

**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**WINTER VALLEY RESIDENCES, INC.    v.**

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

Docket No. F335577

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 real estate located on 600 Canton Avenue in the Town of Milton (the "subject property") owned by and assessed to Winter Valley Residences, Inc. (the "appellant" or "Winter Valley") 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 \$12,579,700 and assessed a tax thereon, at the rate of \$13.18 per \$1,000, in the amount of \$165,800.46. 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 State Tax Form 3ABC<sup>1</sup> and its Application for Statutory Exemption under Clause Third with Form PC<sup>2</sup> attached with the assessors. 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,

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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 Board found and ruled that it had jurisdiction over this appeal.

The appellant challenged the denial of its Application for Statutory Exemption under Clause Third for the subject property on the grounds that Winter Valley 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 March 24, 1977); the appellant's Articles of Merger; the appellant's three Articles of Amendment (dated June 8, 2009, September 6, 2011, and May 29, 2018); a plan of the subject property; a sample lease agreement for the subject property; and copies of photographs of the subject property and apartments' interiors. The appellant also introduced into evidence: a print-out of the fiscal year 2019 Department of Housing and Urban Development ("HUD") Income Limits Summary; and a letter from Regina Lindsey dated June 4, 2018.

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 Unquity House Corporation ("Unquity House"), 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 cards.

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

Winter Valley is a Massachusetts not-for-profit corporation with a principal place of business at 600 Canton Avenue in Milton, which is also the address of MRE. Winter Valley was incorporated in 1977 and is exempt from Federal income taxes under 26 U.S.C. § 501(c)(3) ("Section 501(c)(3)") and is managed by MRE.

Winter Valley 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 Amendments. The primary purposes of Winter

Valley, as expressed in the first paragraph of its May 25, 2018, Articles of Amendment are "[t]o provide non-profit housing for use and occupancy of needy elderly persons and handicapped persons, and to provide services which will enhance the ability to such persons to live safe, useful and independent lives including access to health and social services." These purposes are substantially similar to those contained in Winter Valley's original Articles of Organization.

The subject property consists of approximately twelve acres improved with five residential buildings, Knowlton Hall, and a contiguous house. The five residential buildings each contain thirty-two apartments, a common room, sitting areas, and a laundry room. There are a total of 160 apartments of which eight are studios, six are two-bedrooms and 146 are one-bedrooms. Seventeen apartments are handicapped accessible and sixteen of these are designated assisted living units with meals, laundry, and housekeeping provided.

One hundred and thirty-two apartments are subsidized units while twenty-eight are not. The twenty-six one-bedroom non-subsidized units rent for \$1,000 per month not including heat, and the two two-bedroom non-subsidized units rent for \$1,200 per month not including heat. A recent HUD-required rent comparability study of Winter Valley reveals that, during the relevant time period, the average rent in the Milton area for a one-bedroom unit not

including heat was about \$2,200 and for a two-bedroom unit not including heat was about \$2,500.

Knowlton Hall contains management offices for Winter Valley and MRE, a hair salon for residents, as well as a dining hall for up to eighty diners. The contiguous property at 95 Highland Street is improved with a house in which the onsite caretakers reside. Winter Valley's campus also contains an outdoor pavilion, a garden, and numerous intersecting footpaths.

Winter Valley participates in a U.S. Department of Housing and Urban Development ("HUD") § 202 program<sup>3</sup> with a Section 8 program-based subsidy. The Section 8 program requires residents 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 for one person and \$47,400 for two people. Fifty-three percent of Winter Valley's apartments are occupied by residents having incomes that are 30% of AMI. Twenty-six percent of the apartments are occupied by residents having incomes that are 50% of AMI. Four percent of the apartments are occupied by residents having incomes that are 80% of AMI. The remaining 17% of the apartments are non-subsidized units but still rent at approximately 50% of fair market rent. A portion of the total rent payments for the subsidized units are, according to the

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<sup>3</sup> This program is intended to expand the supply of affordable housing benefits with supportive services for low-income elderly through capital advances to private non-profit entities along with rental assistance.

lease, "payable by or at the direction of HUD as housing assistance payments or project assistance payments on behalf of the tenant." Ms. McLaren testified that residents represent "a fluid cross-section of society" and never have to pay more than 30% of their income for their share of the rent.

The residents of Winter Valley are required to sign a lease developed by HUD for "[t]he Section 202 Program of Housing for the Elderly or Handicapped in conjunction with the Section 8 Housing Assistance Payments Program." This lease requires tenants to provide a security deposit and pay their share of the rent. The amounts that HUD and the tenants pay "shall be subject to change by reason of changes in HUD requirements, changes in the tenant's family income, family composition, or extent of exceptional medical or other unusual expenses in accordance with HUD-established schedules and criteria; or by reason of adjustment by HUD of any applicable Utility Allowance." Tenants are required to make annual income certifications and even interim certifications under certain circumstances, which may necessitate adjustments to the monthly rent prorations.

Winter Valley may terminate a tenancy for "material non-compliance with [the lease], material failure to carry out obligations under any State landlord or tenant act, or other good cause." Material noncompliance includes:

(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 leased premises and related project facilities, interfere with the management of the project or have an adverse financial effect on the project;

(3) failure of the tenant to timely supply all required information on the income and composition, or eligibility factors of the tenant household (including failure to meet the disclosure and verification requirements for social security numbers . . . , or knowingly providing incomplete or inaccurate information); or

(4) non-payment of rent or any other financial obligation due under the Agreement (including any portion thereof) beyond any grace period permitted under State Law. [The payment of rent or any other financial obligation due under the Agreement after the due date but within the grace period permitted under State law shall constitute a substantial violation.]

Termination of the lease agreement also results from a tenant's HUD subsidy termination.

As landlord, Winter Valley "agrees to comply with the requirements of all applicable Federal, State, and local laws, including health, housing and building codes and to deliver and maintain the premises in a safe, sanitary and decent condition." Winter Valley also "agrees to provide reasonable accommodation to an otherwise eligible tenant's disability."

Ms. McLaren testified that the activities at Winter Valley are similar to those at Unquity House, which are supported by



third-party entities. They include: daily educational, exercise or social activities; and transportation to shopping, social, and medical destinations. In addition, all the units have personal emergency alert cords which when pulled, ring an alarm in the building, an alarm in the management office, and the emergency services number in Milton. The staff at Winter Valley include: a property manager; a couple of caretakers, who live in the 95 Highland Street property; a case manager who assists residents in obtaining outside services; activity employees; and staff dedicated to the assisted living units.

When requested by MRE, South Shore Elder Services will evaluate the possible needs of a Winter Valley resident and, if appropriate, provide services to meet those needs. Some residents are part of a grant study which assigns health advocates to them. Residents' conditions are discussed at weekly staff meetings, and their apartments are inspected annually. If the management or staff notice a resident's absence from certain activities, a telephone check is instituted.

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

strongly indicate a mere landlord-tenant relationship, particularly those provisions that: require the tenant's payment of rent and a security deposit; permit termination for any number of causes; recite Winter Valley's limited responsibilities; and recognize the monthly rental payment is composed of the tenant's payment and the assistance payment. Moreover, the Board found that at least 83% of Winter Valley residents qualify for and receive subsidy under HUD's Section 8 program, and if a resident's subsidy ceases, the lease automatically terminates.

The Board further found that Winter Valley 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 Winter Valley's contractual obligations. The Board found that to the extent charitable services were performed, they were executed primarily by unrelated third parties, such as South Shore Elder Services. The Board additionally found that Winter Valley 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 Winter Valley 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 Winter Valley or MRE. While Ms. McLaren testified that the residents residing in the limited number of assisted living units are provided meals, laundry, and housekeeping, there is no indication in the record that they are provided with assistance in activities of daily living, such as: eating, bathing, dressing, mobility, and toileting. Accordingly, the Board found that the occupancies here did not resemble those found at nursing homes, rehabilitation facilities, traditional assisted living residences, or other similar living situations.

On this basis, the Board found 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 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. 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 Winter Valley and its residents was equivalent to a landlord-tenant affiliation. The lease between the parties placed only the usual burdens of a landlord on Winter Valley 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 Winter Valley's staff may have assisted residents in acquiring those services, the record is silent. To the extent Winter Valley's staff may have performed those services, the record is likewise nearly silent. While Ms. McLaren testified that the residents residing in the limited number of assisted living units are provided meals, laundry, and housekeeping, there is no indication in the record that they are provided with medical assistance or assistance in activities of daily living, such as: eating, bathing, dressing, mobility, and toileting. Furthermore, Winter Valley 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 Winter Valley 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 Winter Valley's asserted Clause Third charitable status could be found in them.

First, as discussed above, the Board found that the relationship between Winter Valley 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 Winter Valley 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 Winter Valley, and the rental assistance that the residents received was provided through government agencies. To grant Winter Valley a Clause Third exemption under these circumstances would monetize those benefits provided by others to Winter Valley and its residents at the expense of Milton's taxpayers. The fact that Winter Valley 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 Winter Valley'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, Winter Valley was the beneficiary of government support.

Third, Winter Valley did not directly provide medical or daily-living services to most of its residents, and, the record is silent as to the extent to which those services may have been provided by others. As noted above, to the extent Winter Valley may have provided those services to its assisted living residents, the record has little detail and mentions only meals, laundry, and housekeeping, not assistance in activities of daily living. Similarly, Winter Valley 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 ***Cumington School of the Arts, Inc. v. Assessors of Cumington***, 373 Mass. 597, 600 (1977)). The record here does not show how a "sufficiently large or indefinite class" of the community is benefited by Winter Valley'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 Winter Valley 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 Winter Valley'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, Winter Valley failed to demonstrate that it performed any of the in-unit services that the operator described in ***Mary Ann Morse Healthcare Corp.*** Moreover, Winter Valley 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 sufficiently shown to have been performed by Winter Valley. Under these circumstances, the Board found and ruled that Winter Valley 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.

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While the Board has little doubt that Winter Valley 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