at 111 Dr. Martin Luther King, Jr. Blvd, White Plains, New York, on **Wednesday December 2, 2020 at 10:00** am for the Article 7 proceeding (Index Number 67431/15). At that juncture a Trial Scheduling Order shall be established. If the Courthouse is operating in a virtual capacity the conference shall be conducted via telephone conference.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York

November 12, 2020



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