

IN THE CIRCUIT COURT OF THE FIRST
JUDICIAL CIRCUIT IN AND FOR OKALOOSA
COUNTY, FLORIDA

CASE NO. 2020-CA-000836 F

H-BAY MINISTRIES, INC.,

Plaintiff,

vs.

MACK BUSBEE, as the Property Appraiser of
Okaloosa County, Florida; BEN ANDERSON,
as the Tax Collector of Okaloosa County,
Florida; and JIM ZINGALE, as the Executive
Director of the Florida Department of Revenue,

Defendants.

COMPLAINT

COMES NOW the Plaintiff, H-BAY MINISTRIES, INC., and sues the Defendants, MACK BUSBEE, as the Property Appraiser of Okaloosa County, Florida; BEN ANDERSON, as the Tax Collector of Okaloosa County, Florida; and JIM ZINGALE, as the Executive Director of the Florida Department of Revenue, and, as its cause of action, would state as follows:

1. The Plaintiff, H-BAY MINISTRIES, INC. (hereinafter "Plaintiff"), owns real property located in Okaloosa County, Florida, consisting of an assisted living facility/memory care center known as Superior Residences of Niceville, the denial of an assisted living facility and homes for the aged exemption on which property and its subsequent effect on ad valorem taxes is the subject matter of this action.

2. The parcel is more fully described in the records of the Property Appraiser and Tax Collector under the following Parcel Identification Number ("the subject property"): 05-1S-22-256B-0040-0000.

3. The Defendant, MACK BUSBEE, is the Property Appraiser of Okaloosa County, Florida (hereinafter the "Property Appraiser"), and is sued herein in his official capacity, and not individually.

4. The Defendant, BEN ANDERSON, is the Tax Collector of Okaloosa County, Florida (hereinafter the "Tax Collector"), and is sued herein in his official capacity, and not individually.

5. The Defendant, JIM ZINGALE, is the Executive Director of the Florida Department of Revenue (hereinafter the "DOR"), and is sued herein in his official capacity, and not individually.

6. This Court has jurisdiction of this matter pursuant to Section 194.171(1) of the Florida Statutes.

7. Venue for this action lies in Okaloosa County, Florida pursuant to Section 194.171(1) of the Florida Statutes.

8. Plaintiff is now, and was on January 1, 2019, responsible for the property taxes on the subject property located in Okaloosa County, the legal description of which is contained in the Property Appraiser's records as listed in Paragraph 2 above.

9. The Okaloosa County Value Adjustment Board mailed its Final Decision on the subject property on or around January 16, 2020.

10. This is an action by Plaintiff contesting the legality and validity of the 2019 ad valorem taxation exemption denials on the aforesaid tax parcel.

11. At all times material to this cause of action, the Property Appraiser was responsible for properly assessing the value of Plaintiff's parcel in accordance with Florida law, including applying any exemptions to which the property is entitled.

12. The Tax Collector has the statutory duty to collect the taxes resulting from the assessment of the subject property. The Tax Collector is joined as a nominal party defendant for the purpose of providing timely notice of this action and to provide this Court with jurisdiction over the Tax Collector to direct a refund of taxes paid upon granting of the relief requested herein.

13. The DOR is joined as a party defendant pursuant to Section 194.181 of the Florida Statutes.

14. The real property for which Plaintiff is responsible for property taxes is subject to assessment by the Property Appraiser for ad valorem tax purposes. Section 192.001(12) of the Florida Statutes defines "real property" to mean "land, buildings, fixtures, and all other improvements to land."

15. This property is entitled to the assisted living facility exemption under Section 196.197, Florida Statutes, which is informally titled as "additional provisions for exempting property used by hospitals, nursing homes, and homes for special services." and states that assisted living facilities that meet the requirements of the statute shall be exempt from ad valorem taxation. In order to receive this exemption, the following requirements must be met:

- (a) The entity must be a not-for-profit corporation;
- (b) The facility must have an assisted living facility license with the state of Florida; and
- (c) The subject property must submit an application to the county property appraiser by March 1.

16. Plaintiff met all the requirements outlined above, as identified in Section 196.197, Florida Statutes, as of January 1, 2019, the date on which all valuations and exemptions are to be determined in Florida, and filed its exemption application ahead of March 1, 2019, and is therefore entitled to the total exemption as determined by the Florida Legislature under Section

196.197, Florida Statutes. More detail as to the other requirements is provided in subsequent paragraphs below.

17. The subject property houses Florida residents in need of special services, namely assisted living and memory care. The facility has been granted an Assisted Living Facility License from the State of Florida under Chapter 429, granted to Superior Residences of Niceville for all 80 units, identified as License # AL11712, Certificate # 54603. A copy of this Assisted Living Facility License is attached hereto as Exhibit "A" as is incorporated herein by this reference.

18. Plaintiff is a corporation not-for-profit as approved by the Internal Revenue Service (IRS), authorized to do business in Florida.

19. Florida appellate courts have previously dealt with the issue of whether foreign (non-Florida) corporations should be allowed to receive ad valorem exemptions under this and other similar statutes. The Fifth District Court of Appeal in Miller v. Board of Pensions of United Presbyterian Church in U.S. of America, 431 So.2d 350 (5th DCA 1983) clearly states that the treatment of foreign (non-Florida) corporations differently from Florida corporations is unconstitutional. The DCA ruled that where a statutory limitation to Florida corporations is provided for, a Property Appraiser is required to apply provisions to the applicant as if the Florida corporation criterion did not exist. This was specifically in the context of property tax exemptions.

20. The Property Appraiser failed to properly or lawfully consider Section 196.197, Florida Statutes, in making his determination as to the application of this exemption to the subject property.

21. As a result of meeting the requirements under Section 196.197, the subject property is entitled to a full exemption from ad valorem taxation for tax year 2019.

22. The subject property is also entitled to the homes for the aged exemption under Section 196.1975, Florida Statutes, which is informally titled as "Exemption for property used by nonprofit homes for the aged" and states that senior living facilities that meet the requirements of the statute shall be exempt from ad valorem taxation.

23. There are specific subsections of Section 196.1975, Florida Statutes, that apply to the subject property and entitle it to exemption from ad valorem taxation, including subsections (3) and (10).

24. In order to initially qualify for any portion of Section 196.1975, and be qualified as a "homes for the aged," an entity must first demonstrate that it meets two qualifications: (1) that it is an entity not-for-profit; and (2) that at least 75% of the residents are either over the age of 62 or are totally or permanently disabled.

25. Plaintiff has provided an affidavit signed by its President, Robbie Wittner, that affirms the two qualifications noted above are met, and therefore the subject property qualifies as a "homes for the aged" under Section 196.1975. A copy of this affidavit is attached hereto as Exhibit "B" and is incorporated herein by this reference.

26. As a qualifying entity under the "homes for the aged" statute, we then look to subsection (3) of the statute which provides that "[t]hose portions of the home for the aged which are devoted exclusively to the conduct of religious services or the rendering of nursing or medical services are exemption from ad valorem taxation."

27. As noted above, the entirety of Superior Residences of Niceville is devoted to the rendering of assisted living and memory care to its residents, and the provision of these medical services entitles the subject property to a total exemption under Section 196.1975(3).

28. As a qualifying entity under the "homes for the aged" statute, we also look to subsection (10) of the statute which provides, in part, that facilities that "are financed without

public-entity bonds” are entitled to a total exemption as well. Superior Residences of Niceville was financed using Senior Living Revenue Bonds, Series 2018. A copy of the relevant pages of these Senior Living Revenue Bonds is attached hereto as Exhibit “C” and incorporated herein by this reference.

29. Due to the Senior Living Revenue Bonds financing structure, the subject property is entitled to a total exemption under Section 196.1975(10).

30. The Property Appraiser failed to properly or lawfully consider Section 196.1975, Florida Statutes, in making his determination as to the application of this exemption to the subject property.

31. As a result of meeting the requirements under Section 196.1975, the subject property is entitled to a full exemption from ad valorem taxation for tax year 2019.

32. As a result of the foregoing failure to apply the appropriate exemption(s) to the subject property, the ad valorem taxes resulting from the subject property substantially exceed the taxes which would have been levied on the subject property had it been properly identified as receiving the exemptions identified above.

33. In an exemption challenge, Plaintiff is obligated to only pay a good faith amount of taxes due on the subject property. Plaintiff has shown in good faith that the exemptions should be granted in total, and therefore no taxes are owed. A copy of International Society of Krishna Consciousness of Miami Beach, Inc. v. Robbins, 583 So.2d 767 (Fla. 3d DCA 1991) is attached hereto as Exhibit “D” and is incorporated herein by this reference.

34. This action has been timely filed, and all conditions precedent to the filing of this action have been satisfied.

WHEREFORE, the Plaintiff, H-BAY MINISTRIES, INC., respectfully prays for the Court to render a judgment decreeing (a) that the application for the exemption under Section

196.197, Florida Statutes, was inappropriately denied by the Property Appraiser; (b) that the application for the exemption under Section 197.1975, Florida Statutes, was inappropriately denied by the Property Appraiser; (c) that the Court establish and declare that the subject property be granted total exemption from ad valorem taxation for 2019 or, in the alternative, that the Court remand this determination to the Property Appraiser with instructions to comply with the provisions of the Florida Statutes and the Florida Constitution in determining the exempt status; (d) that the 2019 assessment be set aside to the extent the same exceeds the taxable value of the subject property; and (e) that the judgment further decree that Plaintiff, H-BAY MINISTRIES, INC., is entitled to a refund of any taxes paid to the extent that the amount previously paid exceeds the amount of taxes which would be owed on a corrected assessment with the exemption in place, and such tax refund shall be promptly paid by the Tax Collector within thirty (30) days of entry of a Final Judgment by this Court, along with any statutory interest. Further, Plaintiff, H-BAY MINISTRIES, INC., would request that it be granted such other and further relief as the Court may deem just and proper, as well as the costs of this action.

LOWNDES, DROSDICK, DOSTER, KANTOR &
REED, P.A.

By: 

FLA BAR 42316 FOR

S. Brendan Lynch
Florida Bar No. 0048124
215 North Eola Drive
Post Office Box 2809
Orlando, Florida 32802-2809
Phone: 407-418-6461
Fax: 407-843-4444
brendan.lynch@lowndes-law.com
litcontrol@lowndes-law.com
tracy.kennison@lowndes-law.com
Counsel for Plaintiff

0280048\187961\9370674v1