

NOT FOR PUBLICATION WITHOUT APPROVAL OF
THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

Patrick DeAlmeida
Presiding Judge



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Re: City of Hackensack v. Community Housing Partnership
Docket No. 010570-2007

City of Hackensack v. BC Community Housing Partnership
Docket No. 010582-2007

City of Hackensack v. Bergen County CHIP, Inc.
Docket No. 010591-2007

Dear Counsel:

This letter constitutes the court's opinion on the taxpayer's motion for a directed verdict at the close of plaintiff's trial proofs in the above-referenced matters. The City of Hackensack challenges county board of taxation judgments awarding an exemption from local property taxes to three properties for tax year 2007. The municipality does not dispute that the properties are used for non-profit, charitable purposes. The City's primary argument is that an exemption cannot

be awarded to the properties because the property owner is not organized exclusively for charitable purposes. For the reasons explained more fully below, the court rejects the municipality's position and concludes that subject properties are entitled to an exemption pursuant to N.J.S.A. 54:4-3.6 for tax year 2007.

I. Findings of Fact and Procedural History

The following findings of fact are based on the testimony of the trial witnesses and the exhibits admitted into evidence during trial. R. 1:7-4.

Community Housing in Partnership, Inc. is a non-profit corporation formed under Title 15A of the New Jersey statutes. The entity is also known as BC Community Housing in Partnership and Bergen County CHIP. For purposes of this opinion the property owner will be referred to as CHIP. CHIP owns three parcels of real property in the City of Hackensack.

The property commonly known as 265 State Street is designated by the City as Block 317, Lot 15. For tax year 2007, the property was assessed as follows:

Land	\$ 448,000
Improvement	<u>\$ 178,600</u>
Total	\$ 626,600

The property commonly known as 261 State Street is designated by the City as Block 317, Lot 16. For tax year 2007, the property was assessed as follows:

Land	\$ 457,000
Improvement	<u>\$ 426,100</u>
Total	\$ 883,100

The property commonly known as 241 Moore Street is designated by the City as Block 312, Lot 1. This property is sometimes referred to as 240 Main Street. For tax year 2007, the property was assessed as follows:

Land	\$1,651,700
Improvement	<u>\$1,105,500</u>
Total	\$2,757,200

As of October 1, 2006, the relevant valuation date, CHIP rented all three properties to Bergen County Community Action Partnership, Inc. (“BC CAP”), a non-profit, charitable corporation affiliated with CHIP. BC CAP operates non-profit programs in the buildings on each of the properties. The programs are discussed in turn below.

1. Phases at Chadwick House – 265 State Street

The building at 265 State Street, a former residence, houses the Phases at Chadwick House program (“Phases”) for youths ages 16 to 21 who are “aging out” of the care and custody of the Division of Youth and Family Services (“DYFS”) or are otherwise not considered “a good fit” for existing DYFS programs.¹ Phases is an acronym for “Program for Homeless Adolescents Seeking an Environment of Stability.” The children reside at the property for up to 18 months while participating in programs to learn the life skills necessary for independent living. While residing at the facility, the residents must attend therapy and work with a case manager and life skills specialists. Participation in BC CAP services is mandatory for residents. The Phases program services are not available to persons not residing at 265 State Street.

While at the facility, residents are subject to a detailed set of rules and regulations, including a curfew. They must sign in and out of the facility, report to the facility after school,

¹ Effective June 29, 2012, DYFS was renamed the Division of Child Protection and Permanency. L. 2012, c. 16.

work, take prescribed medications as directed by medical personnel, keep their living area clean, and perform daily and weekly chores. Trained staff members are present at the facility on a twenty-four hour basis.

Residents are referred to the Phases program by DYFS social workers, school officials, parents, and representatives of other organizations involved with at-risk youths. According to the uncontested testimony at trial, if not in the Phases program, the residents likely would be in a youth shelter operated by Bergen County or would be runaways.

The residents at the Phases program do not pay rent. The program is financed by DYFS, as well as through supportive services grants from the federal Department of Housing and Urban Development. The financing is paid to BC CAP, which, in turn, pays rent to CHIP, the owner of the property. CHIP also received annual debt forgiveness from DYFS for capital improvements made to the facility with DYFS funds. No portion of the property is used for purposes other than the Phases program.

2. The Ladder Project – 261 State Street

BC CAP operates the Ladder Project at 261 State Street, a former residence. The facility is a licensed half-way house for homeless men in recovery from substance abuse. The building houses up to 20 residents who have recently completed rehabilitation or detoxification and need “clean time” in a supervised environment to prepare for substance-abuse-free independent living. Residents are required to participate in individual and group therapy, attend recovery support meetings, and find employment. BC CAP provides certified counselors, therapists, and a nutritionist to assist participants in the program. After an initial two-week period, residents must work between 8 a.m. and 6 p.m. The agency provides employment placement assistance. All services are mandatory for residents of the facility.

While at the property, residents must comply with a strict set of rules. They are subject to a curfew and are required to sign in and out of the facility. Residents have been asked to leave the program for failing to comply with the rules. The facility is the only half-way house just for men in Bergen County. Residents are referred to the facility from rehabilitation and detoxification centers, jails, the courts, and anti-drug programs. The average stay is six months.

Residents do not pay rent. They are required, however, to save money from their employment to assist in securing housing after their stay at the facility is completed. Financing for the Ladders Project is derived from the State Division of Addiction Services, the Bergen County Human Services Department, a federal Department of Housing and Urban Development grant and the Father McKenna Foundation, a privately-operated charitable organization. All financing is paid to BC CAP, which, in turn, pays rent for the facility to CHIP, the property owner. The building at 261 State Street is used for no purpose other than the Ladders Project.

3. CHIP Administrative Offices – 241 Moore Street.

The building at 241 Moore Street is used as administrative offices for all of the charitable programs operated by CHIP. The facility is used to intake families and individuals in need of services to evaluate the programs for which they are best suited. The programs administered at the building include head start, energy assistance and weatherization programs for the elderly and low-income persons funded by the Board of Public Utilities, a car loan program for individuals recently coming off public assistance who need transportation to work, a youth job-training program, grant writing programs, and HUD programs for community housing. These programs share services and space in the building. No portion of the facility at 241 Moore Street is used for a purpose other than the administration of CHIP's programs and the referral of clients to the programs of other charitable organizations. The trial testimony establishes that 90-95% of the

financing CHIP receives from the programs operated at the subject properties is government related.

As of the valuation date, October 1, 2006, CHIP's Certificate of Incorporation described the purpose of the organization as follows:

To permit the performance of all acts necessary to provide housing for the homeless and other housing consumers without geographical limitation as well as to permit the pursuit of any lawful purpose, other than pecuniary profit, and the exercise all of (sic) the powers conferred upon corporations organized under the New Jersey Nonprofit Corporations and Associations Act, subject to any limitations imposed in the Certificate as amended, or by law.

Based on this provision, the municipal tax assessor denied tax exempt status to the three properties for tax year 2007 because CHIP was not organized exclusively for charitable purposes.

CHIP appealed the assessor's denial of an exemption to the Bergen County Board of Taxation.

On August 1, 2007, during the pendency of its appeal, CHIP amended its Certificate of Incorporation to describe the purpose of the organization as follows (underlines indicate additions; strikeouts indicate deletions):

To permit the performance of all charitable acts necessary to provide housing and community-based services for the homeless and other ~~housing~~ low-income consumers without geographical limitation, as well as to permit the pursuit of any ~~lawful~~ legal charitable purpose, ~~other than pecuniary profit~~, and ~~the~~ to exercise all the powers conferred upon corporations organized under the New Jersey Nonprofit Corporations and Associations Act, subject to any limitations imposed in the Certificate of Incorporation as amended, or by law.

On August 17, 2007, the county board reversed the assessor's determination and granted the properties tax exempt status.

On October 1, 2007, the municipality filed Complaints challenging the county board's Judgments.

The three matters were consolidated for trial. At the close of the municipality's proofs, the taxpayer moved pursuant to R. 4:40-1 for judgment in its favor with respect to all three properties. The court reserved decision to permit the parties to submit supplemental briefs.

II. Conclusions of Law

The standard for determining a motion for judgment at the close of a party's proofs is the same as that governing the determination of a motion for involuntary dismissed under R. 4:37-2(b). The court must accept as true all the evidence which supports the position of the party defending the motion and must accord that party the benefit of all legitimate inferences which can be derived therefrom. Besler v. Board of Educ., 201 N.J. 544, 572 (2010). There are no material facts genuinely in dispute. The parties agree on the ownership and use of the subject properties on the relevant valuation date. They dispute, however, whether the criteria set forth in N.J.S.A. 54:4-3.6 for an exemption from local property taxes have been satisfied.

The relevant provision of the statute provides an exemption from local property taxation for:

all buildings actually used in the work of associations and corporations organized exclusively for . . . charitable purposes

[N.J.S.A. 54:4-3.6.]

The exemption applies only if the use of the building is "not conducted for profit" and the entity seeking the exemption is a non-profit entity that "owns the property in question and is incorporated or organized under the laws of this State and authorized to carry out the purposes on account of which the exemption is claimed" Ibid. The exemption "extend[s] to cases where the

charitable . . . work therein carried on is supported partly by fees and charges received from or on behalf of beneficiaries using or occupying the buildings; provided the building is wholly controlled by and the entire income therefrom is used for said charitable . . . purposes.” Ibid.

If a building is found to be exempt, “the lands whereon any of the buildings . . . are erected, and which may be necessary for the fair enjoyment thereof, and which is devoted to the purposes above mentioned and to no other purpose and does not exceed five acres” are also exempt. Ibid. The parties do not dispute that, in the event CHIP establishes that its buildings are exempt, the land on which the buildings sit, which measures five acres or less, is necessary for the fair enjoyment of the facilities.

Because they represent a departure from the fundamental approach that all property owners bear their fair share of the local property tax burden, “[t]ax exemption statutes are strictly construed, and the burden of proving entitlement to an exemption is on the party seeking it.” Abunda Life Church of Body, Mind & Spirit v. City of Asbury Park, 18 N.J. Tax 483, 485 (App. Div. 1999)(citing New Jersey Carpenters Apprentice Training and Educ. Fund v. Borough of Kenilworth, 147 N.J. 171, 177-78 (1996), cert. denied, 520 U.S. 1241, 117 S. Ct. 1845, 137 L. Ed. 2d 1048 (1997); Princeton Univ. Press v. Borough of Princeton, 35 N.J. 209, 214 (1961)). “[A]ll doubts are resolved against those seeking the benefit of a statutory exemption” Chester Borough v. World Challenge, Inc., 14 N.J. Tax 20, 27 (Tax 1994)(quoting Township of Teaneck v. Lutheran Bible Inst., 20 N.J. 86, 90 (1955)). These standards, however, do “not justify distorting the language or the legislative intent” of the exemption statute. Boys’ Club of Clifton, Inc. v. Township of Jefferson, 72 N.J. 389, 398 (1977).

The statutory criteria for a charitable exemption are properly summarized as follows. A claimant must demonstrate that: (1) it owns the property; (2) it is organized exclusively for

charitable purposes and is authorized to conduct the activities for which the property is used; (3) the property was actually used for the tax exempt purpose; and (4) the operation and use of the property was not conducted for profit, although fees may be collected from or on behalf of beneficiaries of the charitable services, provided revenue from the fees are used to further the organization's charitable purposes. See Essex Properties Urban Renewal Assocs. v. City of Newark, 20 N.J. Tax 360, 364 (Tax 2002); accord Paper Mill Playhouse v. Township of Millburn, 95 N.J. 503, 521-22 (1984).²

(1) Ownership of the subject property.

It is undisputed that CHIP owns the subject properties. The court concludes that this factor of the charitable exemption test is satisfied.

(2) Organized exclusively for charitable purposes.

Whether an entity is organized exclusively for charitable purposes must be determined from the property owner's organizational documents. See Black United Fund v. City of East Orange, 17 N.J. Tax 446, 455 (Tax 1998), aff'd, 339 N.J. Super. 462 (App. Div. 2001); 1711 Third Avenue, Inc. v. City of Asbury Park, 16 N.J. Tax 174, 182 (Tax 1996); Planned Parenthood v. City of Hackensack, 12 N.J. Tax 598, 610 n. 6 (Tax 1992), aff'd, 14 N.J. Tax 171 (App. Div. 1993).

The Supreme Court, when examining this issue, explained:

We have not previously had occasion to define "charitable purposes" as used in N.J.S.A. 54:4-3.6. Courts of other states with similar statutes have defined "charitable purposes" as:

[A]n application of property for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion,

² N.J.S.A. 54:4-3.6 previously required actual and exclusive use of the buildings for charitable purposes. L. 2001, c. 18 removed the exclusive use element of the statute of the charitable use exemption.

by relieving their bodies from disease, suffering and constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens on government.

[The Presbyterian Homes of the Synod of New Jersey v. Division of Tax Appeals, 55 N.J. 275, 284 (1970)(quoting Coyne Electrical School v. Paschen, 146 N.E.2d 73, 79 (Ill. 1957)(footnote and emphasis omitted).]

Adopting this definition, the Court held that “the term ‘charity’ in a legal sense is a matter of description rather than a precise definition.” Id. at 285. “Therefore, the determination of whether property is devoted to a charitable purpose depends upon the facts or circumstances of each case. As a guide, however, it should be borne in mind that a sometimes stated justification for charitable tax exemptions is that if the charitable work were not being done by a private party, it would have to be undertaken at public expense.” Ibid.

The court is convinced that CHIP is established exclusively for charitable purposes. CHIP’s purpose, as of October 1, 2006, was to provide housing for “the homeless and other consumers” as well as “the pursuit of any lawful purpose, other than pecuniary profit” There is no doubt that providing housing for the homeless is a charitable endeavor. Such housing would relieve the beneficiaries of suffering, assist them with establishing their lives, and lessen the burden on government associated with the homeless population. See Salt and Light Co. v. Township of Mount Holly, 15 N.J. Tax 274, 285 (Tax 1995)(holding that providing shelter to the homeless on a not-for-profit basis constitutes a charitable use), aff’d, 16 N.J. Tax 40 (App. Div. 1996), certif. denied, 148 N.J. 458 (1997). Standing alone, this purpose would surely satisfy the organized-exclusively-for-charitable-purposes prong of the statute.

The ambiguity in CHIP's organizational document is that the entity also is authorized to provide housing for "other consumers" and to engage in "any lawful purpose, other than pecuniary profit." The provision of housing to consumers is not in and of itself a charitable endeavor, even if the residents at the housing are in some way disadvantaged. See e.g. Disability Residential Center v. City of Somers Point, 371 N.J. Super. 1, 12 (App. Div. 2004)(holding that "a facility that merely rents out dwellings to a disabled population is not entitled to an exemption."); accord Essex Properties Urban Renewal, supra, 20 N.J. Tax at 367-368 (rejecting claim for charitable exemption where taxpayer failed to produce sufficient evidence to establish level of services provided to tenants). As Judge Kuskin held in Pompton Lakes Senior Citizens Housing Corp. v. Borough of Pompton Lakes, 16 N.J. Tax 331, 341 (Tax 1997), a non-profit entity authorized by its certificate of incorporation "to plan, sponsor, construct, operate, maintain . . . housing projects for the Senior citizens of Pompton Lakes on a non-profit basis" does not satisfy the "organized exclusively . . . for . . . charitable purposes" prong of the N.J.S.A. 54:4-3.6. "[A] charitable purpose is neither expressed, contemplated nor required" by this authorizing language. Ibid.

In addition, the Certificate of Incorporation provision authorizing CHIP to engage in any lawful purpose quite plainly permits the organization to engage in a host of non-profit activities which may not be charitable. Authority to engage in non-profit endeavors does not equate to an exclusive ability to pursue charitable purposes. "Nonprofit-status, however, cannot be equated with charitableness. Rather, it is but one factor which merits consideration in the determination whether property is being used for charitable purposes." Presbyterian Homes, supra, 55 N.J. at 286 (footnote omitted). It is possible to engage in non-profit activities which are not charitable in nature.

Despite the broad language of CHIP's Certificate of Incorporation, extrinsic evidence leads to the conclusion that on the relevant valuation date CHIP was organized exclusively for charitable purposes. CHIP's By-Laws in effect on October 1, 2006, the consideration of which is appropriate, Community Access Unlimited, Inc. v. City of Elizabeth, 21 N.J. Tax 604, 601-11 (Tax 2003), demonstrate the intended exclusive charitable nature of CHIP's activities. Section 1 of the By-Laws provide as follows:

The purpose of the corporation shall be to change lives through affordable housing development.

A. To include but not be limited to the creation and management of Emergency/Immediate Transition/Permanent housing.

B. The development of relationships with local housing and community groups to create the potential for joint venture construction or rehabilitation of housing units. Increase awareness of CHIP, build positive image and relationships.

C. Improve research capability and ability to quantify results, thereby generating a higher percentage of positive outcomes.

D. To manage or oversee the management of all housing under the auspices of the corporation.

CHIP's By-Laws outline the contours of CHIP's mission: to provide housing to a needy population. Changing lives through affordable housing suggests something more than merely providing housing. The agency's exclusive purpose is a charitable one: to provide housing and related services to people whose lives need to be changed, i.e., a population at risk of homelessness. No other purpose is mentioned in the By-Laws. See Center for Molecular Medicine and Immunology v. Township of Belleville, 357 N.J. Super. 41, 50 (App. Div. 2003)("[S]ince the test is based on exclusivity" the organizational documents "may not include purposes other than those authorized by the exemption statute.").

Although CHIP was on the valuation date authorized to provide housing to “other housing consumers” beside the homeless population, it is evident from the agency’s By-Laws that the organization’s goals are limited to “changing lives through affordable housing” described as “emergency,” “immediate transition” and “permanent.” CHIP is not authorized by its By-Laws to develop market rate housing which does not further a charitable objective. Nor do the By-Laws even hint at any purpose not related to the overarching objective of providing housing to a needy population. In light of the specific provisions in CHIP’s By-Laws, the court does not consider the generic phrase “any lawful purpose” in the Certificate of Incorporation to constitute an authorization for the agency to engage in any non-charitable purposes within the meaning of N.J.S.A. 54:4-3.6. The phrase must be understood to be limited by the more specific definition of the organization’s purpose in the By-Laws.

The August 2007 amendment to CHIP’s Certificate of Incorporation further supports the conclusion that the agency is organized exclusively for charitable purposes. Credible testimony offered at trial establishes that the amendment reflects the agency’s intention to memorialize its existing mission with more precise language and not to change its mission by imposing a limitation to charitable endeavors that had not previously existed. Once the municipality seized on the “any lawful purpose” provision of the Certificate of Incorporation to deny an exemption for tax year 2007, the agency clarified its originating documents to describe with precision its already well-established purpose. The court concludes that this prong of the statute has been satisfied.

(3) The subject property must actually be used for the tax exempt purpose.

The municipality does not dispute that the subject properties are actually used for CHIP’s charitable purposes. Through leases with a related, non-profit organization, the subject properties

are used to provide shelter and supportive services to low-income people at risk of homelessness. No other activities take place there. This prong of the statute has been satisfied.

(4) The operation and use of the property must not be conducted for profit.

The municipality does not contend that the subject properties are used for profit-making endeavors. Both CHIP and the tenant who operate the charitable programs at the subject properties are non-profit entities. Funding for the programs comes from public and private grants. No evidence was introduced at trial suggesting that any of the officers or employees of CHIP or BC CAP profit in any way from the programs beyond what might be considered reasonable compensation for their services. This prong of the statute has been satisfied.

The court concludes that the taxpayer is entitled to judgment in its favor at the close of plaintiff's proofs. The evidence introduced during the municipality's case-in-chief establishes that CHIP is organized exclusively for charitable purposes and that it is entitled to an exemption for its three parcels pursuant to N.J.S.A. 54:4-3.6 for tax year 2007. The court will enter Judgments affirming the decisions of the county board of taxation.

Very truly yours,

A handwritten signature in cursive script, reading "Patrick DeAlmeida".

Hon. Patrick DeAlmeida, P.J.T.C.