

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

**FILED AND  
ENTERED ON  
DATE  
March 10, 2005  
WESTCHESTER  
COUNTY CLERK**

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MIRIAM OSBORN MEMORIAL HOME ASSOCIATION,

Petitioner,

Index No: 17175/97  
18077/98  
16567/99  
16113/00  
16626/01  
18115/02  
16987/03

**-against-**

THE ASSESSOR OF THE CITY OF RYE, THE  
BOARD OF ASSESSMENT REVIEW OF THE CITY  
OF RYE, AND THE CITY OF RYE,

Respondents,

**DECISION & ORDER**

-and-

THE RYE CITY SCHOOL DISTRICT,

Intervenor-Respondent.

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DICKERSON, J.

**TRIAL ORDER OF PROOF NUMBER 2: THE " HOSPITAL " EXEMPTION**

### The Scope Of RPTL § 420-a

Real Property Tax Law §420-a[1](a) [ " RPTL 420-a " ] provides that " 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."

### The Burden Of Proof

In a Trial Order Of Proof dated February 3, 2005<sup>1</sup> [ " the First Order Of Proof " ] this Court found that the burden of proof in tax exemption proceedings is, generally, on the taxpayer [ See e.g., New York Botanical Garden v. Assessors of Town of Washington, 55 N.Y. 2d 328, 334-335, 449 N.Y.S. 2d 467 (1982)( " Generally, the burden of proof lies with the taxpayer who is seeking to have real property declared tax exempt " ); Watchtower Bible & Tract Soc. v. Haring, 8 N.Y. 2d 350, 207 N.Y.S. 2d 673 (1960)]. However, in a situation where a municipality withdraws a previously granted tax exemption, it is the municipality that bears the burden of proving that the real property is subject to

taxation [ See e.g., New York Botanical Garden v. Assessors of Town of Washington, 55 N.Y. 2d 328, 334-335, 449 N.Y.S. 2d 467 (1982)( ( "... under the circumstances presented here, in which the municipality, pursuant to its power under section 420 ( subd 1, para (b)), is seeking to withdraw a previously granted tax exemption, the municipality bears the burden of proving that the real property is subject to taxation " ); Miriam Osborn Memorial Home Ass'n. v. Assessor of the City of Rye, 275 A.D 2d 714, 715, 713 NYS 2d 186 (2d Dept 2000) (" Where as here, a municipality seeks to withdraw an existing exemption under RPTL 420-a (1), the burden is with the municipality to prove that the petitioner is no longer entitled to the exemption " )]. The First Order Of Proof directed the " Respondents to go first and present their case on why the Osborn's real property is ' no longer entitled to [ a tax ] exemption ', in whole or in part " .

### **Parsing The Burden Of Proof**

After the trial began on February 14, 2005 the Intervenor-Respondent [ " the Respondents " ] while agreeing to carry the burden of proof on the " charitable " use provision of RPTL § 420-a requested this Court to order the Petitioner [ " the Osborn " ] to carry the burden of proof on the " hospital " use provision of RPTL § 420-a [ See Petitioner's Pre-Trial Memorandum of Law at pp. 30-33; Respondents' Pre-

Trial Memorandum of Law at pp. 45-48 ]. Both the Petitioner<sup>2</sup> and the Respondents<sup>3</sup> submitted letter briefs in support of their positions.

#### **Respondents' Deductive Reasoning<sup>4</sup>**

It is the Respondents' position that the Petitioner should bear the burden of proof as to whether or not the Osborn is entitled to a " hospital " use exemption under RPTL § 420-a. They further contend that the Petitioner never applied for<sup>5</sup> and City of Rye and its Assessor never granted or removed a " hospital " use exemption under RPTL § 420-a. In support of their position the Respondents rely upon language in Miriam Osborn Memorial Home Ass'n. v. Assessor of the City of Rye, 275 A.D 2d 714, 716, 713 NYS 2d 186 (2d Dept 2000) wherein the Appellate Division mentions " charitable purposes " five times without mentioning the " hospital " use exemption before concluding that " the burden ( of proof ) is with the municipality to prove that the petitioner is no longer entitled to the ( RPTL § 420-a ) exemption ". The Respondents conclude that the Appellate Division's main consideration in shifting the burden of proof to Respondents was the revocation of an existing " charitable " use exemption only. " If the Court deemed such a hospital purpose to be applicable, then the Court's analysis would have considered allegations of the ' hospital ' purpose under RPTL Section 420-a, to wit, that the property ' provides health care to the

community`<sup>6</sup> [ See e.g., Ellis Hosp. v. Assessor of the City of Schenectady, 288 A.D. 2d 581, 732 N.Y.S. 2d 659 ( 3<sup>rd</sup> Dept. 2001 ); Genesee Hospital v. Wagner, 47 A.D. 2d 37, 364 N.Y.S. 2d 934 ( 4<sup>th</sup> Dept. 1975 ) for cases discussing some of the factors which may be considered when a hospital seeks a tax exemption under RPTL § 420-a ]. Stated, simply, the Respondents assert that since the Appellate Division did not mention the RPTL § 420-a " hospital " use exemption in its decision that such a basis for a tax exemption could not have been considered by the Assessor of the City of Rye [ " the Assessor " ] when the Petitioner's tax exemption was revoked in 1996<sup>7</sup>. Therefore, they claim, the Respondents should only bear the burden of proof as to the removal of a " charitable " use exemption while the Petitioner should bear the burden of showing the applicability of the " hospital " use exemption to the Osborn.

#### **RPTL § 420-a Should Be Interpreted Broadly**

The Petitioner's position is that Respondents should bear the burden of proof on the issue of the Osborn's entitlement to a " hospital " use exemption under RPTL § 420-a. The Petitioner asserts that RPTL § 420-a should be interpreted broadly without parsing the various categories therein [ See e.g., New York Botanical Garden v. Assessors of the Town of Washington, supra, at 55 N.Y. 2d 335-336 ( In discussing its earlier decision in Mohonk Trust v. Board of Assessors of Town of

Gardiner, 47 N.Y. 2d 476, 418 N.Y.S. 2d 763 ( 1979 ) and rejecting the municipality's attempt to artificially segregate the various categories of exemption under RPTL § 420-a, the Court of Appeals stated that " We recognized that the trust's primary purpose was an assortment of charitable, educational and moral improvement purposes, and concluded that environmental and conservation purposes are also encompassed within the broader categories for which exemption is afforded absolutely " ); Symphony Space, Inc. v. Tishelman, 69 N.Y. 2d 33, 37, 466 N.Y.S. 2d 677 ( 1983 )( " rather than dissecting each exempt purpose, the Court indicated that the statute may encompass property used primarily for various and varied charitable and educational purposes and the moral or mental improvement of the citizenry " )].

#### **Respondents On Notice Of Nursing Home Operations**

The Petitioner states that its entitlement to an exemption based on the operation of its nursing home has been an integral part of this case since the filing of its 1996 tax exemption application<sup>8</sup> in response to the request<sup>9</sup> of the Assessor, Ms. Edye B. Kershner [ now Mrs. McCarthy ]. For example, on the first page of the Petitioner's 1996 application, the Osborn indicated that it is " a licensed nursing facility as defined in Article 28 of the New York State Public Health Law "<sup>10</sup>.

## The Assessor's Decision Shifts The Burden Of Proof

Assessor McCarthy's trial testimony<sup>11</sup> along with a letter<sup>12</sup> from Stephen J. Harrison, Associate Attorney for the New York State Office of Real Property Services [ " ORPS " ] dated October 26, 1995 with a copy of a letter from Attorney Marc Ganz of ORPS dated October 18, 1994 provided to and relied upon by her [ and the subsequent rejection of the arguments set forth in said letters<sup>13</sup> by the Appellate Division in Matter of San Simeon By The Sound, Inc. v. Russell, 250 A.D. 2d 689, 671 N.Y.S. 2d 699 ( 2d Dept. 1998 )( " The petitioner established as a matter of law that it had a mandatory exemption from real property taxation as a ' hospital ' and ' residential health care facility ' " ), provides the most compelling argument for shifting the burden of proof to the Respondents on the " hospital " use exemption under RPTL § 420-a. Evidently, Assessor McCarthy learned from the ORPS' letters that " for purposes of the §420-a exemption, the provision of extended care to the elderly, commonly referred to as nursing home care, is not an exempt hospital purpose. In our opinion, the purposes of §420-a exemption eligibility, the term ' hospital ' identifies an institution where, as a general rule, patients are given medical and surgical treatment, and it is commonly understood to be a place where persons obtain complete medical care. In our opinion, for purposes of §420-a exemption eligibility, the term ' hospital ' does not include nursing home care " .

### One Of The Factors In My Determination

During Assessor McCarthy's cross examination testimony<sup>14</sup> herein, she agreed with Petitioner's counsel that when she initially revoked the Osborn's exemption in 1996, she did not believe there was any basis for exempting any part of the Osborn as a hospital under RPTL § 420-a. She also agreed with counsel that in forming her opinion regarding the Osborn's entitlement to an exemption as a hospital, she relied on the ORPS' letters and the opinions therein as " one of the factors in my determination, yes ".

### THE DECISION

There is no doubt that Assessor McCarthy considered whether the Osborn, which clearly operated as a nursing home during the tax years in question, should be granted an exemption under RPTL § 420-a as a " hospital ". She testified that she relied on the ORPS' letters in making her determination that the Osborn was not entitled to an exemption under RPTL § 420-a as a " hospital ". The reasonable inference, of course, is that had the ORPS' letters stated that the term " hospital " did include nursing home care, that Assessor McCarthy very likely would have granted the Osborn an exemption under RPTL § 420-a to that extent. Regardless, there is no doubt here that Assessor McCarthy

took away a " hospital " exemption under RPTL § 420-a that she believed the Osborn had been given and was not entitled to.

**There Has Been No Waiver**

There is no merit in the Respondents' suggestion that the Petitioner has waived a claim to the " hospital " exemption in its 1997 and 1998 administrative complaints<sup>15</sup> with the City of Rye Board of Assessment Review [ " the Board " ]. In both complaints, the Petitioner referenced the " nursing facility " on the property. This is evidenced by the " Statement in Support of the Osborn's Application for Exemption " which is attached to the " Complaints on Real Property Assessment " for 1997 and 1998<sup>16</sup>. The " Statement in Support ", page 5, states that " The new facilities at the Osborn will be used in the same manner as the existing facilities. The expansion includes the addition of a new 84 bed nursing facility which replaces the old nursing home beds and supplements the existing facilities. " The underlying applications for exemption filed in 1997 and 1998 also referred to the Osborn's nursing facility<sup>17</sup>. On page 2-E of the application<sup>18</sup>, Petitioner states " The New York State Department of Health has issued an Operating Certificate of Occupancy with respect to the new nursing facility. " In addition, the Petitioner's 1997 RPTL Article 7 petition<sup>19</sup> referred to the Osborn's operation of a " fully licensed skilled nursing facility. "

Accordingly, this Court finds that since the City of Rye withdrew the Petitioner's existing " hospital " exemption the burden is on the Respondents to prove that the Osborn is no longer entitled to the " hospital " use exemption under RPTL § 420-a.

The foregoing constitutes the decision and order of this Court.

Dated: White Plains, N.Y.  
March 10, 2005

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HON. THOMAS A. DICKERSON  
JUSTICE SUPREME COURT

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## ENDNOTES

1. Trial Order Of Proof dated February 3, 2005 at [www.nycourts.gov/courts/9jd/taxcert.shmtl](http://www.nycourts.gov/courts/9jd/taxcert.shmtl)
2. Letter of Peter G. Bergmann dated February 28, 2005 [ " the Bergmann Ltr. " ].
3. Letter of Daniel G. Vinceltte dated February 28, 2005 [ " the Vincelette Ltr. " ]
4. For an example of deductive reasoning see Matter of Nextel of New York, Inc. v. Assessor of Village of Spring Valley, 4 Misc. 3d 233, 237-239, 771 N.Y.S. 2d 853 ( West. Sup. 2004 ).
5. Exhibit 1 to Bergmann Ltr. is the Petitioner's Application For Real Property Tax Exemption For Nonprofit Organizations dated April 29, 1996. Therein the Petitioner noted in "2a" that its purpose was " Charitable " but not " Hospital ". However, the same form does describe the Osborn as " a licensed nursing facility as defined in Article 28 of the New York State Public Health Law ".
6. Vincelette Ltr. at p. 4.
7. R. Tr. Ex. 131.
8. See N. 5, supra.
9. R. Tr. Exs. 96 & 98.
10. Pursuant to New York State Public Health Law § 2801(1) a nursing home is included within the definition of the term "hospital". See e.g., Matter of San Simeon By The Sound, Inc. v. Russell, 250 A.D. 2d 689, 671 N.Y.S. 2d 699 ( 2d Dept. 1998 ); Cobble Hill Nursing Home, Inc. v. Axelrod, 196 A.D. 2d 564, 601 N.Y.S. 2d 334 ( 2d Dept. 1993 ).
11. Bergmann Ltr. Ex. 2.
12. Bergmann Ltr. Ex. 2. Compare Ex. D to Respondents' Pre-Trial Memorandum of Law.
13. See Ex. A to Petitioner's Pre-Trial Memorandum of Law.
14. Bergmann Ltr. Ex. 2.

15. Bergmann Ltr. Ex. 3.
16. Bergmann Ltr. Ex. 3.
17. Bergmann Ltr. Ex. 1.
18. Bergmann Ltr. Ex. 4.
19. Bergmann Ltr. Ex. 5.