

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**WILLIAM LAWRENCE BOULEY
& LOUISE MARIE BOULEY**

v.

**BOARD OF ASSESSORS OF
THE TOWN OF STOW**

Docket No. F350391

Promulgated:
December 16, 2024

This is an appeal originally filed under the informal procedure¹ pursuant to G.L. c. 58A, § 7A and G.L. c. 59, §§ 64 and 65 from the refusal of the Board of Assessors of the Town of Stow ("appellee" or "assessors") to grant to William Lawrence Bouley and Louise Marie Bouley ("appellants") a Community Preservation Act ("CPA") exemption pursuant to G. L. c. 44B, § 3(e)(1) ("Section 3(e)(1) Exemption") with respect to condominium unit 43 located at 19 Heather Lane in Stow ("subject property") for the fiscal year 2024 ("fiscal year at issue").

Commissioner Bernier heard the appeal. He is joined by Chairman DeFrancisco, and Commissioners Good, Elliott, and Metzger in the decision for the appellant. That decision is issued simultaneously with the promulgation these findings of fact and report, which are made by the Appellate Tax Board ("Board") on its own motion.

¹ The assessors timely elected to transfer the proceedings to the formal docket. See G.L. 58A, § 7A.

William Lawrence Bouley and Nathan Bouley, pro se.

Kristen Fox, Assessor, for the appellee.

FINDINGS OF FACT AND REPORT

Based on testimony and documentary evidence submitted during the hearing of this appeal, Board made the following findings of fact.

On January 1, 2023, the relevant valuation and assessment date for the fiscal year at issue, title to the subject property was held in the name of Nathan Bouley and Greta Bouley, Trustees of the Bouley Realty Trust u/d/t dated December 29, 2009 ("Trust"). A Condominium Unit Deed to the subject property and the Trust Agreement were recorded with the Southern Middlesex District Registry of Deeds ("Registry of Deeds") on December 31, 2009. The grantors of the Trust are the appellants and two named Trustees. The beneficiaries of the Trust are stated to be the persons and entities listed as such in "the Schedule of Beneficiaries."

A Schedule of Beneficiaries, which has not been recorded with the Registry of Deeds but a copy of which was provided to the assessors, was signed by the four grantors of the Trust on December 29, 2009. Therein, the grantors certify to "the beneficial interest of" the Trust being held as follows: (i) Life Estate - William Bouley and Louise Bouley, as tenants by the entirety for their joint lives (limited to use and occupancy of

the property only, with no rights to rents or the right to partition), and (ii) Remainder - Nathan Bouley and Greta Bouley, 50 percent each. The appellants, life estate beneficiaries of the Trust, occupied the subject property as their primary residence on January 1, 2023, and the Fiscal Year 2024 4th Quarter Actual Real Estate Tax bill ("4th Quarter Real Estate Tax Bill") for the subject property was issued to "Bouley William & Louise LE, Bouley Realty Tr Nathan & Greta Trs." The bill included a "CPA Surtax" of \$223.44.

Before the due date of the first quarterly preliminary real estate tax bill for the fiscal year at issue, the appellants filed an application for the Section 3(e)(1) Exemption - a Form CP-4 (Low Income Persons - Low or Moderate Income Seniors, Fiscal Year 2024 Application for Community Preservation Act Exemption), which was received by the appellee on July 19, 2023. The appellee denied the application on August 10, 2023. The appellants timely filed their appeal with the Board on October 20, 2023. Accordingly, the Board found and ruled that it had jurisdiction over the appeal.

The Property Tax Abatement/Exemption Denial Notice dated September 14, 2023, sent to the appellants indicates that the Section 3(e)(1) Exemption was denied because "[p]roperty is not recorded as life estate with Registry." An accompanying letter from the Assistant Assessor of the Town of Stow, based upon advice received from the Massachusetts Department of Revenue's Division

of Local Services, states that “[a]n unrecorded trust document does not provide the requisite notice of the trust’s reservation of a life estate to a beneficiary.” The appellee did not assert that the appellants did not occupy the subject property as their domicile. Nor did the appellee assert that the appellants failed to satisfy the age and annual income prerequisites for low or moderate income senior housing in Stow.

While Stow imposes a CPA surcharge on its annual real estate tax levy against real property, as permitted by G.L. c. 44B, Stow also exempts real property owned and occupied as a domicile by persons who qualify for low or moderate income senior housing in the Town. The appellee rejected the appellants’ application for the Section 3(e)(1) Exemption, not because they did not meet the statutory domicile, age, and annual income requirements for the exemption but, as noted, because their interest as holders of a life estate in the subject property had not been recorded with the Registry of Deeds.

As explained more fully in the Opinion below, the CPA defines real property with respect to which a CPA surcharge may be imposed, and as to which a Section 3(e)(1) Exemption may be allowed, to include the interest of a beneficiary in a trust that itself holds a legal interest in real property. The statute does not provide that documentation establishing a beneficiary’s life estate interest must be recorded in a registry of deeds. Because it is

undisputed that the appellants are the holders of a life estate in the Trust whose Trustees hold recorded legal title to the subject property, the Board found and ruled that the appellants held a real property interest in the subject property on January 1, 2023, that qualified for the Section 3(e)(1) Exemption from the CPA surcharge for the fiscal year at issue.

Accordingly, the Board issues a decision in favor of the appellants in this appeal and orders an abatement in the full amount of the CPA Surtax of \$223.44 assessed for the fiscal year at issue.

OPINION

Pursuant to the provisions of the CPA, towns are allowed to impose "a surcharge on *real property* of not more than 3 percent of the real estate tax levy against real property [emphasis added]." G. L. c. 44B, § 3(b). The CPA also permits towns to accept one or more of the exemptions authorized thereunder, including an exemption "for property owned and occupied as a domicile by a person who would qualify for . . . low or moderate income senior housing in the . . . town." G.L c. 44B, § 3(e)(1). The CPA defines "low or moderate income senior housing" as "housing for those persons having reached the age of 60 or over who would qualify for low or moderate income housing." G.L c. 44B, § 2. Low income housing, and moderate income housing, are defined in the statute as housing for persons and families whose annual income is less

than 80 or 100 per cent, respectively, of the areawide median income. *Id.*

Stow has adopted the CPA and has accepted the Section 3(e)(1) Exemption for seniors with low or moderate income. The appellee does not maintain that the appellants did not occupy the subject property as their domicile or that they did not satisfy the age and annual income prerequisites for low or moderate income senior housing in Stow. Rather, the appellee argues that because the appellants' interest as holders of a life estate in the subject property had not been recorded with the Registry of Deeds, the Section 3(e)(1) Exemption was not available to them.

Section 2 defines "real property" to which the provisions of the CPA apply to include not only land and buildings, but also "where applicable, real property interests." Section 2 defines a "real property interest" as, in relevant part, "a present or future legal . . . interest in or to real property, . . . and any beneficial interest therein, including *the interest of a beneficiary in a trust which holds a legal . . . interest in real property*, but [excluding] an estate at will or at sufferance and any estate for years having a term less than 30 years . . . [emphasis added]."

The appellants hold a life estate in the subject property - a beneficial interest described in the Schedule of Beneficiaries to which reference is made in the Trust Agreement recorded with

the Registry of Deeds. They are not holders of an estate at will or of an estate with a term of less than 30 years. As life estate beneficiaries of the Trust, the Trustees of which hold recorded legal title to the subject property, the appellants held on January 1, 2023, a "real property interest" with respect to which the Section 3(e)(1) Exemption can be allowed.

Although not directed at exemptions authorized under the CPA, Local Finance Opinion 2022-2 (LFO-2022-2, April 2022 - Exemption Eligibility When Property Is Held in Trust), cited by the Division of Local Services in their advice to the appellee, indicates that an applicant can qualify for a personal or residential exemption from real property taxation as "a named beneficiary in [a] trust instrument or *referenced* schedule of beneficiaries [emphasis added]," noting that G.L. c. 184, § 35 had eliminated the requirement that the names of the beneficiaries of a trust be recorded. See Question 4, LFO-2022-2. Just as a referenced schedule of beneficiaries need not be recorded to establish a person's beneficial interest in a trust for purposes of exemption from real property taxation, a life estate indicated in a schedule of beneficiaries referenced in a recorded trust instrument need not itself be recorded to establish the holder's entitlement to the Section 3(e)(1) Exemption. Recording of the trust instrument suffices.

In the instant case, the appellee did not dispute the appellants' occupancy of the subject property as their domicile or their satisfaction of the age and income prerequisites for low or moderate income senior housing in Stow. Further, the evidence establishes that, on January 1, 2023, the appellants were the holders of a beneficial interest – a life estate – in the subject property within the meaning of the CPA, as indicated in the Schedule of Beneficiaries provided to the assessors, notwithstanding that their life estate had not been recorded with the Registry of Deeds. The Board therefore found and ruled that the appellants held a real property interest in the subject property that qualified for the Section 3(e)(1) Exemption from the CPA surcharge for the fiscal year at issue.

Accordingly, the Board issues a decision for the appellants in this appeal and grants an abatement in the full amount of the CPA Surtax of \$223.44 assessed for the fiscal year at issue.

THE APPELLATE TAX BOARD

By: 

Mark J. DeFrancisco, Chairman

A true copy,

Attest: 

Clerk of the Board