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Colony Plaza Associates, L.P. v. Cathy Rinehart, Assessor

State Tax Commission of Missouri

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STATE TAX COMMISSION OF MISSOURI

COLONY PLAZA ASSOCIATES, L.P.,)
)
Complainant,)
)
v.) Appeal No. 15-32015
)
CATHY RINEHART, ASSESSOR,)
CLAY COUNTY, MISSOURI,)
)
Respondent.)

ORDER
AFFIRMING HEARING OFFICER DECISION
UPON APPLICATION FOR REVIEW

HOLDING

On March 14, 2017, Senior Hearing Officer John Treu (Hearing Officer), entered his Decision and Order (Decision) affirming the assessment by the Board of Equalization of Clay County (BOE) and finding that the subject property is not exempt from taxation.

Colony Plaza Associates, L.P., (Complainant) filed its Application for Review of the Decision. Cathy Rinehart, Assessor of Clay County, Missouri, (Respondent) filed her Response. Complainant filed its Reply. We affirm.

FINDINGS OF FACT

As of January 1, 2015, Complainant owned the subject property, a 111-unit, 11-story apartment building located at 404 St. Louis Avenue, Excelsior Springs, Clay County, Missouri, built in 1980. All of the units are one-bedroom apartments. The subject property includes an office, a meeting room, a laundry area, a vending area, a library, and an entry area. Lot improvements include a 324-square foot patio area and asphalt parking area.

On July 14, 1999, Complainant was formed under the Missouri Limited Partnership Law by POAH, Inc.'s predecessor as General Partner. As of January 1, 2015, Complainant was owned 50% by Preservation for Affordable Housing, Inc., (POAH, Inc.) and 50% by Preservation of Affordable Housing, LLC (POAH, LLC). POAH, Inc., is a 501(c)(3) organization under the Internal Revenue Service Code. POAH, LLC, is a limited liability company. POAH, LLC, is wholly owned by POAH, Inc. In other words, Complainant's partners are an IRS-recognized not-for-profit corporation and a for-profit limited liability company, and the for-profit limited liability company is owned by the not-for-profit corporation.

As of January 1, 2015, the subject property was governed, in part, by a 30-year Land Use Restriction Agreement (LURA) with the Missouri Housing Development Commission (MHDC).

¹ Under the terms of the LURA, the amount of rent for 107 of the 111 units was restricted but could be increased with approval of the MHDC, and the units were required to be occupied by individuals whose income was 60% or less of Area Median Income. Additionally, the LURA restricted the age of occupants to 55 years of age or older. Under the terms of a separate Housing Assistance Payments (HAP) contract with the U.S. Department of Housing and Urban

¹ Complainant entered into the LURA with the MHDC in 2001. At that time, US Bank was a partner of Complainant with a 99.99% ownership interest. Under the terms of the LURA, in exchange for Complainant limiting rent and renting to low income individuals, Complainant's then-partner, US Bank, received \$3,024,720 in Low Income Housing Tax Credits, half from the Federal Government, and half from the State of Missouri. The LURA restrictions expire in May 2030, but the tax credits were paid out over a 10 year period, ending in 2011. After receiving all of the over \$3 million in tax credits, US Bank transferred, and POAH, Inc., accepted, US Bank's partnership interest in the property. US Bank received no cash payment, but, in the transfer, Complainant assumed the obligation to pay mortgages for the subject property in the amount of over \$6 million and the obligation to continue to operate the subject property under the terms that POAH, Inc., would indemnify US Bank against any losses associated with the transfer, including potential recapture of the tax credits. No deed or other public record documents the transfer of the partnership interest, but following the transfer, all of the partners of Complainant were, and are as of the 2015 tax date, entities owned and controlled by POAH, Inc. Complainant argues that this means Complainant is "indirectly" owned by POAH, Inc., and, as a consequence, a not-for-profit due to POAH, Inc.'s IRS 501(c)(3) status.

Development, 110 of the 111 units received federal rent subsidies, which essentially make up the difference between the amount of the total rent and the income-based amount of rent a tenant pays. Additionally, the HAP restricted the age of occupants to 62 years of age or older. In 2014, the MHDC allowed Complainant to rent the units for a total of \$641 per month. In 2015, the MHDC allowed Complainant to rent the units for a total of \$650 per month. According to Complainant's exhibits and evidence, this amount of rent is full market rent.

Complainant provides some services to tenants of the subject property, including assistance with budgeting, payment plans (but not waivers) for those who are behind on their rent, arranging for a local pharmacy to come to the property to provide flu shots, and providing information on the availability of Meals-On-Wheels and other similar services. Complainant employs one staff person, who works 12 hours per week, to coordinate the services available for tenants. The staff person's salary is included in the operating expenses for the subject property. The subject property has laundry and vending machines available for tenants; however, the machines are operated by an outside vendor and Complainant receives a portion of the profits – \$8,813 in 2014 and \$9,106 in 2013.

According to Complainant's Statements of Operations, at the end of 2014, the subject property had total revenue of \$853,615. Complainant's expenses totaled \$589,927. This resulted in a net income of \$263,688. One of the line items included in Complainant's Statements of Operations for 2014 included a payment of real estate taxes in the amount of \$34,460. Mortgage interest paid along with miscellaneous financial expenses totaled \$190,225. After paying the mortgages and financing costs, the operation of the subject property still showed a profit of \$73,463 in 2014. Complainant deducted depreciation and amortization "expenses" totaling

\$230,222, and Complainant reported an “Operating Loss” of \$156,759. Complainant also paid to POAH, Inc., a partnership fee of \$25,529 and other miscellaneous expenses of \$2,582. Complainant’s Statement of Operations showed a net loss of \$184,870 for 2014.

Respondent assessed the subject property at a market value of \$2,479,300 as of January 1, 2015. Complainant initially appealed Respondent’s assessment of the subject property on the grounds of overvaluation, misclassification, and exemption. Complainant later withdrew the claims of overvaluation and misclassification and proceeded to Evidentiary Hearing on the remaining issue: whether the subject property was exempt from taxation as of January 1, 2015. The Hearing Officer subsequently entered his Decision finding that Complainant had failed to present substantial and persuasive evidence proving that the subject property was entitled to an exemption. Complainant timely filed its Application for Review.

CONCLUSIONS OF LAW

Complainant’s Points on Review

Complainant did not set forth specifically numbered points of error but instead generally stated that the Hearing Officer erred “in concluding that Complainant had failed to present substantial evidence establishing the property is exempt from taxation under controlling Missouri law as stated in *Franciscan Tertiary Province of Missouri v. State Tax Commission*, 566 S.W.2d 213 (Mo. 1978) (en banc).” Complainant alleged that it has presented substantial and competent evidence demonstrating that (1) the subject property is owned and operated on a not-for-profit basis; (2) the subject property is used exclusively for a charitable purpose; and (3) the subject property’s dominant use benefits society generally and an indefinite number of people.

STC's Ruling

For the reasons that follow, the STC finds Complainant's arguments to be unpersuasive. The STC, having thoroughly reviewed the whole record and having considered the Hearing Officer's Decision, the Application for Review of Complainant, and the Response of Respondent, concludes that the Hearing Officer's Decision was correct and proper.

Standard of Review

A party subject to a Decision and Order of a Hearing Officer with the State Tax Commission may file an application requesting the case be reviewed by the Commission. *Section 138.432 RSMo Cum. Supp. 2015; 12 CSR 30-3.080(4)*. The Commission may then summarily allow or deny the request. *Section 138.432; 12 CSR 30-3.080(5)*. The Commission may affirm, modify, reverse, set aside, deny, or remand to the Hearing Officer the Decision and Order of the Hearing Officer on the basis of the evidence previously submitted or based on additional evidence taken before the Commission. *Section 138.432; 12 CSR 30-3.080(5)(A)*.

The Commission, having reviewed the record and having considered the Decision of the Hearing Officer and the briefs of the parties, enters its Decision. Segments of the Hearing Officer's Decision may have been incorporated into our Decision without further reference.

Exemptions

The following subjects are exempt from taxation for state, county or local purposes: "All property, real and personal, actually and regularly used exclusively for religious worship, for schools and colleges, or for purposes purely charitable and not held for private or corporate profit, except that the exemption herein granted does not include real property not actually used or occupied for the purpose of the organization but held or used as investment even though the

income or rentals received therefrom is used wholly for religious, educational or charitable purposes.” Section 137.100(5). Tax exemptions are not favored in the law and statutes granting exemptions are to be strictly, yet reasonably, construed against the one claiming the exemption. *Missouri Church of Scientology v. State Tax Commission*, 560 S.W.2d 837, 844 (Mo. Banc 1987), *State ex rel. Union Electric Co. v. Goldberg*, 578 SW2d 921,923 (Mo. Banc 1979).

Charitable Exemption

The legal test for a charitable exemption is whether:

- (1) The property is owned and operated on a not-for-profit basis;
- (2) The property is dedicated unconditionally to the charitable activity; and
- (3) The dominant use of the property is for the benefit of an indefinite number of people and directly or indirectly benefits society generally. *Franciscan Tertiary Province of Missouri v. State Tax Commission*, 566 S.W.2d 213, 224 (Mo Banc 1978); *Twitty v. State Tax Commission*, 896 S.W.2d 680, 684 (Mo. App. S.D. 1995).

Complainant’s failure to prove any single element of this legal test is sufficient for denial of exemption.

DECISION

In this appeal, Complainant’s exhibits and evidence were not substantial and persuasive on the issue of exemption. We find Complainant’s arguments to be unpersuasive to warrant either a modification or overturning of the Decision. *Substantial evidence* can be defined as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Cupples Hesse Corp. v. State Tax Commission*, 329 S.W.2d 696, 702 (Mo. 1959). *Persuasive evidence* is evidence that has sufficient weight and probative value to convince the trier of fact. *Cupples Hesse Corp.*, 329 S.W.2d at 702. The persuasiveness of evidence does not depend on

the quantity or amount thereof but on its effect in inducing belief. *Brooks v. General Motors Assembly Division*, 527 S.W.2d 50, 53 (Mo. App. 1975). See also, *Westwood Partnership v. Gogarty*, 103 S.W.3d 152 (Mo. App. E.D. 2003); *Daly v. P. D. George Co.*, 77 S.W.3d 645 (Mo. App. E.D. 2002); *Reeves v. Snider*, 115 S.W.3d 375 (Mo. App. S.D. 2003).

“The first prerequisite for property to be exempt as charitable under Section 137.100 is that it be owned and operated on a not-for-profit basis.” *Green Hills Community Action Agency v. Beverly Alden, Assessor, Caldwell County, Missouri, et.al* (2012 WL 3637332 Mo.St.Tax.Com); *Bethesda Barclay House v. Ciarleglio*, 88 S.W.3d 85, 95 (Mo. App. E.D. 2002). “The requirement that the property must be operated as a not-for-profit activity does not mean that it is impermissible for the project at times or even fairly regularly to operated in the black rather than on a deficit basis, provided, of course, that any such excess of income over expenses, is achieved incidentally to accomplishment of the dominantly charitable objective and is not a primary goal of the project, and provided further that all of such gain is devoted to the charitable objectives of the project.” *Green Hills Community Action Agency*. However, Missouri case law “clearly establish[es] that the providing of housing to elderly, handicapped, or other low-income persons is a charitable use of real property, *when done under the auspices of a not-for-profit owner.*” *Id.* (emphasis added).

Throughout Complainant’s Application for Review, Complainant argues that POAH, Inc., a not-for-profit organization, “indirectly owns 100%” of Complainant due to the structure of the limited partnership that created Complainant. Complainant argues that, because POAH, Inc., “indirectly owns 100%” of Complainant, the subject property is, by extension, owned and operated on a not-for-profit basis. We find this argument to be without merit. The record clearly

shows that Complainant, a limited partnership registered with the State of Missouri, owns the subject property. Complainant is owned equally by two partner organizations, one of which, POAH, Inc., is a not-for-profit organization while the other, POAH, LLC, is a for-profit organization. Complainant cannot be characterized as a not-for-profit organization simply because one of its equal partners is a not-for-profit organization. Even if Complainant operates the subject property on a not-for-profit basis, Complainant is *not* organized or registered as a not-for-profit entity, and “a tax exemption will not be granted to property which houses a business operated for gaining profit, even if the profit is turned over to a parent organization to be used for a charitable purpose.” *Bethesda*, 88 S.W.3d at 94, *citing S.S. Bd. of S. Baptist Convention*, 658 S.W.2d 1, 6 (Mo. banc 1983).

Furthermore, the overall tenor of the evidence implies that the primary and inherent use of the subject property is not as a charity. “The phrase ‘used exclusively’ refers to the primary and inherent use as opposed to a mere secondary and incidental use.” *Bethesda*, 88 S.W.3d at 95. “A charity must be available to all who need it and must not appear to place obstacles of any character in the way of those who need and would take advantage of the charitable benefits.” *Id.* “Providing retirement homes for the elderly in a non-profit manner rises to a charitable purpose if the home is available to both rich and poor.” *Id.*, *citing Cape Retirement Community v. Kuehle*, 798 S.W.2d 201, 203 (Mo.App. E.D.1990). “The essence of the charitable nature of homes for the aged is that they accommodate the ability to pay of the less financially fortunate elderly.” *Bethesda*, 88 S.W.3d at 95, *citing Evangelical Ret. Homes v. State Tax Com'n*, 669 S.W.2d 548, 556 (Mo.banc 1984).

The Limited Partnership Agreement provides that Complainant's purposes were not purely charitable but include acquiring land and improvements through tax-exempt bond financing, loans, grants and/or capital contributions to operate, manage, and lease said acquired land and improvements as low-income housing. The Limited Partnership Agreement does not contemplate and Complainant presented no evidence indicating that Complainant provides housing for those who are unable to pay; rather, the evidence in the record indicates that Complainant does not waive rent when a tenant is unable to pay and that tenants pay the difference between the market rent and the income-based subsidy the tenants receive from the government. Other evidence established that Complainant conducts credit reviews of potential tenants and that some potential tenants are rejected due to bad credit.

Complainant failed to carry its burden of proving the subject property qualified for exemption by satisfying all three prongs of the *Franciscan* test. Complainant's evidence was not substantial and persuasive to the Hearing Officer, and the record supports the Decision.

Summary & Conclusion

A review of the record in the present appeal provides ample support for the determinations made by the Hearing Officer. A reasonable mind could have conscientiously reached the same result based on a full review of the entire record. The Commission finds no basis to support a determination that the Hearing Officer acted in an erroneous, arbitrary, capricious or unreasonable manner, or that he abused his discretion as the trier of fact and concluder of law in this appeal. *Hermel, Inc. v. STC*, 564 S.W.2d 888 (Mo. 1978); *Black v. Lombardi*, 970 S.W.2d 378 (Mo. App. E.D. 1998); *Holt v. Clarke*, 965 S.W.2d 241 (Mo. App.

W.D. 1998); *Smith v. Morton*, 890 S.W.2d 403 (Mo. App. E.D. 1995); *Phelps v. Metropolitan St. Louis Sewer Dist.*, 598 S.W.2d 163 (Mo. App. E.D. 1980).

The Hearing Officer did not err in his determinations as challenged by Complainant.

ORDER

The Decision of the Hearing Officer is AFFIRMED. The Decision and Order of the Hearing Officer, including the findings of fact and conclusions of law therein, is incorporated by reference, as if set out in full, in this final decision of the STC.

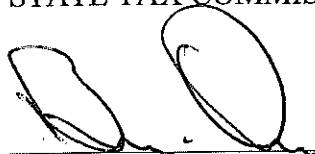
Judicial review of this Order may be had in the manner provided in Sections 138.432 and 536.100 to 536.140, RSMo within thirty days of the mailing date set forth in the Certificate of Service for this Order.

If judicial review of this decision is made, any protested taxes presently in an escrow account in accordance with this appeal shall be held pending the final decision of the courts unless disbursed pursuant to Section 139.031.8, RSMo.

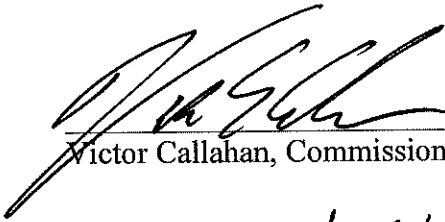
If no judicial review is made within thirty days, this decision and order is deemed final and the Collector of Monroe County, as well as the collectors of all affected political subdivisions therein, shall disburse the protested taxes presently in an escrow account in accord with the decision on the underlying assessment in this appeal.

SO ORDERED October 10, 2017.

STATE TAX COMMISSION OF MISSOURI



Bruce E. Davis, Chairman



Victor Callahan, Commissioner



Will Kraus, Commissioner

Certificate of Service

I hereby certify that a copy of the foregoing has been sent electronically or mailed postage prepaid this 10th day of October, 2017, to: Complainants(s) counsel and/or Complainant, the County Assessor and/or Counsel for Respondent and County Collector.



Jacklyn Wood
Legal Coordinator