

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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| Orange Stones Co., | : | |
| Appellant | : | |
| | : | |
| v. | : | No. 23 C.D. 2012 |
| | : | Submitted: September 10, 2012 |
| Board of Assessment Appeals of | : | |
| Berks County, and Reading School | : | |
| District, and City of Reading | : | |

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
JUDGE LEADBETTER**

FILED: October 11, 2012

Appellant, Orange Stones, Co., appeals from the decision of the Court of Common Pleas of Berks County (trial court), which denied its real estate assessment appeal on the basis that it failed to qualify as entity of purely public charity because it did not donate or render gratuitously a substantial portion of its services.

Appellant is a domestic nonprofit corporation exempt from federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3). Appellant is the owner of property located at 1711 Hampden Boulevard, Reading, Pennsylvania (the Property) consisting of 3.07 acres improved with a 23,000 square foot building. Appellant provides drug and alcohol

rehabilitation services at several locations throughout the Commonwealth. Appellant does not provide clinical treatment services at the Property. Rather, six of Appellant's employees provide administrative and clerical support for the clinical locations, including staff training and certification documentation, patient intake and post-release follow-up calls, processing of medical assistance applications, information technology support, marketing and storage.

On August 23, 2010, the Board of Assessment Appeals of Berks County (Board) received Appellant's application for the exemption of real estate from taxation. The Board held a hearing at which Appellant presented testimony to support its application. The Board denied the requested exemption and assessed the Property at \$783,200. Appellant filed an appeal from the denial of its application with the trial court. Subsequently, the Reading School District and the City of Reading intervened.

On December 14, 2011, the trial court conducted a bench trial at which Appellant presented the testimony of Brandy Switek, an employee at the Property, and Scott Snyder, the Secretary of the board of directors. Ms. Switek testified regarding the employees who worked at the property, their duties, the layout of the building and the purposes for which it was used by Appellant. She also testified that Appellant provides scholarships to patients who are not eligible for county funding or managed care funding or are indigent. Ms. Switek stated that she was unable to provide any information as to what amount or what value the scholarships are in relation to Appellant's overall revenue. She was also unable to provide the exact number of scholarships given to patients, but on cross-examination estimated that approximately 10% of patients receive free services. Notes of Testimony (N.T.) at 45-46; Reproduced Record (R.R.) at 283a.

Documents reflecting the number of patients receiving free services existed, but were not produced by Appellant. Ms. Switek testified that she did not make the decision regarding which patients received scholarships, rather either the Chief Executive Officer or the Chief Operating Officer made such decisions. Mr. Snyder testified that Appellant awarded scholarships to patients on a consistent basis and that the majority of patients are indigent and referred for treatment through single county authorities or other agencies. N.T. at 58-59; R.R. at 286a. He further testified that Appellant makes an effort on a consistent and systematic basis to accept patients who are unable to pay for services. N.T. at 82-83; R.R. 292a.

On December 20, 2011, the trial court issued an order denying the tax assessment appeal. On March 6, 2012, the Honorable Scott E. Lash issued an opinion in support of the denial of the tax assessment appeal.¹ Judge Lash determined that Appellant had failed to carry its burden to show that it donates or provides a substantial portion of its services gratuitously. He stated that it was questionable whether the 10% figure provided by Appellant constituted a substantial portion of its services. Additionally, he noted that Appellant had failed to produce evidence, such as actual data concerning the number of patients who received scholarships and the patients' length of stay, to substantiate the 10% of services figure testified to by Ms. Switek. Further, given the lack of financial evidence, he was unable to ascertain whether costs incurred for scholarship were substantial or *de minimis*. This appeal followed.

¹ Senior Judge Albert A. Stallone conducted the bench trial and issued the order denying the appeal. The case was reassigned to Judge Lash on December 28, 2011, following Senior Judge Stallone's retirement.

Appellant argues that the trial court erred in concluding that it failed to show that it donates or renders gratuitously a substantial portion of its services and, thus, qualifies as an entity of purely public charity. Appellant contends that the testimony of both Ms. Switek and Mr. Snyder supports a finding that under a totality of the circumstances it makes a bona fide effort to provide services to patients who are unable to afford the care they need. Appellant also asserts that the trial court erred in finding that providing free services or scholarships to 10% of its patients was a relatively small percentage of the total operation and that the trial court disregarded the sworn testimony of Ms. Switek and Mr. Snyder in favor of insisting upon actual data regarding donated services.

In *Hospital Utilization Project v. Commonwealth (HUP)*, 507 Pa. 1, 487 A.2d 1306 (1985), the Pennsylvania Supreme Court set forth the test to determine what constitutes a purely public charity. Under the *HUP* test, an entity qualifies as a purely public charity if it (a) advances a charitable purpose; (b) donates or renders gratuitously a substantial portion of its services; (c) benefits a substantial and indefinite class of persons who are legitimate subjects of charity; (d) relieves the government of some of its burden; and (e) operates entirely free from profit motive. 507 Pa. at 22, 487 A.2d at 1317. By satisfying the *HUP* test, the applicant demonstrates that it meets the minimum constitutional qualifications for being an appropriate subject of a tax exemption. *Lehigh Area Sch. Dist. v. Carbon County Bd. of Assessment*, 708 A.2d 1297 (Pa. Cmwlth. 1998). It is the taxpayer who bears the burden to prove it is entitled to a tax exemption. *Fellowship Int'l Mission, Inc. v. Lehigh County Bd. of Assessment Appeals*, 690 A.2d 1271 (Pa. Cmwlth. 1997). The trial court is the fact-finder in tax assessment appeals and all matters of credibility and evidentiary weight are within its

province. *The Lutheran Home at Topton, Pa. v. Schuylkill County Bd. of Assessment Appeals*, 782 A.2d 1 (Pa. Cmwlth. 2001).

With regard to the requirement that an organization donate or render gratuitously a substantial portion of its services, the organization must show that it makes a bona fide effort to provide services to those who are unable to afford the usual fee. *Hahn Home v. York County Bd. of Assessment Appeals*, 778 A.2d 755 (Pa. Cmwlth. 2001). The determination as to whether the services donated are “substantial” is made on a case-by-case basis and is based on a totality of the circumstances. *Id.* at 762 .

The trial court as the fact finder considered and weighed the testimony provided by Appellant’s witnesses and determined that Ms. Switek’s undocumented estimate that 10% of patients received scholarships was “hardly probative.” Trial Court’s Opinion at 10. The trial court went on to state that there was no reason Appellant could not have produced actual data on the number of scholarships. Ms. Switek testified that such data was available on her computer, but that she had not brought it with her to the trial.² It was within the trial court’s province to determine the persuasiveness of the testimony of Appellant’s witnesses and determine its probative value. Moreover, we agree that the vague testimony presented was insufficient to meet Appellant’s burden to prove that it “donates or renders gratuitously a substantial portion of its services.”³

² By contrast, this Court, in concluding that the Hahn Home donated a substantial portion of services gratuitously, noted that a witness testified extensively and in detail, along with the submission of numerous mathematical and account exhibits to explain that in most years, the Hahn Home provided in excess of 90% or 95% gratuitous goods and services to its residents. 778 A.2d at 762 n.8.

³ In its brief, Appellant also addresses arguments raised by the Reading School District before the trial court that a charitable exemption is tied to the granting of zoning permit. In its **(Footnote continued on next page...)**

Accordingly, we affirm.

BONNIE BRIGANCE LEADBETTER,
Judge

(continued...)

brief, the Board asserts that Appellant was using only a small portion of the property to support its charitable purpose and, therefore, Appellant was not entitled to a tax exemption for the entirety of the property. Based on our determination that the *HUP* test was not satisfied, we need not address these issues.

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ORDER

AND NOW, this 11th day of October, 2012, the order of the Court of Common Pleas of Berks County is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
Judge