

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

THE STERLING AND FRANCINE
CLARK ART INSTITUTE, INC.

v.

BOARD OF ASSESSORS OF
THE TOWN OF WILLIAMSTOWN

Docket Nos. F318912, F322056

Promulgated:
October 28, 2015

These are appeals filed 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 Williamstown ("appellee" or "assessors") to abate a tax on certain real estate in Williamstown, owned by and assessed to The Sterling and Francine Clark Art Institute, Inc. ("The Clark" or "appellant") under G.L. c. 59, §§ 11 and 38, for fiscal years 2013 and 2014.

Commissioner Good heard these appeals. Chairman Hammond and Commissioners Scharaffa, Rose and Chmielinski joined her in the decisions for the appellant.

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

James B. Art, Esq. for the appellant.

Jeffrey T. Blake, Esq. for the appellee.

This case was submitted on an agreed statement of facts and attached exhibits. Based on those submissions, the Appellate Tax Board ("Board") made the following findings of fact.

As of July 1, 2012 and July 1, 2013, the relevant dates for the determination of exemption for the fiscal years at issue, The Clark was the assessed owner of a 2.17-acre parcel of land improved with a single-family residential dwelling located at 166 South Street in Williamstown ("subject property" or "Scholars' Residence"). For assessment purposes, the subject property is identified as "Map 131 Block 0082."

For fiscal year 2013, in accordance with G.L. c. 59, § 29, The Clark timely filed a Form 3ABC with the assessors on February 29, 2012. The assessors nonetheless valued the subject property at \$1,709,800, and assessed a tax thereon, at the rate of \$14.37 per \$1,000, in the total amount of \$26,160.96.¹ In accordance with G.L. c. 59, § 57, the appellant timely paid the tax due. On November 1, 2012, in accordance with G.L. c. 59, § 59, the appellant timely filed an Application for Abatement with the assessors, seeking an abatement of the tax on the grounds that the subject property was exempt under G.L. c. 59, § 5, Clause Third ("Clause Third"), which provides an exemption for property owned and occupied by charitable organizations. The assessors denied the appellant's abatement application on

¹ This amount includes a Community Preservation Act ("CPA") surcharge as well as a Fire District surcharge.

January 24, 2013. On April 17, 2013, in accordance with G.L. c. 59, §§ 64 and 65, the appellant seasonably filed a Petition Under Formal Procedure with the Board.

For fiscal year 2013, in accordance with G.L. c. 59, § 29, The Clark timely filed a Form 3ABC with the assessors on February 28, 2013. The assessors nonetheless valued the subject property at \$1,709,800, and assessed a tax thereon, at the rate of \$15.28 per \$1,000, in the total amount of \$27,540.98.96.² In accordance with G.L. c. 59, § 57, the appellant timely paid the tax due. On October 29, 2013, in accordance with G.L. c. 59, § 59, the appellant timely filed an Application for Abatement, seeking an abatement of the tax on the grounds that the subject property was exempt under Clause Third. The assessors denied the appellant's abatement application on November 5, 2013. On February 3, 2014, in accordance with G.L. c. 59, §§ 64 and 65, the appellant seasonably filed its petition with the Board.

On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide these appeals.

The Clark, formed in 1950 as a Massachusetts non-profit corporation, is exempt from taxation in accordance with Internal Revenue Code ("IRC") § 509(a)(3) as a supporting organization in support of The President and Trustees of Williams College, a Massachusetts charitable corporation ("Williams College").

² This amount includes a CPA surcharge as well as a Fire District surcharge.

According to its Restated Articles of Organization, the purposes of The Clark include the following: (a) to maintain one or more museums of fine arts and art institutions in Williamstown, Massachusetts in support of Williams College; (b) to provide facilities for study and research in the fine arts, art history and literary matters; (c) to establish and maintain collections of art for the use of students, teachers and other qualified members of the public in support of Williams College; (d) to engage in or assist with the educational activities, teaching and research of Williams College, in any one or more of the fine arts or any related fields; and, (e) to assist promising and deserving students and teachers of fine arts, art history and related subjects.

As part of its charitable mission, The Clark operates a visiting scholars program that invites scholars from around the world, who must have a Ph.D. or equivalent professional experience, to use the resources of The Clark to complete projects that are of primary importance to the study of the visual arts. These visiting scholars, called Clark Fellows, contribute to the educational activities of The Clark through special lectures given to the learning community, as well as regularly scheduled conferences, symposia, and workshops. In addition, the visiting scholars regularly interact with students and faculty of Williams College in informal settings such as

weekly luncheons, and are available to advise students on a variety of topics including career alternatives and research projects. The Clark's visiting scholars program has been recognized by the United States Department of State as an "Exchange Visitor Program" under the Fulbright-Hayes Act.

The Clark offers between 10 and 18 fellowships to visiting scholars each year, ranging in duration from six weeks to nine months. The visiting scholars are not faculty or employees of The Clark and are not paid a salary, although some may receive a need-based stipend. The visiting scholars are given office space in The Clark library. Visiting scholars are also provided housing, free of charge, at the subject property, known as the Scholars' Residence, which is located directly across the street from The Clark's museum galleries and libraries.

The subject property, the Scholars' Residence, is a three-story Colonial-style dwelling built circa 1880. The subject dwelling consists of five one-bedroom apartments and one two-bedroom apartment, each of which is fully furnished by The Clark. All of these units have a kitchen, shower, living room, and dining room, and also a television, washer and dryer. There are also two "swing room units" that include only a bedroom and a bathroom, and are typically used for shorter stays, or to host The Clark's guest lecturers. The subject property also includes a large communal kitchen, library, living room, dining room,

pantry, and an ADA-complaint elevator, all located on the first floor, which are available for use by all Clark fellows and visiting lecturers. All units in the subject property share the same heating system, security system and electric meter, all of which are paid for by The Clark.

The Clark furnishes all of the units and common areas, cleans the common areas regularly, maintains the building and grounds, and cleans the individual living units during the transition from one visiting fellow to the next. While respecting the privacy of the residents, The Clark reserves the right to access the entirety of the subject property, including living units, and to re-locate residents within the building as may be necessary to accommodate visiting scholars during their stay. There are no, and have never been, any written leases, licenses, or other occupancy agreements that confer any legal rights to the visiting scholars or preserve or even document any legal right of the scholars to reside in the Scholars' Residence.

The assessors did not dispute, and the Board found, that The Clark is a charitable organization within the meaning of Clause Third. Based on its subsidiary findings, and for the reasons more fully explained in the following Opinion, the Board found and ruled that The Clark occupied the subject property in furtherance of its charitable purposes.

Accordingly, the Board issued a decision for the appellant in the present appeals and granted abatements in the amount of \$26,160.96 for fiscal year 2013 and \$27,540.98 for fiscal year 2014.

OPINION

Clause Third provides in pertinent part 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. A taxpayer claiming exemption under Clause Third therefore must demonstrate that (1) the property is owned by a charitable organization and (2) occupied by a charitable organization to further its charitable purpose. See **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 the purposes of Clause Third, a "charitable organization" is "(1) a literary, benevolent, charitable or scientific institution or temperance society incorporated in the commonwealth, and (2) a trust for literary, benevolent, charitable scientific or temperance purposes." G.L. c. 59, § 5, Third. The parties agreed, and the Board found, that the appellant qualified as a charitable organization for purposes of Clause Third. The

issues in these appeals, therefore, are whether the appellant occupied the subject property and whether it did so in furtherance of its charitable purpose.

Occupancy is “something more than that which results from simple ownership and possession. It signifies an active appropriation to the immediate uses of the charitable cause for which the owner was organized.” **Assessors of Boston v. Vincent Club**, 351 Mass. 10, 14 (1966) (quoting **Babcock v. Leopold Morse Home for Infirm Hebrews & Orphanage**, 225 Mass. 418, 421-422 (1917)). To qualify for exemption, the property must be occupied “directly for the fulfillment of [the organization’s] charitable purposes.” **Boston Symphony v. Assessors of Boston**, 294 Mass. 248, 255 (1935) (citing **Burr v. Boston**, 208 Mass. 537, 543 (1911)).

When the property at issue involves a residential facility owned by a charitable organization, a threshold determination must be made as to whether the property is occupied by the residents in their individual capacities or by the organization itself. The rights maintained by the residents in connection with the property, particularly the degree of exclusivity and control, are a controlling factor in making this determination. Cases dealing with shared possession have held that in the “absence of exclusive possession by tenants, the owner is considered the ‘occupant.’” **Mary Ann Morse Healthcare Corp. v. Assessors of Framingham**, 74 Mass. App. Ct. 701, 706 fn. 7. (2009).

In ***M.I.T. Student House, Inc. v. Assessors of Boston***, 350 Mass. 539 (1966), the appellant sought a tax exemption for a "student house" that was occupied by needy students who paid a small rental fee to the taxpayer. The Court found that "the character of the premise is that of a 'dormitory or boarding house'" and that the occupation of such is by the corporation itself and not the residents, "just as the occupation of a college dormitory [] is that of the institution of learning." ***Id.*** at 542 (citing ***Springfield Young Men's Christian Assn v. Assessors of Springfield***, 284 Mass. 1, 5 (1932)); see also, ***Franklin Square House v. Boston***, 188 Mass. 409, 411 (finding that the charitable organization occupied the subject property because housing working girls was similar to housing students in a dormitory). Applying these principles, the Court found and ruled in ***M.I.T. Student House*** that the property at issue was occupied by the charitable organization and therefore exempt from taxation under Clause Third.

In contrast, "where residents are afforded legal protections under landlord/tenant law, the Court ruled that the residents, and not the charitable organization, occupy the property." ***John Bertram House of Swampscott, Inc. v. Assessors of Swampscott***, Mass. ATB Findings of Fact and Reports 2006-306, 332 (citing ***Charlesbank Homes v. City of Boston***, 218 Mass. 14 (1914)). In ***Charlesbank Homes***, the appellant, a charitable organization,

maintained an apartment house containing some general rooms and 103 apartments, which were leased to tenants for small fees. *Id.* at 15. The Court found that the objective of the corporation was to rent the apartments, which it did. As such, the residents were "strictly tenants . . . [with] an interest in the respective apartments let to them and they themselves are the occupants." *Id.*

In the present appeals, The Clark used the subject property to provide housing for participants in their visiting scholars program. The visiting scholars did not sign any type of lease or occupancy agreement nor did they pay rent during their stay at The Clark. The Clark paid all utilities, furnished the individual units and common areas, and cleaned and maintained the common areas. Moreover, while respecting the privacy of the residents, The Clark reserved the right to access the entirety of the subject property, including living units, and to re-locate visiting scholars within the building. On the basis of these facts, the Board found and ruled that the subject property was occupied by the Clark itself, rather than the visiting scholars in their individual capacities. Accordingly, the Board found and ruled that the subject property was both owned and occupied by a charitable organization for purposes of Clause Third.

The remaining issue to be determined is whether this occupancy of the subject property furthered the Clark's stated

charitable purposes. "Real estate which is both owned and occupied by a charitable organization is 'not entitled to tax exemption if the property is occupied by it for a purpose other than that for which it is organized.'" **Acushnet River Safe Boating Club v. Assessors of Fairhaven**, Mass. ATB Findings of Fact and Reports 2002-372, 383 (citing **Lynn Hospital v. Board of Assessors of Lynn**, 383 Mass. 14, 18 (1981); **Milton Hospital & Convalescent Home v. Assessors of Milton**, 360 Mass. 63, 69 (1971)). See also **Mary Ann Morse Healthcare Corp. v. Assessors of Framingham**, 74 Mass. App. Ct. 701, 706 (2009) (ruling that the provision of housing to elderly residents was consistent with organization's charitable purpose).

Those purposes, as contained in the Clark's Restated Articles of Organization, included the provision of "facilities for study and research in the fine arts, art history and literary matters," and assisting with "the educational activities, teaching and research of Williams College, in any one or more of the fine arts or any related fields." On the basis of the evidence presented, the Board found and ruled that the use of the subject property to house the visiting scholars was consistent with and in furtherance of the Clark's charitable purposes. The record indicated that national and international arts scholars were invited to participate in the visiting scholars program, and that as part of the program, the scholars contributed to the promotion of the

visual arts and arts education at Williams College by conducting research, giving lectures, and taking part in workshops and symposia. Although the actual research and other activities conducted by the scholars may have taken place, in part, at buildings other than the Scholars' Residence, the Board concluded that the subject property was necessary for the operation of the visiting scholars program. Given the small stipend, if any, awarded to the visiting scholars, along with the comparatively short duration of the scholarships, the Board concluded that it would have been extremely difficult to entice prominent arts scholars from around the world to come to Williamstown in the absence of guaranteed free housing. The Board thus found and ruled that the Clark occupied the subject property in furtherance of its stated charitable purpose. See **Mary Ann Morse Healthcare Corp.**, 74 Mass. App. Ct. at 706.

After considering the evidence of record, and based on its subsidiary findings, the Board found and ruled that the appellant was a charitable organization for purposes of Clause Third and that it occupied the subject property in furtherance of its stated charitable purposes as contemplated by Clause Third. Therefore, the Board found and ruled that the subject property was exempt from tax under Clause Third.

Accordingly, the Board issued a decision for the appellant in the present appeals and granted abatements in the amount of \$26,160.96 for fiscal year 2013, and \$27,540.98 for fiscal year 2014.

THE APPELLATE TAX BOARD

By: _____
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: _____
Assistant Clerk of the Board