

**Drug Policy Alliance v New York City Tax Commn.**

2013 NY Slip Op 33273(U)

December 16, 2013

Supreme Court, New York County

Docket Number: 103827/12

Judge: Paul Wooten

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. PAUL WOOTEN  
*Justice*

PART 7

In the Matter of the Application of  
**DRUG POLICY ALLIANCE,**  
Petitioner,

INDEX NO. 103827/12

For a Judgment under Article 78 of the  
Civil Practice Law and Rules,  
-against-

MOTION SEQ. NO. 001

**NEW YORK CITY TAX COMMISSION  
AND NEW YORK CITY DEPARTMENT  
OF FINANCE,**  
Respondents.

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk and notice of entry cannot be served hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

The following papers were read on this motion by petitioner for a judgment pursuant to Article 78.

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits (Memo) _____	_____
Replying Affidavits (Reply Memo) _____	_____

Cross-Motion:  Yes  No

Drug Policy Alliance (petitioner or Alliance) brings this Article 78 proceeding to annul the October 20, 2011 determination of respondent New York City Department of Finance (DOF) which denied Alliance's July 12, 2011 application (Application) for a real estate property tax exemption for its then-recently purchased New York headquarters, condominium unit 15(A) in the building located at 131 West 33rd Street in Manhattan. Petitioner's headquarters is used exclusively as office space for its nonprofit educational, charitable and moral purposes. The denial was based on the grounds that "[a]dvocacy of a cause does not qualify as an exempt purpose for property tax abatement" (Moretti affirmation, ¶ 7, exhibit 1, D), pursuant to RPTL 420-a(1). The respondents cross-move to dismiss the petition pursuant to CPLR 3211(a)7 and 7804(f).

The petitioner proffers that the conclusion by the DOF that petitioner is just an advocacy organization is a narrow interpretation of the statute and that their functions are broader. The

petitioner seeks an order: declaring that DOF's determination is arbitrary and capricious, and contrary to law; declaring that Alliance is entitled to the tax exemption, pursuant to the New York State Constitution article XVI, section 1, Real Property Tax Law (RPTL) § 420-a (1)(a), and Administrative Code of the City of New York § 11-246; and directing DOF to grant petitioner the exemption. In connection with the herein petition, the Court received amicus briefs from New York Civil Liberties Union Foundation, Asian American Legal Defense Fund, and Lawyers Alliance for New York.

### BACKGROUND

Petitioner appealed DOF's denial of the Application to respondent New York City Tax Commission (Commission) on February 3, 2012. On August 21, 2012, a de novo hearing was held before Commission Hearing Officer Ellen Hoffman, wherein petitioner submitted oral and written evidence. Before a decision was rendered by the Commission petitioner filed the herein Article 78 petition on September 21, 2012.<sup>1</sup> On September 28, 2012, the Commission issued its "Opinion and Determination On Application For Correction" (Opinion) on petitioner's appeal. The Opinion provided that petitioner's property was not eligible for tax exemption, because "while education may be a component of [petitioner's] operation, it is clear from the record that the aims of legislative and policy change overwhelmingly dominate its activities and focus" (Moretti affirmation, exhibit A at 12). The Commission does not contend in its opposition papers that the herein petition was premature.

RPTL § 420-a (1)(a) provides, in relevant part,

Real property owned by a corporation or association organized or conducted exclusively for religious, charitable, hospital, educational, or moral or mental improvement of men, women or children purposes, or for two or more such purposes, and used

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<sup>1</sup> Petitioner acknowledges in its petition that this proceeding was commenced before the Commission's final determination was issued. However, petitioner maintains that this early filing was done in order to preserve their claim for petitioner to appeal the DOF's October 20, 2011 determination, as the statute of limitations expired on September 24, 2012 (see Verified Petition at ¶ 2).

exclusively for carrying out thereupon one or more of such purposes ... shall be exempt from taxation as provided in this section.

The word "exclusively," as used in this section, should not be read literally, but, rather, as meaning "primarily," or "principally" (*Matter of Adult Home at Erie Sta., Inc. v Assessor & Bd. of Assessment Review of City of Middletown*, 10 NY3d 205, 214 [2008], citing *Matter of Symphony Space v Tishelman*, 60 NY2d 33, 38 [1983]).

Petitioner, a not-for-profit organization incorporated in the District of Columbia, is exempt from federal income taxation pursuant to Internal Revenue Code section 501(c)(3), and exempt for New York State and New York City sales and use taxes, pursuant to RPTL section 1116(a)(4), as an educational and charitable nonprofit. In its petition, Alliance describes itself as:

"the United States' leading organization working to educate the public about drug policy to advance policies that reduce the harms of both drug use and drug prohibition, and seek solutions that promote safety and reduce addiction while upholding the sovereignty of individuals over their own minds and bodies" (Verified Petition at 3).

On its Application to the Commission, petitioner specified that its organizational purpose is "Educational." At the hearing before the Commission, Ethan Nadelman, petitioner's executive director, testified that petitioner's educational activities consist of:

"public speaking by myself and by my colleagues ... doing interviews [on] radio and television ... the creation of a website, with extensive information ... production of publications, public policy debates, just really the whole range of getting, trying to transmit knowledge to the broader public" (Petitioner's exhibit 4 at 7).

#### STANDARD

"In reviewing administrative proceedings in general," courts are 'limited to considering whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion'" (*Chinese Staff & Workers Assn. v*

*City of New York*, 68 NY2d 359, 363 [1986], quoting CPLR 7803[3]; see also *Matter of Lobaina v Human Resources Admin., Office of Child Support Enforcement*, 79 AD3d 884 [1st Dept 2010]). "The proper test is whether there is a rational basis for the administrative orders. . . . Rationality is what is reviewed under . . . the arbitrary and capricious standard" ( *Matter of Pell v. Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]) . As such, a court "may not overturn an agency's decision merely because it would have reached a contrary conclusion" (*Matter of Sullivan County Harness Racing Assn. v Glasser*, 30 NY2d 269, 278 [1972]; see also *Matter of Verbalis v New York State Div. of Hous. & Community Renewal*, 1 AD3d 101 [1st Dept 2003]). "Indeed, once it has been determined that an agency's conclusion has a 'sound basis in reason' the judicial function is at an end and a reviewing court may not substitute its judgment for that of the agency" (*Paramount Communications v Gibraltar Cas. Co.*, 90 NY2d 507, 514 [1997], quoting *Matter of Pell v Board of Edu.*, 34 NY2d at 231 [1974]).

When determining a CPLR 3211(a) motion, "we liberally construe the complaint and accept as true the facts alleged in the complaint and any submissions in opposition to the dismissal motion" (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 151-152 [2002]; see *Leon v Martinez*, 84 NY2d 83, 87 [1994]; *Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409 [2001]; *Wieder v Skala*, 80 NY2d 628 [1992]). To defeat a pre-answer motion to dismiss pursuant to CPLR 3211, the opposing party need only assert facts of an evidentiary nature which fit within any cognizable legal theory (*Bonnie & Co. Fashions v Bankers Trust Co.*, 262 AD2d 188 [1st Dept 1999]). Further, the movant has the burden of demonstrating that, based upon the four corners of the complaint liberally construed in favor of the plaintiff, the pleading states no legally cognizable cause of action (see *Guggenheimer v Ginzburg*, 43 NY2d 268 [1997]; *Salles v Chase Manhattan Bank*, 300 AD2d 226 [1st Dept 2002]).

Upon a CPLR 3211(a)(7) motion to dismiss for failure to state a cause of action, the

"question for us is whether the requisite allegations of any valid cause of action cognizable by the state courts 'can be fairly gathered from all the averments'" (*Foley v D'Agostino*, 21 AD2d 60, 65 [1st Dept 1964], quoting *Condon v Associated Hosp. Serv.*, 287 NY 411, 414 [1942]). "However imperfectly, informally or even illogically the facts may be stated, a complaint, attacked for insufficiency, is deemed to allege 'whatever can be implied from its statements by fair and reasonable intendment'" (*Foley v D'Agostino*, 21 AD2d at 65, quoting *Kain v Larkin*, 141 NY 144, 151 [1894]). "[W]e look to the substance [of the pleading] rather than to the form (*id.* at 64).

#### DISCUSSION

Petitioner argues that, inasmuch as DOF has granted tax exempt status to numerous other advocacy groups, its denial of petitioner's application is arbitrary, as it was impermissibly based on the subject matter of Alliance's advocacy. Petitioner points out that its activities are similar to those of the NAACP Legal Defense Fund, Inc., the Alan Guttmacher Institute, and the Catholic Diocese of New York, all of which are similar organizations that are exempt from property taxes

Courts that have considered whether an organization's purpose and activities are "educational" within the meaning of RPTL § 420-a(1)(a), have uniformly held that an organization must do more than engage in the "mere communication of facts and ideas" to qualify for the tax exemption (*Matter of Rudolph Steiner Educ. & Farming Assn. v Brennan*, 65 AD2d 868, 869 [3d Dept 1978]). What is required is "the development of faculties and powers and the expansion of knowledge by teaching, instruction or schooling. We distinguish the much broader process of the communication of facts and ideas" (*Matter of Asia Socy. v Tax Commn. of City of N.Y.*, 92 AD2d 781, 782 [1st Dept 1983], quoting *Matter of Swedenborg Found. v Lewisohn*, 40 NY2d 87, 94 [1976] [emphasis added]). Thus, for example, in *Matter of Baldwin Research Inst., Inc. v Assessor of Town of Amsterdam* (45 AD3d 1152 [3d Dept 2007]), the

Court held that a corporation that was organized for the purpose of conducting research in the field of substance abuse, but that also provided residential educational programs to assist students in remaining abstinent to drugs and alcohol, was entitled to a property tax exemption.

In support of its position in this application, petitioner relies principally upon *Gay Alliance of Genesee Val. v City Assessor of City of Rochester* (201 AD2d 887 [4th Dept 1994]), which petitioner described as "the only Appellate Division case involving educating the public" (Letter of Matthew M. Milford to the New York City Tax Commission (2/2/12), Verified Petition at ¶ 28). In *Gay Alliance*, the Court held that the applicant was entitled to a tax exemption because its activities included a peer facilitation counseling program and a speakers bureau that provided speakers to high school and university classes. By contrast, petitioner does not contend that it engages with the public in any manner other than by organizing conferences and making its publications available.

Taking all the factual allegations in the Petition as true, it is evident that the DOF's determination denying petitioner's application is arbitrary or irrational, and that petitioner's application is granted. The Court is concerned that the respondents excluded from the Opinion any mention that petitioner already has tax exempt status from the Federal, State and City authorities, petitioner's enumerated purposes are beyond DOF's narrow interpretation of education, and that similar organizations have been granted a tax exemption pursuant to a liberal interpretation of RPTL § 420-a(1)(a) (see *Matter of Greater Jamaica Development Corporation v New York Tax Com'n*, 111 AD3d 937 [2d Dept 2013] ["a property owner seeking a real property tax exemption which demonstrates that it is a not-for-profit entity 'whose tax-exempt status has been recognized by the Internal Revenue Service and whose property is used solely for [charitable] purposes has made a presumptive showing of entitlement to exemption'"], quoting *Matter of Plattsburgh Airbase Redevelopment Corp. v Rosenbaum*, 101 AD3d 21, 23 [3d Dept 2012]; see also *Yeshiva Beth Yehuda V'Chaim D'Betlan v Town of*



Shandaken, 100 AD2d 641, 642 [3d Dept 1984]).

Finally, petitioner's constitutional claims largely rest on its view that it was denied a property tax exemption because of the content of its public advocacy, rather than because public advocacy constitutes the major portion of petitioner's activities. Petitioner contends that its right to the due process of law was violated when the Commission barred it from cross-examining a witness at the hearing, and by the fact that Glenn Newman, the president of the Commission, rather than Hearing Officer Hoffman, signed the Opinion. In light of the Court's decision herein, the Court declines to reach the merits of this claim.

CONCLUSION

Accordingly, it is hereby

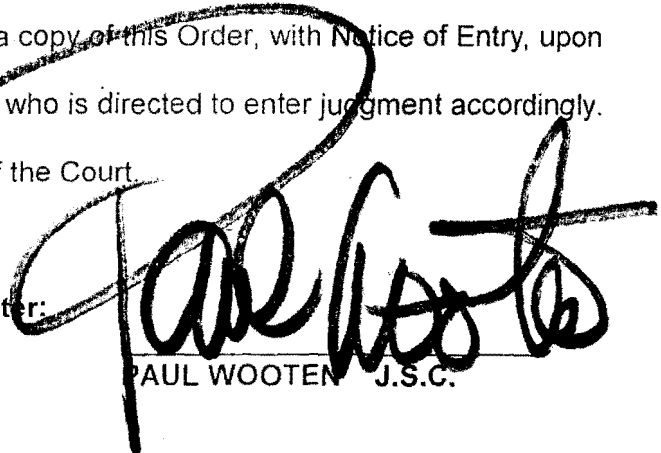
ORDERED that the pre-answer cross-motion by respondents New York City Tax Commission and New York City Department of Finance to dismiss the complaint pursuant to CPLR §§ 3211(a) and 7804(f) is denied; and it is further,

ADJUDGED that the petition is granted and the Department of Finance is directed to grant petitioner a tax exemption, pursuant to the New York State Constitution article XVI, section 1, Real Property Tax Law (RPTL) § 420-a (1)(a), and Administrative Code of the City of New York § 11-246; and it is further,

ORDERED that the petitioner shall serve a copy of this Order, with Notice of Entry, upon the respondents and upon the Clerk of the Court, who is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

Dated: 12/16/13

Enter:   
PAUL WOOTEN J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate: :  DO NOT POST

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