

FILED AND  
ENTERED  
February 10, 2005  
DUTCHESS  
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

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SALVATION & PRAISE DELIVERANCE CENTER,  
INC., a religious corporation

Petitioner,

- against -

THE ASSESSOR AND BOARD OF ASSESSMENT  
REVIEW OF THE CITY OF POUGHKEEPSIE  
Respondent.

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CITY OF POUGHKEEPSIE

Plaintiff

- against -

SALVATION & PRAISE DELIVERANCE CENTER,  
INC.

Defendant.

-----X

DICKERSON, J.

DECISION & ORDER  
Index No. 3417-96

Index No. 3556-00

BAR CLAIM ACTION GRANTED

The Petitioner, Salvation & Praise Deliverance Center [ " Salvation & Praise " ] commenced this proceeding in 1996, pursuant to Real Property Tax Law [ " RPTL " ] Article 7, concerning its property known as 4-12 South Hamilton Street in the City of Poughkeepsie, Dutchess County, New York [ " the subject property " ].

#### **The Tax Years 1984-1996**

Salvation & Praise purchased the subject property on October 11, 1984 and received tax exemptions from 1984 to 1993 from the City of Poughkeepsie [ " the City " ] pursuant to RPTL §420-a. In 1994, however, the subject property did not receive an exemption from the Assessor of the City [ " the Assessor " ], Robert Cullen, and was found to be taxable on the 1994 assessment roll for the 1995 tax year. In 1995 the new Assessor, Debra Whitton [ " Ms. Whitton " ] found the subject property to be tax exempt for the 1996 tax year<sup>1</sup>.

#### **The Tax Years 1997-1999**

As to the 1996 assessment roll for the 1997 tax year, the Assessor, Ms. Whitton, denied the application for renewal of the exemption<sup>2</sup>. As a result of this denial, the Petitioner filed the instant RPTL Article 7 proceeding in July 1996. The subject property did not receive an exemption for the 1997 and 1998 tax assessment rolls either since as Ms.

Whitton testified, no application was received regarding the 1997 and 1998 tax rolls<sup>3</sup>.

#### **Was A Tax Exemption Application Filed?**

At trial, there was conflicting testimony as to whether the Petitioner filed an application for exemption with regard to the 1997 and the 1998 tax assessment rolls. Ms. Delores Robinson, the pastor of Salvation & Praise [ " Pastor Robinson " ], testified that she filed the applications for an exemption, but the Petitioner failed to prove service on the Assessor<sup>4</sup>. Ms. Whitton testified that no application was received from Salvation & Praise seeking an exemption regarding the 1997 and 1998 tax rolls, and, in addition, no grievance complaint or RPTL Article 7 petition was filed in 1997<sup>5</sup>.

#### **Tax Bills Ignored Leads To Tax Lien Imposed**

Salvation & Praise received a bill for the 1994/95 school taxes in September 1994, as well as a bill from the City in January 1995 for the City, County and Library taxes<sup>6</sup>. Neither of those tax bills were paid by the Petitioner. In December 1995, due to these unpaid taxes, the City attached a tax lien to the subject property.

### Salvation & Praise Failed to Redeem the Property

The City's Administrative Code § 14.25 provides that " The owner of ( any property subject to a tax lien ) may redeem the same from such sale at any time within two years by paying...the sum mentioned in the certificate with interest thereon..."<sup>7</sup> . Salvation & Praise did not redeem the subject property during the two year redemption period which ran from December 15, 1995 to December 15, 1997. The City acquired title to the property by a deed dated May 6, 1998, which was recorded in the Dutchess County Clerk's office on September 4, 1998<sup>8</sup>

### The City Attempts To Settle All Claims

In 1998, Salvation & Praise and the City engaged in settlement negotiations concerning the taxes owed on the subject property. On October 16, 1998 the Common Council for the City passed a Resolution<sup>9</sup> [ " the Resolution " ] permitting Salvation & Praise to pay the delinquent 1995 taxes it owed on the 1994 tax assessment roll. The Resolution had three primary components. **First**, Salvation & Praise was required to pay all outstanding 1995 taxes, penalties and interest for the 1994/95 tax year on or before November 1, 1998. **Second**. Salvation & Praise was to sign a release<sup>10</sup> in a form acceptable to the City's Corporation Counsel, waiving and releasing any claim the petitioner had challenging the validity of the 1995 tax lien and the denial of exempt

status for the 1995 city tax roll [ based on the 1994 tax assessment roll ]. And, **third**, Salvation & Praise was to sign a Contract of Rehabilitation<sup>11</sup> to bring the proposed church into code compliance by June 15, 1999.

**Petitioner Fails To Comply With All Settlement Terms**

Although the Petitioner tendered full payment of the 1995 tax lien it was later returned to Pastor Robinson because the other two conditions of the settlement were not met. **First**, Salvation & Praise never signed the release in the form forwarded to it by the Assistant Corporation Counsel, Marilyn Berson<sup>12</sup>. The only release that was received by the Corporation Counsel's office was the one which added language that the property be deemed exempt for the years 1996, 1997, 1998 as well as deemed exempt for the year 1999, so long as the terms of the Resolution were carried out<sup>13</sup>. **Second**, Salvation & Praise never signed the Contract of Rehabilitation. Subsequently, Salvation & Praise's counsel advised Judge Palella by letter dated May 26, 2000 "...that the proposed settlement has terminated. I respectfully request that this matter be rescheduled for trial as soon as possible."<sup>14</sup>

### **The Bar Claim Action**

On August 7, 2000, The City commenced a bar claim action<sup>15</sup> against Salvation & Praise, pursuant to Article 15 of the Real Property Actions and Proceedings Law [ " RPAPL " ]. Salvation & Praise filed an Answer and Counterclaims<sup>16</sup> requesting damages and seeking a declaratory judgement determining that they had a good and meritorious claim to ownership. The City served a Verified Answer to Counterclaims<sup>17</sup> asserting among other Affirmative Defenses that the Counterclaims were barred by the statute of limitations<sup>18</sup>.

### **Petitioner Knew Subject Property Was Taxable**

It is clear that the subject property was taxable on the 1994 tax assessment roll and that Salvation & Praise knew it was taxable. At trial, Pastor Robinson testified that she was confused, and believed that the property was exempt since her notice from the City regarding the exemption renewal contained the numbers \$55,300 under both the taxable and exempt columns. That same notice, however, states that the application for exemption was denied<sup>19</sup>.

### Taxes Not Paid In 1994-1997

In the fall of 1994, Salvation & Praise received a tax bill from the City of Poughkeepsie School District for the 1994/95 taxes. In January 1995, Petitioner received the 1995 tax bill for the County, City and Library taxes. At that point, Pastor Robinson called her attorney, who filed an application for exemption for the 1995 tax assessment roll as well as a grievance complaint<sup>20</sup>. A review of Petitioner's only check book<sup>21</sup> for the subject property from April 26, 1994 through November 30, 1997 revealed that there was no payment of taxes to the City in 1994 through 1997. At trial, Petitioner's attorney acknowledged that the 1994 school taxes were not paid<sup>22</sup>.

### Incredible Testimony

Pastor Robinson's testimony that she was confused and believed that the subject property was exempt is incredible, especially, when the Court takes into consideration that she received two tax bills for the subject property [ which certainly would have put her on notice that the property was taxable on the 1994 tax assessment roll ] along with the notice from the assessor stating that the exemption was "disapproved"<sup>23</sup>.

In addition, the instant petition, which was verified by Pastor Robinson, states that the subject property was not exempt in 1994 because Salvation & Praise neglected to file a renewal application

[ " The petitioner has had a real property tax exemption every year since 1984 except in 1994 when it neglected to file a Renewal Application for Real Property Tax Exemption for Non-Profit Organizations (RP-420-a/b-Rnw-1, formerly EA-420-a/b-Rnw-1) when the assessor assessed the property " ]<sup>24</sup>. Yet, contrary to her verification, Pastor Robinson testified at trial that she applied for a renewal exemption in 1994 which was marked disapproved<sup>25</sup> by the assessor, Robert F. Cullen.

#### **Bar Claim Action Granted - Article 7 Petition Moot**

Petitioner failed to pay both the 1994/95 School taxes and the 1995 County, City, and Library taxes. It failed to redeem the subject property during the two year redemption period, and it failed to agree to all the terms of the proposed settlement agreement. As a result, the City acquired title to the subject property by a deed dated May 6, 1998 which was recorded on September 4, 1998.

The City's acquisition of the subject property was proper and met all the requirements of due process. Salvation & Praise had actual notice of the impending tax sale as evidenced by the certified receipts signed by Pastor Robinson<sup>26</sup>, the publications in the Poughkeepsie newspapers<sup>27</sup>, and the testimony of the Tax Collector, Kimberly Niesen-Foley [ See e.g., Hicks v. City of Poughkeepsie, 293 A.D.2d 711, 741 N.Y.S. 2d 424 ( 2<sup>nd</sup> Dept. 2002 ) ( " the notice provided by the defendant City of Poughkeepsie of the impending tax sale of her property complied

with due process " ); DeVita v. City of Poughkeepsie, 296 A.D. 2d 523, 745 N.Y.S. 2d 212 (2<sup>nd</sup> Dept 2002)( the City of Poughkeepsie's notice to owner of tax lien sale of his property and his right to redeem satisfied due process requirements )]. Since title to the subject property was properly taken by the City on due notice to Salvation & Praise, the City's RPAPL Article 15 bar claim action is granted rendering the Petitioner's Article 7 petition for the 1996 taxes moot.

### **Counterclaim Barred By Statute Of Limitations**

Although Salvation & Praise is correct that the July 1996 RPTL Article 7 action can be converted into a declaratory judgement action, it's assertion that the statute of limitations for such an action is six years is incorrect. The law is clear that a declaratory judgement action attacking a tax assessment carries with it the same statute of limitations as an Article 78 proceeding, i.e., four months. [ See e.g., Emunim v. Assessor of Fallsburg, 78 N.Y.2d 194, 205, 573 N.Y.S.2d 43, *reconsideration denied*, 78 N.Y.2d 1008, 575 N.Y.S.2d 459 (1991)( " The 'void' assessment may be challenged in an Article 78 proceeding or in a declaratory judgement action...*citations omitted*...Kahal's argument that such a declaratory judgement action is governed either by those cases which hold that an equity action to 'clear a cloud on title' may be brought at any time or by the 'catch-all' six-year limitation of CPLR 213(1) is without merit " ); See also Lee and LeForestier, Review and

Reduction of Real Property Assessments in New York<sup>28</sup>, §1.01, 3d Edition, 2000 Supplement, p.7 [ " Note that a declaratory judgment action collaterally attacking a tax assessment has the same statute of limitations as an article 78 proceeding, that is, four months " ]. The four month statute of limitations period begins to run from receipt of the tax bill by the owner claiming tax-exempt status [ See e.g., Adventist Home, Inc. v. Board of Assessors, 83 N.Y.2d 878, 880, 612 N.Y.S.2d 371 (1994)( " We conclude that petitioner failed to timely commence this proceeding because it was not brought within four months of receipt of the tax bill in December 1990, the point at which petitioner had actual notice of the Board's determination " )].

Petitioner's counterclaim seeking declaratory relief in 2000 relative to 1994/95 School taxes and 1995 City, County and Library taxes is barred by the statute of limitations. Salvation & Praise would have had to bring its proceeding by January 1995 at the latest, which was four months after the September 1994 receipt of the School tax bill, when the cause of action accrued.

#### **If Only The Petitioner Had Paid Its Taxes**

The City had the burden of proving that Salvation & Praise was no longer entitled to a tax exemption [ See e.g., Miriam Osborne Memorial Home Association, 275 A.D.2d 714, 713 N.Y.S.2d 186 (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..." ); New York Botanical Garden v. Town of Washington, 55 N.Y.2d 328, 334-335, 449 N.Y.S.2d 467 (1982)( " However, under the circumstances presented here, in which the municipality, pursuant to its power under section 420(subd. 1, par. [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 " )].

At trial the City relied on the alleged financial inadequacies of Salvation & Praise to sustain its burden of proving that the property is subject to taxation on the 1994 tax assessment roll for the 1994/95 School taxes and the 1995 City, County and Library taxes, and therefore the petitioner was no longer entitled to the exemption. The City claims that the petitioner's bank account records indicate that the petitioner did not have the financial means to effectuate the renovation of the subject property. The bank account records relied upon by the City were obtained at the December 2, 1997 deposition of Ms. Robinson, more than three years after denying the petitioner's 1994 exemption application.

There is no evidence before this Court that the petitioner's financial condition was ever a factor considered by the City when it denied Salvation & Praise the exemption for the 1995 tax year. Hence, had the RPAPL Article 15 bar claim action not been brought by the City, either because the petitioner paid its taxes or redeemed the property, the City would not, from the facts presented to this Court, have been

able to meet its burden of proving that the Petitioner was no longer entitled to an exemption.

Accordingly, the City of Poughkeepsie's RPAPL Article 15 bar claim action is granted, the petitioner's counterclaims are dismissed, and its RPTL Article 7 petition is dismissed as moot.

Dated: White Plains, NY  
February 10, 2005

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HON. THOMAS A. DICKERSON  
SUPREME COURT JUSTICE

TO: Lewis & Greer, P.C.  
Attorneys For Petitioner  
11 Raymond Avenue  
P.O. Box 12603  
Poughkeepsie, New York 12603

David D. Hagstrom, Esq.  
Van De Water & Van De Water, LLP  
Attorneys For Respondents/Plaintiff  
40 Garden Street  
P.O. Box 112  
Poughkeepsie, New York 12602

**ENDNOTES**

- 1.R. Tr. Ex. Y.
2. R. Tr. Ex. R.
3. Tr. Trans. at pp. 148-149.
- 4.Tr. Trans. at pp. 91-94.
5. Tr. Trans. at pp. 148-149.
6. Tr. Trans. at p. 89.
- 7.R. Tr. Ex. SS.
- 8.R. Tr. Ex. KK.
9. P. Tr. Ex. 23.
10. P. Tr. Ex. 20 [ The Release prepared by the City did not contain the language, " THIS RELEASE IS DELIVERED WITH THE UNDERSTANDING THAT THE PROPERTY IS DEEMED EXEMPT FOR THE YEARS 1996, 1997 AND 1998 AND WILL BE DEEMED EXEMPT FOR THE YEARS 1999 IF THE TERMS OF RESOLUTION R-98-202 ARE CARRIED OUT ". This language was added by Salvation & Praise and not accepted by the City.
- 11.R. Tr. Ex. DD.
- 12.Tr. Trans. at pp. 238-239, 256-257.
13. See N. 10, supra.
14. R. Tr. Ex. EE.
15. Court Ex. 1.
16. Court Ex. 1.
17. Court Ex. 1.
18. Pursuant to an April 15, 2002 Order signed by Hon. Peter Rosado, J.S.C., the City's bar claim action and the Petitioner's Article 7 proceeding were joined for trial.

19. P. Tr. Ex. 14.
20. R. Tr. Ex. D.
21. R. Tr. Ex. M.
22. Tr. Trans. at pp. 222-223.
23. P. Tr. Ex. 14.
24. Petition at para. 3.
25. P. Tr. Ex. 14.
26. R. Tr. Ex. MM.
27. R. Tr. Ex. 17.
28. For a list of authors see pp. 168-170.