

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, SECOND DEPARTMENT

-----X
SEPHARDIC CONGREGATION OF
SOUTH MONSEY,

Docket No. 2007-1076

Plaintiff-Appellant,

v.

THE TOWN OF RAMAPO, THE
ASSESSOR OF THE TOWN OF
RAMAPO, ROCKLAND COUNTY,
NEW YORK, AND THE BOARD OF
ASSESSMENT REVIEW FOR THE
TOWN OF RAMAPO,

Defendants-Respondents.
-----X

BRIEF *AMICUS CURIAE* OF THE NATIONAL LEGAL FOUNDATION
In Support of Plaintiff-Appellant

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INTEREST OF THE *AMICUS CURIAE*

Amicus Curiae The National Legal Foundation (NLF) is a 501c(3) public interest law firm dedicated to the defense of First Amendment liberties and to the restoration of the moral and religious foundation on which America was built. Since its founding in 1985, the NLF has litigated important First Amendment cases in both the federal and state courts. The NLF has gained valuable expertise in the area of First Amendment law, which it believes will assist this Court in deciding this appeal. Because taxation exemptions for clergy implicate free exercise issues, the NLF has an interest, on behalf of its constituents and supporters, in arguing for a proper application of the Parsonage Exemption Statute.

SUMMARY OF THE ARGUMENT

Rabbi Hankakian meets the standards set forth as an officiating clergyman eligible for a tax exemption under the Parsonage Exemption Statute. New York Real Property Tax Law §462 (Consol. 2007). Many individuals work 80 or more hours in a week in just one job, such as in the fields of medicine, law and software engineering; thus, if Rabbi Hankakian works a second full time job there is no reason to assume that he would be unable to fulfill his role as the congregation's Rabbi. It is also quite common for religious leaders to have a second job in order to meet financial needs. In order to determine if an individual performs the duties of an officiating clergyman for the purposes of the exception the duties the

individual performs for the congregation outweigh the fact that the individual had another source of employment as well. Because Rabbi Hankakian fulfills the duties of a fulltime Rabbi he is eligible for the tax exemption in the Parsonage Exemption Statute.

ARGUMENT

I. RABBI HANKAKIAN MEETS THE OFFICIATING CLERGY REQUIREMENT OF REAL PROPERTY TAX LAW §462 BECAUSE SECURING ADDITIONAL FULL-TIME OUTSIDE EMPLOYMENT DOES NOT PREVENT A CLERGYMAN FROM BEING ABLE TO FULFILL HIS FULL-TIME DUTIES IN THE MINISTRY AND A CHURCH LEADER WHO WORKS FULL-TIME AS A CLERGYMAN AND SECURES OUTSIDE EMPLOYMENT CANNOT BE BARRED FROM RECEIVING A TAX EXEMPTION.

New York Real Property Tax Law §462 (Consol. 2007) (hereinafter referred to as the Parsonage Exemption Statute) provides, in pertinent part, “property owned by a religious corporation while actually used by the officiating clergymen thereof for residential purposes shall be exempt from taxation.” In *Sephardic Congregation of South Monsey v. The Town of Ramapo*, 827 N.Y.S.2d 850, 855 (Sup. Ct. Rockland County 2007), the court below held that petitioner-appellant Sephardic Congregation of South Monsey was not entitled to a tax exemption under the Parsonage Exemption Statute on the grounds that the Congregation’s Rabbi, Rabbi Hankakian, was not an officiating clergyman since he secured full-time outside employment working as a special education teacher at the Yeshiva of

North Jersey. The holding of the court below was incorrect for the following reasons.

A. Securing Additional Full-time Outside Employment Does Not Prevent a Clergyman From Being Able to Fulfill His Full-time Duties in the Ministry Because There Are Several Professions in Which 80-hour Workweeks Are Both Customary and Necessary, Thereby Proving That an 80-hour Workweek is a Possible Feat.

The court below stated “it is difficult for this Court to accept that the Rabbi is able to also fulfill duties as a full-time Rabbi, 40 to 45 hours per week as he has stated.” It further asserted, “clearly, his substantial outside employment makes it highly unlikely if not impossible, for the Rabbi to meet the necessary requirement of being an officiating clergyman for purposes of receiving an RPTL §462 exemption.” *Id.* It found it difficult to accept the idea that Rabbi Hankakian is able to fulfill his duties as a full-time Rabbi of the Congregation since he works as a full-time teacher at the Yeshiva, and it did not believe that he is capable of working two full time jobs. *Id.*

The typical full-time job in the United States consists of working 40 hours per week, usually over the course of five days. If a person were to work an 80-hour workweek, the equivalent of two full time jobs, they would most likely either be working five 16-hour days, six 13.3-hour days, or seven 11.42-hour days. For those accustomed to the repetitiveness of the typical eight-to-five, Monday through Friday job, this may seem like a grueling schedule, however, for many working

professionals in America, the eighty-hour workweek is anything but a myth. It has been estimated that one-fifth of highly paid professionals in the United States work 60 or more hours per week, in addition to regularly traveling, succumbing to “fast-paced, unpredictable schedules,” and constantly being available to fulfill their clients’ demands. Marilyn Gardner, “*Extreme*” *Jobs on the Rise*, The Christian Science Monitor, Dec. 4, 2006, <http://www.csmonitor.com/2006/1204/p14s01-wmgn.html>.

The medical profession is a prime example of a profession that demands long hours. Medical interns and residents have been known to work up to 110 hours per week during their medical residency. Anthony Ciolli, *The Medical Resident Working Hours Debate: A Proposal for Private Decentralized Regulation of Graduate Medical Education*, Social Science Research Network, Feb. 5, 2006, <http://ssrn.com/abstract=881378>. In July 2003, the Accreditation Council for Graduate Medical Education (hereinafter ACGME) set forth requirements that limited medical residents to work only 80 hours per week, averaged over a four week time period. ACGME, *The ACGME’s Approach to Limit Resident Hours 12 Months After Implementation: A Summary of Achievements*, www.acgme.org/acWebsite/dutyHours/dh_dutyhoursummary2003-04.pdf. This limitation has been described as “arguably the single largest attempt to reduce medical errors in the United States.” Interview with Dr. Kevin Volpp, Assistant Professor of Medicine

and Health Care Systems—The Wharton School, University of Pennsylvania School of Medicine, online, <http://www.usatoday.com/educate/health/Volpp/volpp.htm>. If the medical profession has been moving toward reducing medical errors and thereby *limits* the workweek to 80 hours in a profession where lives are often at stake, it logically follows that working 80 hours a week is not only possible, but also a practical work schedule.

Law is another profession in which employees typically put in long hours. Lawyers in general often work up to 80 hours per week, Alea Jasmin Mitchell, *Work-to-Life Balance in Departments and Firm Balancing Act*, Diversity and the Bar, September/October 2003, <http://www.mcca.com/index.cfm?fuseaction=page.viewPage&PageID=995&d:\CFusionMX7\verity\Data\dummy.txt>, and it is even common for them to work hours extending into the triple digits simply in an attempt to further their career or just maintain their current positions. The Esquire Group, *Lawyers Opt for Part-Time Hours*, City Business, May 7, 1996, http://www.esquiregroup.com/about_news_09.cfm. Federal prosecutors in particular frequently work 70 hours per week and between 80 to 100 hours during a trial. Gardner, *supra* (interview with Alexander Southwell, federal prosecutor for the U.S. Attorney's Office in New York).

There are also other professions in which employees are required to meet the demands of grueling work schedules. For example, a study of the work patterns of

software engineers conducted at Harvard University determined that software engineers in the United States typically work 70 to 80 hours per week. Leslie A. Perlow, *Time to Coordinate: Toward an Understanding of Work-Time Standards and Norms in a Multicountry Study of Software Engineers*, Sage Journals Online (2001), <http://wox.sagepub.com/cgi/content/abstract/28/1/91>.

The medical, legal, and software engineering professions are just a small sample of the many professions in which employees are often required to work much more than the typical 40-hour week. These professions serve as evidence disclaiming the impossibility of the 80-hour workweek. If it is possible for a person to work 80 hours per week in one job, it is likewise completely possible for a person to work more than one job in which their combined work schedule is equal to or exceeds 80 hours per week.

B. A Church Leader Who Works Full-time as a Clergyman and Secures Additional Outside Employment Cannot be Barred From Receiving a Tax Exemption Because the Test For Determining a Person's Status as an Officiating Clergyman is Whether the Person Performs All the Duties of an Officiating Clergyman.

Serving as a church leader is another profession in which extended work hours are not only customary but are in many cases financially necessary. Salaries among church leaders in general are notoriously low. In a research article on clergy salaries, the authors of the article suggest that the standard of living for clergy families should be a reasonable one, allowing for housing, food, and

clothing. The authors further suggest that such a standard should perhaps be increased to enable clergy families to save money for their children's college education, to pay off their own educational debt, and to save for their retirement. Becky R. McMillan and Matthew J. Price, *How Much Should We Pay the Pastor? A Fresh Look at Clergy Salaries in the 21st Century*, Duke Divinity School, Pulpit and Pew Research Reports No. 2, Winter 2003, <http://pulpitandpew.duke.edu/salary.html> (follow "Download the full report in Adobe Acrobat PDF format" hyperlink).

Accumulated educational debt in particular is something that is very prevalent among clergymen. Repaying such debt often imposes a significant financial burden on clergymen and their families. *Id.* at 18-19. Many church leaders also have children whom they need to support and for whose education they need to save money. The study on which the article was based involved a survey of 883 church leaders. The study found that approximately 42.5 percent of clergy surveyed had children living at home, 18.3 percent had children between the ages of 0 and 4, 50 percent had children between the ages of 5 and 11, 61.5 percent had children between the ages of 12 and 18, and 31 percent had children ages 19 and older. The Association of Religion Data Archives, *Pulpit and Pew National Survey of Pastoral Leaders, 2001*, Codebook, http://www.thearda.com/Archive/Files/Codebooks/CLERGY01_CB.asp, Questions 28-32.

In cases where clergymen do not make enough money in their job as the church leader of a congregation, in order to support such a middle-class lifestyle it is often times necessary for their spouse to work to supplement the familial income. In cases where this is not possible, the church leader will have to secure a second job, either pastoring another congregation or doing something totally unrelated to pastoring. 10.2 percent of the pastors surveyed in the study indicated that they serve as pastors from 1 to as many as 34 other congregations, while 15.3 percent of the pastors indicated that they hold outside jobs unrelated to pastoring congregations. *Id.* at Questions 44-46.

Whether a church leader holds outside employment was a key determinant for the court below in making its ruling. However, when the New York Court of Appeals, in *Word of Life Ministries v. Nassau County*, 787 N.Y.S.2d 705 (N.Y. 2004), was deciding whether a congregational leader was an officiating clergyman for tax exemption purposes, it said “those lower New York courts that have addressed the issue have uniformly applied the correct test.” *Id.* at 707. It specifically pointed to *Matter of Holy Trinity Orthodox Church of East Meadow v. O’Shea*, 720 N.Y.S.2d 904 (N.Y. Sup. Ct. 2001); *Temple Beth Sholom, Inc. of Roslyn, New York v. Nassau County Department of Assessment, Bureau of Exemptions*, 800 N.Y.S.2d 357 (N.Y. Sup. Ct. 2001); *Full Gospel Tabernacle of Long Island, New York, Inc. v. Board of Assessor of Town of Brookhaven*, NYLJ,

Jan. 25, 1982, at 15 col. 6 (Sup. Ct. Suffolk County); and the New York Office of Real Property Services Opinions of Counsel (No. 54, 1976).

In analyzing each of these sources, the “correct test” is whether the congregational leader performs all the duties of an officiating clergyman. Thus, in *O’Shea*, it was held that a choir director was not an officiating clergyman because his only responsibility was to render liturgical music for wedding and funeral ceremonies, and he was not able to officiate at such ceremonies. *O’Shea*, 720 N.Y.S.2d at 906-907. Conversely, in *Temple Beth Sholom*, it was held that an assistant rabbi was an officiating clergyman where “he was employed full time by the synagogue; conducted secondary services on Sabbath and all holidays; taught . . . classes during the year; supervised youth groups; conducted [ceremonies] when the rabbi was not available; and visited members in hospitals and homes after the death of family members.” *Temple Beth*, 800 N.Y.S.2d at 357. Similarly, in the Opinions of Counsel, the passage suggested that someone who preaches regularly and is ordained is an officiating clergy. 54 Op. Real Prop. Serv. 1 (1976). In examining the authorities in sum, it appears that the courts were emphasizing the duties of the clergyman and not whether the clergyman was engaged in outside employment, as the court below suggested. While the *Temple Beth* court noted in its opinion that the clergyman was employed full time, it can be deduced that such wording was added as emphasis in supporting the court’s decision, because the

issue presented was whether as an *assistant* rabbi, the clergyman in question could be considered an officiating clergyman. Furthermore, the Court of Appeals, in its *Word of Life* opinion, cited the New Jersey Appellate Division Court as persuasive authority, pointing to the court's distinguishing between an itinerant pastor and an officiating clergyman in *St. Matthew's Lutheran Church for the Deaf v. Division of Tax Appeals*, 87 A.2d 732 (N.J. 1952), and not between a pastor who had secured outside employment and a pastor that had not. Tax exemptions could not be given to an itinerant preacher, but rather, as the *St. Matthew's* court stated, an officiating clergyman "must be a settled or incumbent pastor . . . installed over a parish, church or congregation . . . [and] must be serving the needs of a reasonably localized and established congregation." *Word of Life*, 3 N.Y.3d at 459, 821 N.E.2d at 132, 787 N.Y.S.2d at 707, citing *St. Matthew's*, 87 A.2d at 735.

Rabbi Hankakian performs all the duties of a full-time officiating clergyman, and there is no evidence that he does not work 40 to 45 hours per week for the Congregation, as he claims. As it has been shown, it is possible, and often even necessary, for a person to work an 80-hour workweek. Even though Rabbi Hankakian works during the day on the weekdays at the school, he is still left with time to fulfill his responsibilities in the afternoons and on the weekends. If Rabbi Hankakian were to work a six-day workweek and take a day off in observance of

the Sabbath, he could still work 80 hours a week while sleeping eight hours a night and having a couple hours of free time each day.

Since Rabbi Hankakian performs all the duties of an officiating clergyman and works 40 to 45 hours per week for the congregation, it should be irrelevant for the purposes of the Parsonage Exemption Statute that he also holds outside employment. As previously discussed, clergymen should have the opportunity to live a reasonable lifestyle, and if that means having outside employment to supplement their income, they should not be denied a tax exemption on these grounds.

CONCLUSION

For the foregoing reasons and for the reasons found in the Petitioner-Appellant's brief this Court should reverse the judgment of the Supreme Court of Rockland County, New York.

Respectfully Submitted,
This 28th day of June 2007

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CERTIFICATE OF COMPLIANCE

PURSUANT TO 22 NYCRR § 670.10.3(f)

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