

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3244-07T3

CHABAD OF RANDOLPH, INC.,  
  
Plaintiff-Respondent,

v.

TOWNSHIP OF RANDOLPH,  
  
Defendant-Appellant.

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Submitted December 1, 2008 - Decided December 31, 2008

Before Judges Lisa and Reisner.

On appeal from the Tax Court of New Jersey,  
Docket No. 006731-2006.

McKirdy & Riskin, P.A., attorneys for  
appellant (Richard P. De Angelis, Jr., on  
the brief).

Schneck Holtzman, L.L.C., attorneys for  
respondent (Lee S. Holtzman, Michael I.  
Schneck and Jonathan M. Bernstein, on the  
brief).

PER CURIAM

Defendant Township of Randolph appeals from a judgment entered by the Tax Court on November 16, 2007, granting plaintiff Chabad of Randolph, Inc. (Chabad) a tax exemption for

a residence occupied by its rabbi, Abraham Alberto Bechor,<sup>1</sup> and from a January 28, 2008 order denying reconsideration.<sup>2</sup>

The Township tax assessor denied Chabad's application for a tax exemption to commence October 1, 2005, because of alleged zoning violations, and based on his conclusion that Chabad did not meet the requirements for an exemption. The County Tax Board affirmed his decision, and Chabad appealed to the Tax Court. The Tax Court judge concluded that Chabad carried its burden of proving that the rabbi's Chabad-owned residence was entitled to a parsonage exemption under N.J.S.A. 54:4-3.6, which exempts from taxation "the buildings, not exceeding two, actually occupied as a parsonage by the officiating clergymen of any religious corporation of this State." The judge also concluded that the Township did not prove its claim that Chabad committed zoning violations. Because we conclude that the judge's decision is supported by substantial credible evidence, we affirm.

I

The following pertinent evidence was presented at the August 9, 2007 trial of Chabad's tax appeal. The Township stipulated that Chabad was a non-profit entity, organized for

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<sup>1</sup> The rabbi's name is sometimes spelled "Bekhor" in this record.

<sup>2</sup> The property, located at 48 West Hanover Avenue in Randolph Township, is Block 166, Lot 1.10 on the Township Tax Map.

religious purposes, which owned the premises. The stipulated issues were "whether the premises in question was used in a fashion that would qualify for exemption as a parsonage" and whether the rabbi met the definition of an "officiating clergyman." The Township claimed there was "no proof that Rabbi [Bechor] was in fact installed over an established congregation."

Rabbi Bechor testified that he had been serving as the presiding rabbi over the congregation of Chabad of Randolph since February 2001. He was "chosen by the headquarter [sic] of the Chabad in New Jersey, which is based . . . in Morristown, by the head Rabbi of New Jersey, Rabbi Hershong."<sup>3</sup> He was "installed . . . together with board members of the Randolph community." He testified that his responsibilities included providing religious services, religious education, prayer services, sermons, weekly Torah readings, and officiating at various religious rituals such as marriages and funerals. He also was responsible for the administration of the congregation, including overseeing the Hebrew school, a religious pre-school, and a Jewish learning institute for adult religious education, hiring staff and overseeing the organization's finances.

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<sup>3</sup> This was later clarified as a reference to the Rabbinical College.

According to the rabbi, 139 families belonged to the Chabad and received religious services of various kinds. He authenticated a membership list showing the 139 members who belonged during the year period from September 2005 to August 2006. He also testified that Chabad leased space from the Mount Freedom Jewish Center, allowing Chabad to use a portion of the Mount Freedom temple for religious education, the "Hebrew Country Pre-school," and prayer services. He testified that the Chabad sent out weekly e-mails notifying its members about prayer services.

On cross-examination, he admitted that in 2005, the High Holidays services were not held in the Mount Freedom temple, but rather were held at the Chabad-owned house the rabbi occupied. He also testified that although it was quite large, he considered the entire house to be his residence. However, he agreed the house could be characterized as "Chabad house." He testified that there was a large open space on the first floor of the house which was sometimes used for prayer. He denied running the Hebrew school at his home, but admitted that in September 2005, the school orientation was held there. The rabbi testified that he previously ran the Hebrew school at his in-laws' house on Andrews Road in Randolph. He explained that while he and his family lived in the entire Chabad house, they

also conducted a religious class and Saturday services in the downstairs portion of the house.

The rabbi testified that he bought the property at 28 West Hanover Avenue in July 2005 for \$692,000 and then sold it to Chabad of Randolph, Inc. for \$1, on or about August 25, 2005. The rabbi, his wife and Jack Dashosh were Chabad's trustees. Chabad then applied for a tax exemption.

In answer to the judge's questions, the rabbi testified that of the 139 Chabad members, between ten and thirty members would attend daily or Sabbath prayer services. The Sabbath services were held at the rabbi's home, and the weekday services were held at the Mount Freedom temple.

The rabbi indicated his understanding that holding prayer services at his home did not violate local zoning, although Chabad once received summonses for holding a Hebrew school at the house and for running prayer services and counseling there. Chabad pled guilty to the charge related to the Hebrew school, paid a \$250 fine, and moved the school to another location. They pled not guilty to the charges related to the prayer services, classes and counseling, and those charges were dismissed. It was his understanding that the Township agreed the latter activities did not violate the zoning ordinance.

The Township presented testimony from its planning and zoning administrator, Darren Carney. He testified that when a variance was granted for its construction, the structure in question was approved only as a residence and that its use for a Hebrew school, adult education, and prayer services was unauthorized. In September 2005, he observed activity which he believed demonstrated that the property was being used as a Hebrew school. However, he admitted that while he observed a large number of people entering and leaving the premises, he had no personal knowledge as to what they were doing at the house. This concluded the trial testimony.

In a written opinion dated October 3, 2007, Judge Kuskin concluded that Rabbi Bechor was a credible witness and that Chabad was entitled to a tax exemption. Accepting the rabbi's testimony in its entirety, Judge Kuskin found that the property was used as a parsonage within the meaning of N.J.S.A. 54:3.6. Relying on Friends of Ahi Ezer Congregation, Inc. v. City of Long Branch, 16 N.J. Tax 591, 595 (Tax 1997), the judge concluded that the rabbi "was an officiating clergyman in that the duties and responsibilities described by him in his undisputed testimony 'sound like those performed by congregational leaders of all religious denominations.'" Ibid. He also concluded that Chabad had a congregation, which held

religious services at the Mount Freedom Jewish Center and at the rabbi's home. He also concluded that "the conduct of Sabbath worship services" at the residence did not preclude a parsonage tax exemption, "since the premises otherwise satisfied the requirements for a parsonage exemption under N.J.S.A. 54:4-3.6."

The Township filed a motion for reconsideration, contending that Chabad was using the property as a Jewish community center in violation of the zoning ordinance, and therefore was not entitled to a tax exemption. However, the court found that, under the standard of Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996), the Township had not demonstrated a basis for reconsideration of the court's earlier decision. However, Judge Kuskin also noted that if he did grant reconsideration, he would reach the same conclusion.

He also found that the Township had not proven that the premises were being used in a manner that violated the zoning ordinance. The judge credited the rabbi's testimony on that issue and observed that "Mr. Carney's testimony was not illuminating as to the nature of the summonses or as to the basis for the resolution. None of the summonses [were] presented to me. . . . He did not testify that any of those zoning violations had been confirmed or so found by a Court, either a Municipal Court or any Superior Court Judge." He also

found Carney's description of the one alleged zoning violation that Carney observed, to be unconvincing. Judge Kuskin concluded "[t]here may have been a zoning violation, but nothing in the record before me demonstrates that." Citing Farhi v. Commissioners of Deal, 204 N.J. Super. 575 (Law Div. 1985), he also noted that, regardless of the zoning ordinance, conducting prayer services at the premises was constitutionally protected activity.

## II

Our review of the Tax Court judge's decision is limited and deferential:

The scope of appellate review from a Tax Court determination is the same as that applicable to a non-jury determination of any other trial court. "As a general rule, admission or exclusion of proffered evidence is within the discretion of the trial judge whose ruling is not disturbed unless there is a clear abuse of discretion." Moreover, "'judges presiding in the Tax Court have special expertise; for that reason their findings will not be disturbed unless they are plainly arbitrary or there is a lack of substantial evidence to support them.'" Our scope of review "is limited to determining whether the findings of fact are supported by substantial credible evidence with due regard to the Tax Court's expertise and ability to judge credibility."

[Yilmaz, Inc. v. Director, Div. of Taxation, 390 N.J. Super. 435, 443 (App. Div.), certif. denied, 192 N.J. 69 (2007) (citations omitted).]



Judged by this standard of review, we find no basis to disturb Judge Kuskin's well-reasoned and thorough decision. The Township's appellate arguments warrant little discussion. R. 2:11-3(e)(1)(E).

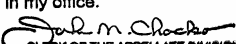
The Township first invites us to address the "novel" issue of an applicant's right to a tax exemption where the applicant is using the premises for an unlawful use in violation of local zoning. However, we conclude we need not address this issue, because the Township did not prove that Chabad was using the premises in violation of the Township zoning ordinance. Judge Kuskin's decision was based on his assessment of the rabbi's credibility, as well as the Township's lack of proof. We find no basis in this record to depart from our usual deference to the trial judge's credibility determinations. State v. Locurto, 157 N.J. 463, 470-74 (1999). We also agree with Judge Kuskin that the Township simply failed to prove its zoning argument.

The record contains evidence of one zoning violation, which occurred in September 2005, before the October 2005 date on which Chabad sought its tax exemption, and which was resolved by paying a \$250 fine and moving the religious school to another location. There was no proof that Chabad violated the zoning ordinance in any other way. We agree with Judge Kuskin that the Township's witness provided no helpful testimony on that issue.

Moreover, since there is no proof that conducting prayer services at the house violated local zoning here, we need not address the First Amendment implications of applying a zoning ordinance to worship services conducted in a private residence. See Fahri, supra, 204 N.J. Super. at 581-83.

The Township also contends that Judge Kuskin's decision was against the weight of the evidence. We disagree. There was ample credible evidence in this record that Chabad has a congregation, that Chabad conducts worship services and other religious activities under the rabbi's supervision and leadership, and that Rabbi Bechor is the congregation's officiating rabbi. See Friends of Ahi Ezer Congregation, supra, 16 N.J. Tax at 593-95. The evidence overwhelmingly supports the conclusion that his residence is a "parsonage" within the meaning of N.J.S.A. 54:4-3.6. See St. Matthew's Lutheran Church for the Deaf v. Div. of Tax Appeals, 18 N.J. Super. 552, 557-58 (App. Div. 1952). The Township's remaining contentions on this issue are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We affirm substantially for the reasons stated in Judge Kuskin's written opinion.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.  
  
CLERK OF THE APPELLATE DIVISION