

**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**UNQUITY HOUSE CORPORATION**

**v.**

**BOARD OF ASSESSORS OF  
THE TOWN OF MILTON**

Docket No. F335576

Promulgated:  
February 16, 2021

This is an appeal under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the Town of Milton (the "assessors" or "appellee") to grant an exemption from real estate tax under G.L. c. 59, § 5, cl. 3 ("Clause Third") for an improved parcel of real estate located on 30 Curtis Road in the Town of Milton (the "subject property") owned by and assessed to the Unquity House Corporation (the "appellant" or "Unquity House") under G.L. c. 59, §§ 11 and 38, for fiscal year 2019 (the "fiscal year at issue").

Commissioner Elliott heard this appeal. Chairman Hammond and Commissioners Rose, Good, and Metzger joined him in the decision for the appellee.

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.

*W. Paul Needham, Esq.* for the appellant.

*John P. Flynn, Esq. and Peter L. Mello, Esq.* for the appellee.

## **FINDINGS OF FACT AND REPORT**

On January 1, 2018, the valuation and assessment date for the fiscal year at issue, and on July 1, 2018, the qualification and determination date for exempt status under Clause Third for the fiscal year at issue, the appellant was the assessed owner of the subject property. For fiscal year 2019, the assessors valued the subject property at \$9,324,100, and assessed a tax thereon, at the rate of \$13.18 per \$1,000, in the amount of \$122,891.64. In accordance with G.L. c. 59, § 57A, the appellant timely paid the tax assessed on the subject property without incurring interest.

On February 28, 2018, in accordance with G.L. c. 59, § 29, the appellant timely filed with the assessors State Tax Form 3ABC<sup>1</sup> and its Application for Statutory Exemption under Clause Third with Form PC<sup>2</sup> attached. On March 8, 2018, the assessors denied the appellant's application for statutory exemption under Clause Third. On June 6, 2018, in accordance with G.L. c. 59, §§ 64 and 65, the appellant seasonably filed its Petition Under Formal Procedure with the Appellate Tax Board ("Board"). On this basis, the Board found and ruled that it had jurisdiction over this appeal.

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<sup>1</sup> State Tax Form 3ABC is a return of property held for charitable purposes that public charities are required to file annually with the local assessors.

<sup>2</sup> Form PC is a financial report that public charities are required to file annually with the Non-Profit Organizations/Public Charities Division of the Office of the Massachusetts Attorney General.

The appellant challenged the denial of its Application for Statutory Exemption under Clause Third for the subject property on the grounds that Unquity House operates as a traditional public charity whose charitable purposes and use of the subject property advance the public good and lessen the burden on government while serving a sufficiently large and fluid segment of the population thereby qualifying it for the exemption.

To prove its case, the appellant introduced an Agreed Statement of Facts with numerous exhibits attached, including copies of the appellant's Application for Statutory Exemption; the assessor's denial of the application; a Certificate of Solicitation for the appellant; a Certificate of Good Standing for the appellant; the appellant's Articles of Organization (dated October 27, 2001); the appellant's Articles of Amendment (dated May 9, 2018); a sample lease for the subject property; and photographs of the subject property and apartments inside. The appellant also introduced a print-out of the fiscal year 2019 Department of Housing and Urban Development ("HUD") Income Limits Summary.

In addition, the appellant called Sarah McLaren to testify. Ms. McLaren is the Executive Director and Controller for Milton Residences for the Elderly, Inc. ("MRE"), a related not-for-profit corporation that manages the subject property and a near-by related and similar property owned by Winter Valley Residences, Inc.

("Winter Valley"), the not-for-profit appellant in a companion appeal. The officers and boards of these three entities are identical.

In defense of their denial of the appellant's exemption application, the assessors cross-examined Ms. McLaren but did not call any witnesses of their own. They did introduce copies of the relevant jurisdictional documents and a copy of the subject property's property record card.

Based on the evidence presented, the Board made its jurisdictional findings and ruling and found the following.

Unquity House is a Massachusetts not-for-profit corporation with a mailing address of 30 Curtis Road in Milton and a principal place of business at 600 Canton Avenue in Milton, which is the address of MRE and the related property, owned by Winter Valley, also seeking exemption under Clause Third. Unquity House was incorporated in 2001 as a successor to Unquity House Limited Partnership, which was formed when the subject property was constructed in 1970. Unquity House is exempt from Federal income taxes under 26 U.S.C. § 501(c)(3) ("Section 501(c)(3)") and is managed by MRE.

Unquity House has no shareholders, no capital stock, and none of its net earnings may be distributed to any private person or individual or member, and upon its dissolution, its net assets are to be used for the purposes expressed in its Articles of

Organization and Amendment. The primary purposes of Unquity House as set forth in the first paragraph of its Articles of Amendment are “[t]o provide non-profit housing for use and occupancy of needy elderly persons, and to provide services which will enhance the ability of such persons to live safe, useful and independent lives including access to health and social services.” These purposes closely track those in its Articles of Organization.

The subject property is a single residential building consisting of forty 260-square-foot studio apartments and 99 400-square-foot one-bedroom apartments, most with private balconies. The subject property has several common areas including a lobby, library, dining area, communal sitting area, laundry, beauty parlor, resident-operated convenience store, café, and commercial kitchen, as well as several outdoor seating areas. Originally covered under a HUD § 236 subsidy program,<sup>3</sup> Unquity House converted to a HUD Rental Assistance Demonstration (“RAD”) program in 2014.<sup>4</sup> Residents are required to be over 62 years of age and have incomes that are no more than 50% of Average Median Income for the area (“AMI”). Under the HUD guidelines, income is limited to \$42,000

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<sup>3</sup> This program provided non-profits and public housing authorities (“PHAs”) with Federal Housing Authority insured mortgages up to \$12.5 million with financing for as low as one-percent interest rate with a term up to forty years.

<sup>4</sup> The RAD program allows non-profits and PHAs to reinvest in housing capital needs and requires them to move to a Section 8 platform which is a federal voucher program administered locally by PHAs that receive federal funds from HUD. The Section 8 housing subsidy is paid to the landlord directly by the PHA on behalf of the participating individual or family.

for one person and \$47,400 for two people. Seventy percent of Unquity House residents have incomes that are 30% of AMI.

As of the date of the hearing of this appeal, studio and one-bedroom apartments at Unquity House rented below market for \$1,200 and \$1,350, respectively. According to the documentary evidence, in 2016, Unquity House received \$867,866 in rental income and \$1,158,297 in rental subsidies from HUD and several municipal housing authorities. According to the rent provision in the lease: "th[e] monthly rent is less than the market (unsubsidized) rent due on this unit . . . . because . . . HUD . . . makes . . . monthly payments to the Lessor on behalf of the Lessee." Ms. McLaren's testified that residents "come from everywhere" and represent a cross-section of society.

The residents of Unquity House are required to provide a security deposit and sign a standard lease which states that the amount of rent the Lessee pays may be changed at any time for the following reasons:

- (a) a change in the rent schedule for the Lessor,
- (b) HUD or the Contract Administrator changes any allowances for utilities or services consider[ed] in computing the Tenant's share of the rent,
- (c) the income, the number of persons in the Lessee's household or other factors considered in calculating the Lessee's rent change,
- (d) changes in Lessee's rent or Assistance Payment are required by recertification or subsidy termination procedures,

(e) the procedures for computing the Lessee's Assistance Payment or rent change,

(f) the Lessee fails to provide information on his or her income, family composition or other factors as required by the Contract Administrator, or

(g) the Section 8 Housing Assistance contract terminates for any reason.

The lease also provides that "the Lessee must live in the unit and the unit must be the Lessee's only place of residence." Lessees' eligibility for the HUD subsidy must be recertified every two years. The Lessor's written consent is required for residents to park on the subject property.

Unquity House may terminate a tenancy for material non-compliance, which is defined as:

(1) one or more substantial violation[s] of the Agreement;

(2) repeated minor violations of the lease that disrupt the livability of the property, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the premises or related facilities, interfere with the management of the project and/or have an adverse financial effect on the property;

(3) failure of the tenant to timely supply all required information on the income, composition or other eligibility factors of the lessee's household to the Contract Administrator; or

(4) non-payment of rent or any other financial obligation due under the Agreement beyond the grace period permitted under Massachusetts State Law. [The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State Law constitutes a minor violation.]

Termination also results from a Lessee's refusal to accept changes to the lease and occurs if the HUD subsidy terminates.

The Lessor is responsible for:

- a. Regularly clean[ing] all common areas within the property;
- b. Maintain[ing] the common areas and facilities in a safe condition;
- c. Arrang[ing] the removal of trash and garbage;
- d. Maintain[ing] equipment and appliances in a safe and working order;
- e. Mak[ing] necessary repairs with reasonable promptness;
- f. Maintain[ing] exterior lighting in good working order;
- g. Provid[ing] extermination services as necessary; and
- h. Maintain[ing] grounds and shrubs.

According to Ms. McLaren's testimony, the services provided at the subject property by third-party entities include: daily educational or social activities; food programs; and subsidized transportation to shopping, social, and medical destinations. All the units have personal emergency alert cords which when pulled, ring an alarm in the building and the emergency services number in Milton. In addition, the live-in maintenance worker is immediately dispatched to the unit, and on-call staff may be alerted. The staff at Unquity House include: a property manager; two maintenance



workers, one of whom lives at the subject property; a resident care coordinator who assists residents in obtaining outside services; two activity employees; and front desk/reception personnel. According to the lease, it is up to the Lessee "[t]o maintain and keep smoke detector(s) or any safety devices such as carbon monoxide detectors and/or pull cords within the Unit operational at all times."

When requested by MRE, South Shore Elder Services will evaluate the possible needs of an Unquity House resident and, if appropriate, provide services to meet those needs. The Boston Food Bank supplies provisions to Unquity House monthly, which the Unquity House staff breaks down and distributes to residents. Some residents are part of a grant study with Hebrew Senior Life, which has placed a registered nurse and social worker at the subject property to advocate for prophylactic medical services. The lease authorizes the Lessor's access to a Unit without Lessee's advance consent only "if the Lessor believes there exists an emergency in the Unit."

Based on these findings and reasonable inferences drawn therefrom, the Board ultimately found that Unquity House failed to demonstrate that it is entitled to the Clause Third exemption for the fiscal year at issue. The Board found that Unquity House's relationship with its residents was essentially that of landlord to tenant. The provisions in Unquity House's standard "Apartment

Lease" strongly indicate a mere landlord-tenant relationship, particularly those provisions that: require Lessee's payment of rent and a security deposit; permit termination for any number of causes; recite the Lessor's limited responsibilities; and recognize the monthly rental payment is composed of the Lessee's payment and the assistance payment. Moreover, the Board found that all Unquity House residents qualify for and receive subsidy under HUD's RAD program, and if a resident's subsidy ceases, the lease automatically terminates.

The Board further found that Unquity House did not demonstrate that it regularly performs charitable services for the benefit of its residents. It did not even demonstrate that most residents required them. Significantly, none of these types of services are mentioned in the lease provisions reciting the Lessor's contractual obligations. The Board found that to the extent charitable services were performed, they were executed primarily by unrelated third-party organizations and agencies, such as the Boston Food Bank, South Shore Elder Services, and Hebrew Senior Life. The Board additionally found that Unquity House failed to detail or substantiate with its records or more extensive testimony the extent to which it provided its residents with, and the number of residents to which it provided, regular care coordination, social activities, and transportation services, and whether it charged for those services.

Similarly, the Board found that Unquity House failed to detail or substantiate its or other service-related organizations' presence in its residents' apartments to perform charitable activities. The lease recites only traditional landlord functions and does not mention assistance with daily living or medical needs. Except for possible emergencies, the record does not otherwise establish such a presence by Unquity House or MRE. Accordingly, the Board found that the occupancies here did not resemble those found at nursing homes, rehabilitation facilities, assisted living residences, or other similar living situations.

On this basis, the Board found and ruled that the appellant did not prove that it was entitled to the Clause Third exemption for the fiscal year at issue. It did not demonstrate that for Clause Third purposes: its dominant purpose and the methods used for discharging that purpose were traditionally charitable; it lessened the burdens of government; it provided a sufficiently robust community benefit; it provided important charitable services to its residents; it provided benefits to a large or fluid group of beneficiaries; or it "occupied" the subject property.

Accordingly, the Board decided this appeal for the appellee.

## OPINION

The general rule in Massachusetts is that "all property, real and personal, situated within the commonwealth . . . shall be subject to taxation . . . unless expressly exempt." Clause Third provides that real estate owned by a "charitable organization and occupied by it or its officers for the purposes for which it is organized" is exempt from taxation. Clause Third defines a charitable organization as "a literary, benevolent, charitable or scientific institution or temperance society incorporated in the commonwealth." Thus, a corporate taxpayer claiming exemption under Clause Third must prove both that the property is owned by such a charitable organization and that the charitable organization occupies it for its charitable purposes. See *Home for Aged People in Fall River v. Assessors of Fall River*, Mass. ATB Findings of Fact and Reports 2011-370, 391; see also *Jewish Geriatric Services, Inc. v. Assessors of Longmeadow*, Mass. ATB Findings of Fact and Reports 2002-337, 351, aff'd 61 Mass. App. Ct. 73 (2004) (citing *Assessors of Hamilton v. Iron Rail Fund of Girls Club of America*, 367 Mass. 301, 306 (1975)).

"For purposes of the local property tax exemption, the term 'charity' includes more than almsgiving and assistance to the needy." *New England Legal Found. v. Boston*, 423 Mass. 602, 609 (1996). "A charity, in the legal sense, may be more fully defined as a gift to be applied consistently with existing laws, for the

benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government." ***Boston Symphony Orchestra, Inc. v. Assessors of Boston***, 294 Mass. 248, 254-55 (1936) (quoting ***Jackson v. Phillips***, 14 Allen 539, 556 (1867)). But the organization "must prove that it is in fact so conducted that in actual operation it is a public charity." ***Jacob's Pillow Dance Festival, Inc. v. Assessors of Becket***, 320 Mass. 311, 313 (1946). "The mere fact that the organization claiming exemption has been organized as a charitable corporation does not automatically mean that it is entitled to an exemption for its property." ***Western Mass. Lifecare Corp. v. Assessors of Springfield***, 434 Mass. 96, 102 (2001). "An organization's legal status as a charitable corporation or its exemption from Federal taxation under § 501(c)(3) . . . is not sufficient to satisfy [the charitable organization requirements of Clause Third]." ***New England Forestry Found., Inc. v. Assessors of Hawley***, 468 Mass. 138, 149 (2014). The organization must prove that it operates as a charity through its declared purpose and the work that it performs. See *id.*; ***Massachusetts Med. Soc'y v. Assessors of Boston***, 340 Mass. 327, 323 (1960); ***Jacob's Pillow Dance Festival, Inc.***, 320 Mass. at 313;

see also **Thomas Jefferson Mem'l Ctr. at Coolidge Point, Inc. v. Assessors of Manchester-by-the-Sea**, Mass. ATB Findings of Fact and Reports 2018-89, 112-115.

As with most tax exemptions, a taxpayer seeking relief under Clause Third bears the burden of proving "clearly and unequivocally that he comes within [its] terms." **Boston Symphony Orchestra**, 294 Mass. at 257.

The Supreme Judicial Court, in **New Habitat, Inc. v. Tax Collector of Cambridge**, 451 Mass. 729 (2008), provided "an interpretive lens through which we now view" charitable exemption cases. **Mary Ann Morse Healthcare Corp. v. Assessors of Framingham**, 74 Mass. App. Ct. 701, 703-04 (2009) (describing what it characterized as the Supreme Judicial Court's "community benefit test"). As the Supreme Judicial Court explained in **New Habitat, Inc.**, 451 Mass. at 732-33:

To determine whether an organization is charitable, the court weighs a number of nondeterminative factors. These factors include, but are not limited to, whether the organization provides low-cost or free services to those unable to pay . . .; whether it charges fees for its services and how much those fees are . . .; whether it offers its services to a large or "fluid" group of beneficiaries and how large and fluid that group is . . .; whether the organization provides its services to those from all segments of society and from all walks of life . . .; and whether the organization limits its services to those who fulfil certain qualifications and how those limitations help advance the organization's charitable purposes.

The significance of these factors depends in no small part on the dominant purposes and methods of the organization. . . . The farther an organization's dominant purposes and methods are from traditionally charitable purposes and methods, the more significant these factors will be.

In addition to meeting this community benefit test, an organization must satisfy an occupancy test. **Mary Ann Morse Healthcare Corp.**, 74 Mass. App. Ct. at 705.

The Supreme Judicial Court has long recognized that the mere provision of "wholesome and sanitary homes for . . . people of small means at moderate cost," without more, is not a traditional charitable purpose. See **Charlesbank Homes v. City of Boston**, 218 Mass. 14, 15 (1914), referencing **Franklin Square House v. Boston**, 188 Mass. 409 (1905). In cases of low-income elderly housing, that "more" is usually the provision of medical and assisted-living services. See, e.g., **Mary Ann Morse Healthcare Corp.**, 74 Mass. App. Ct. at 706 ("The traditional charitable purpose . . . here consists of providing living space **and** residential assistance to individuals who are unable to manage on their own.") (Emphasis added).

In the present appeal, the relationship between Unquity House and its residents was equivalent to a landlord-tenant affiliation. The lease between the parties placed only the usual burdens of a landlord on Unquity House and granted the residents essentially all the usual rights and protections normally afforded tenants. If

tenants required additional services - such as medical help or assistance with daily living - those services were rendered by other unaffiliated entities. As to the extent Unquity House's staff may have assisted residents in acquiring those services, the record is silent. To the extent Unquity House's staff may have performed those services, the record is likewise nearly silent. Furthermore, Unquity House did not provide even the rental assistance that the majority of the residents received; rather, that aid was provided through government agencies.

Accordingly, the Board found and ruled that Unquity House failed to establish that its purposes and methods were traditionally charitable ones, and hence failed to meet the definition of a traditional charity. See ***New Habitat, Inc.***, 451 Mass. at 733.

Because the mere provision of low-income elderly housing is not a traditionally Clause Third charitable purpose, the Board more heavily weighed several nondeterminative factors under the community benefit test for purposes of determining whether support for Unquity House's asserted Clause Third charitable status could be found in them.

First, as discussed above, the Board found that the relationship between Unquity House and its residents was equivalent to that of landlord to tenant. The lease contained typical landlord-tenant provisions and did not place additional



responsibilities on Unquity House or its staff or lessen those attributable to the residents. Any medical or help with daily-living services offered to the residents was provided through other unrelated organizations and agencies. Furthermore, the subsidization of the housing units was financed by HUD, not Unquity House, and the rental assistance that the residents received was provided through government agencies. To grant Unquity House a Clause Third exemption under these circumstances would monetize those benefits provided by others to Unquity House and its residents at the expense of Milton's taxpayers. The fact that Unquity House effectively operates as a lessor that charges rent becomes a more significant Clause Third disqualifying consideration because its dominant purposes and methods do not coincide with traditionally charitable ones. See **New Habitat, Inc.**, 451 Mass. at 733.

Nor, secondly, can Unquity House's operations be said to demonstrate how it was directly responsible for "advanc[ing] the public good and thereby lessen[ing] the burdens of government," an accomplishment that "is frequently put forward as a fundamental reason for exempting charities from taxation." See **Mary Ann Morse Healthcare Corp.**, 74 Mass. App. Ct. at 702; **Boston Chamber of Commerce v. Assessors of Boston**, 315 Mass. 712, 717 (1944). To the contrary, Unquity House was the beneficiary of government support.

Third, Unquity House did not directly provide medical or daily-living services to its residents, and, the record is silent as to the extent to which those services may have been provided by others. Similarly, Unquity House failed to provide any details on the number of participants or the number of offerings associated with its educational and social programming. It likewise failed to provide details regarding either its transportation service, including whether it charged for that service, or its case manager, including his or her qualifications and availability, as well as the services that may have been orchestrated by him or her.

The Board observes that one of the nondeterminative factors referred to by the Supreme Judicial Court in its decision in **New Habitant, Inc.** is whether an organization offers its services to a large or "fluid" group of beneficiaries and how large and fluid that group is. "An organization 'operated primarily for the benefit of a limited class of persons' such that 'the public at large benefits only incidentally from [its] activities' is not charitable." **Western Massachusetts Lifecare**, 434 Mass. at 103-04 (quoting **Cummington School of the Arts, Inc. v. Assessors of Cummington**, 373 Mass. 597, 600 (1977)). The record here does not show how a "sufficiently large or indefinite class" of the community is benefited by Unquity House's operations or reflected in its resident population. See *id.* at 103-04 (quoting **Harvard Community Health Plan, Inc. v. Assessors of Cambridge**, 384 Mass.

536, 543 (1981)). Consequently, the Board was unable to confirm that Unquity House provided benefits to a sufficiently large or indefinite class of people. But even if the record did so indicate, that factor alone could not support Unquity House's Clause Third exemption status, given its failure to meet the definition of a traditional charity and satisfy the nondeterminative factors noted above. "[T]he more remote the objects and methods become from the traditionally recognized objects and methods the more care must be taken to preserve sound principles and to avoid unwarranted exemptions from the burdens of government." ***Boston Chamber of Commerce***, 315 Mass. at 718.

Finally, in addition to meeting a community benefit test, Clause Third requires that the property under consideration be "occupied" by the charitable organization. ***Mary Ann Morse Healthcare Corp.***, 74 Mass. App. Ct. at 705. In cases where individuals reside at the property owned by the charity, Massachusetts courts have ruled that the occupancy requirement is satisfied so long as the residents' use is not to the exclusion of the organization, and that such use enables the organization to achieve its charitable mission at the property. See ***Mary Ann Morse Healthcare Corp.***, 74 Mass. App. Ct. at 705-708 (holding that a non-profit operator of an assisted living facility could be considered an "occupant" of the property under consideration for purposes of Clause Third, even though the apartment residents also

occupied the property and had certain privacy rights and safeguards against eviction because the residents' occupancy was conditional on, and dependent on, the operator's presence and control of the premises).

In this appeal, Unquity House failed to demonstrate that it performed any of the in-unit services performed by the operator described in ***Mary Ann Morse Healthcare Corp.*** Moreover, Unquity House failed to show the extent to which its residents may have required services, such as medical help or assistance with activities of daily living. If those services were administered on the subject property, they were admittedly performed by unrelated organizations and were not shown to have been performed by Unquity House. Under these circumstances, the Board found and ruled that Unquity House did not occupy the subject property for Clause Third purposes.

### **CONCLUSION**

On this basis, the Board found and ruled that the appellant did not prove that it was entitled to the Clause Third exemption for the fiscal year at issue. The appellant did not demonstrate that for Clause Third purposes: its dominant purpose and the methods used for discharging that purpose were traditionally charitable; it provided a sufficiently robust community benefit; it provided important charitable services to its residents; it

lessened the burdens of government; it provided benefits to a large or fluid group of beneficiaries; or it "occupied" the subject property.

While the Board has little doubt that Unquity House is performing an important housing function for the elderly in Milton, that function does not rise to the level necessary for a Clause Third exemption.

Accordingly, the Board decided this appeal for the appellee.

**THE APPELLATE TAX BOARD**

By:       /s/ Thomas W. Hammond        
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest:       /s/ William J. Doherty        
Clerk of the Board