

Farmsteads of New England, Inc.

v.

Town of Hillsborough

Docket No.: 20055-04EX

DECISION

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” 2004 denial of the Taxpayer’s request for charitable exemption under RSA 72:23, V on a 37-acre parcel of land with a farmhouse and outbuildings (the “Property”). For the reasons stated below, the appeal is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, it was entitled to the statutory exemption for the year under appeal. See RSA 72:23-m; TAX 204.06.

The Taxpayer argued it was entitled to the charitable exemption because:

- (1) it is a New Hampshire nonprofit corporation, has registered with the State as a charitable trust and has received a federal income tax exemption from the Internal Revenue Service;
- (2) after the Property was purchased on March 31, 2003, the Taxpayer proceeded to prepare to conduct its charitable activities and accepted its first client in July, 2003;

- (3) the activities, measured by the number of day, residential and respite clients treated, has grown over time;
- (4) the Taxpayer receives funding from both public and private sources;
- (5) one of the Taxpayer's clients is the son of the founder (Ms. Deborah Gray), but his day services are publicly funded and his transportation costs are paid separately by his parents;
- (6) the buildings are used exclusively for the Taxpayer's mission, including residences for clients, staff and office space and exercise areas, and for farm animals who are an integral part of the programs offered;
- (7) in the summer, the clients participate in gardening activities and the resident farmer/caretaker plays an important role in the operation of the farm and the support of the client programs;
- (8) the Taxpayer also engages in fund-raising activities and seeks grants;
- (9) as set forth in the corporation's articles of agreement and bylaws, none of the directors receive compensation for their services as directors and there are no members in the corporation;
- (10) Ms. Gray is the Executive Director and receives a salary of \$22,500 per year currently, which is far less than she could earn in alternative employment (\$60,000 - \$70,000 per year);
- (11) Ms. Gray is willing to step down from her roles as a voting director and president when suitable replacements can be found; and
- (12) although she lives in the farmhouse, she provides essential services as the primary, overnight care provider for the clients.

The Town argued the denial of the charitable exemption was proper because:

- (1) much of the financial support for the Taxpayer comes from donations and financial guarantees by the parents of the founder, Ms. Gray, and relatively little comes from unrelated parties;

(2) of the seven clients presently receiving services from the Taxpayer, one is the son of the founder and another is a child of a former director;

(3) Ms. Gray received substantial income (in consulting fees and salary) from the Taxpayer, presently lives on the third floor of the house and her mother also lived in the house for approximately six months in 2004;

(4) the charitable definition in RSA 72:23-1 clearly precludes pecuniary profit or benefit to officers or members;

(5) the “charter” is too vague and discretionary to impose specific obligations that can be enforced; and

(6) the Taxpayer failed to meet its burden of proof.

Board’s Rulings

Based on the evidence and arguments presented, the appeal is denied on the sole ground discussed below.

In order to qualify for a charitable exemption under RSA 72:23, V, the Taxpayer must satisfy the definition of “charitable” contained in RSA 72:23-1. While the Town argues there are other elements of this definition the Taxpayer also fails to satisfy, the board need not resolve those factual and legal arguments here. Instead, the board denies the appeal based upon the absolute statutory prohibition in the charitable definition, which states: “no pecuniary profit or benefit to [the corporation’s] officers or members.” (Emphasis added.)

The board finds Ms. Gray, the founder, continued to serve as an officer (president) of the corporation seeking the exemption and also as chairman of its board of directors; during the same time periods, she received “pecuniary profit or benefit,” first as a consultant and then as an employee (Executive Director), of the corporation. Ms. Gray stated her intention to “step down”

as an officer and director when “suitable” replacements can be found. The board finds, however, that the statutory prohibition can be avoided only at such time when Ms. Gray serves either as an uncompensated (voluntary) officer or a compensated employee/consultant, but not both. The Taxpayer has cited no New Hampshire case authority allowing the board to interpret the statute in a manner permitting both roles.

The Taxpayer argues the statutory definition, as stated in RSA 72:23-1, “is not intended to abrogate the meaning of ‘charitable’ under the common law of New Hampshire.” The problem, however, is that none of the cases cited by the Taxpayer in its request for “Rulings of Law” negates the prohibition stated in the statute. Nature Conservancy v. Nelson, 107 N.H. 316, 320 (1966), for example, which was decided well before enactment of the statute in 1991, ruled the corporation qualified for a charitable exemption in part because its stated purposes “by their nature tend to promote the general welfare with no pecuniary profit to [the corporation’s] members and with no restrictions which confine benefits to them.” This ruling was explained in Appeal of City of Franklin, 137 N.H. 622, 626 (1993) in the same terms: “no pecuniary profit to its members and no restrictions confining benefits to them.”

In 1996, the supreme court, citing the Nature Conservancy case, noted the statutory definition in RSA 72:23-1 “is consistent with the common law definition of charitable organization.” The Housing Partnership v. Rollinsford, 141 N.H. 236, 241 (1996). The “no pecuniary profit” phrase contained in the statute is a continuation of a prohibition recognized and applied in the common law. This prohibition applies with even more force to officers than members, since officers have generally much greater control over the corporation’s day-to-day

affairs. In this case, the Taxpayer has no members, so the officers are in even more complete control.¹

To qualify for a charitable exemption, an applicant must establish that it meets each of the statutory requirements. See Christian Camps & Conferences v. Town of Alton, 118 N.H. 351, 353 (1978) (“It is elemental that determination of the rights of plaintiff to an exemption from taxation is statutory. The existence and extent of exemptions depends on legislative edict.”). The exemption requirements apply even where, as here, the commendable purpose of the Taxpayer in treating clients with autism and other developmental disabilities within a farm environment has not been questioned.

In summary, the wording of the statute and the common law of New Hampshire are consistent with each other. Neither permits an officer of a charitable corporation to receive “pecuniary profit or benefit” from the corporation. The board finds this absolute prohibition has been violated because Ms. Gray served as an officer and director of the Taxpayer while at the same time receiving money as an employee and consultant. It is the fact of monetary payment, rather than its amount relative to other employment opportunities she arguably may have had, that is controlling. Therefore, the appeal is denied.

¹ Officers report to the directors of the corporation and therefore directors are subject to, and are included within, this prohibition. Cf. RSA 293-A:8.01 (“All corporate powers must be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors . . .”).

The board has responded to the Taxpayer's and the Town's requests for findings of fact and rulings of law in Addendum A attached hereto.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(f). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Addendum A

The “Requests” received from the Taxpayer and the Town are replicated below, in the form submitted and without any typographical corrections or other changes. The board’s responses are in bold face. With respect to the Requests, “neither granted nor denied” generally means one of the following:

- a. the Request contained multiple requests for which a consistent response could not be given;
- b. the Request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;
- c. the Request contained matters not in evidence or not sufficiently supported to grant or deny;
- d. the Request was irrelevant; or
- e. the Request is specifically addressed in the Decision.

TAXPAYER'S REQUESTED FINDINGS OF FACT AND RULINGS OF LAW

FINDINGS OF FACT

1. Farmsteads of New England, Inc. (herein after Farmsteads) is a federally exempt organization under Section 501 (c)(3) of the Internal Revenue Service Code.

Granted.

2. The mission of Farmsteads is to provide an environment that is conducive to a meaningful and satisfying life for people who have autism and other developmental disabilities and who are seeking a holistic lifestyle that supports their vocational, residential and recreational needs.

Granted.

3. The Town of Hillsboro denied Farmsteads' request for exemption due in part to the alleged failure of Farmsteads to provide services.

Granted.

4. Farmsteads purchased the farm in Hillsborough on or about March 31,2003.

Granted.

5. Farmsteads began providing services to clients in July, 2003.

Granted.

6. As of April 1, 2004, Farmsteads had provided services to 4 clients.

Granted.

7. As of February 1, 2005, Farmsteads has provided services to 14 clients.

Neither granted nor denied.

8. Farmsteads owns, occupies and uses the farm for the purpose of providing an environment that is conducive to a meaningful and satisfying life for people who have autism and other developmental disabilities and who are seeking a holistic lifestyle that supports their vocational, residential and recreational needs..

Granted.

9. The occupancy of the caretakers cottage by the farm manager is reasonably necessary to Farmsteads' ability to provide of services to clients 24 hours a day, 7 days per week.

Neither granted nor denied.

10. The executive director, Deborah Gray, who is also a member of the board of directors, receives compensation as an employee for her executive director duties at a level that is below that of executive director's in other organizations.

Granted.

RULINGS OF LAW

11. The provision of services to only 4 clients prior to April 1, 2004 does not defeat the charitable exemption as it is reasonable to have time after acquiring the property to renovate same to make the premises handicap accessible and suitable for clients, to obtain the necessary permits and certifications, to obtain funds and to interview and select appropriate clients. Cf. Ossipee Mountains Habitat for Humanity v. Town of Wolfeboro, 2002 N.H. Tax Lexis 15, Docket No. 18555-01EX, (BTLA 2002) citing St. Mary's School v. Concord, 80 N.H.436, 437 (1922); Speare Memorial Hospital v. Town of Plymouth, No. 14996-94EX, 1995 WL 156819 (BTLA 1995).

Neither granted nor denied.

12. The occupancy of the caretakers cottage by the farm manager does not defeat the charitable exemption. Cf. Wentworth Home v .Portsmouth, 108 N .H. 514, 517 (1968) (exemption proper for housing of employed personnel "essential to the furnishing of care" in charitable health care facility); and Franciscan Fathers v. Pittsfield. 97 N.H. 396, 402 (1952) (exemption proper for caretaker's house on land of religious society), citing Hedding Comp Meeting Assn. v. Epping 88 N.H. 321,324 (1937).

Neither granted nor denied.

13. The occupancy of the farm house by the executive director and other individuals who are providing overnight supervision and assistance to resident clients does not defeat the charitable exemption. Cf. Wentworth Home v .Portsmouth, 108 N .H. 514, 517 (1968) (exemption proper for housing of employed personnel "essential to the furnishing of care" in charitable health care facility); and Franciscan Fathers v. Pittsfield. 97 N.H. 396, 402 (1952) (exemption proper for caretaker's house on land of religious society), citing Hedding Comp Meeting Assn. v. Epping 88 N.H. 321,324 (1937).

Neither granted nor denied.

14. Farmsteads of New England, Inc. is entitled to a charitable tax exemption for the real estate located in Hillsborough under the common law definition of "charitable" as it is dedicated to providing services in accordance with its mission statement, there is no pecuniary profit to its members, and no restrictions confining benefits to them. Cf. Appeal of the City of Franklin, 137 N.H. 622,626 (1993); Nature Conservancx v. Nelson, 107 N.H. 316,317 (1966).

Denied.

TOWN OF HILLSBOROUGH REQUESTS FOR
FINDINGS OF FACT AND RULINGS OF LAW

Requested Findings of Fact.

1. The Farmsteads Articles of Agreement state the following objective:

Farmsteads of New England, Inc. exists to provide an environment that is conducive to a meaningful and satisfying life for people with autism and other developmental disabilities who are seeking a holistic lifestyle that supports their vocational, residential and recreational needs.

Granted.

2. The President of the Farmsteads Board of Directors, Deborah Gray, is also Executive Director of the corporation. Her salary is currently \$22,500/yr. It was \$30,000/yr.

Granted.

3. Farmsteads provides Deborah Gray with full health insurance, and it pays \$100 per month towards her husbands health insurance.

Neither granted nor denied.

4. Farmsteads was registered with the Secretary of State on March 31, 2000. It purchased the Hillsborough property three years later, on March 31, 2003.

Granted.

5. During the year prior to the purchase of the property, Deborah Gray was paid consulting fees of \$30,000 by the corporation.

Granted.

6. The Vice President of the Farmsteads Board of Directors is Alfred DeScenza, who is Deborah Gray's father.

Granted.

7. Alfred DeScenza is CEO of DeScenza Diamonds, Inc. of Boston.

Granted.

8. Alfred DeScenza and DeScenza Diamonds have contributed more than \$180,000 to Farmsteads.

Granted.

9. Alfred DeScenza and Shirley DeScenza (who is Deborah Gray's mother), have personally guaranteed the \$735,000 note which Farmsteads borrowed to purchase the Hillsborough property.

Granted.

10. Deborah Gray lives at the Hillsborough property.

Granted.

11. Deborah Gray's granddaughter visits her every Saturday and stays overnight at Farmsteads.

Granted.

12. Shirley DeScenza (Deborah Gray's mother), lived at the Hillsborough property from March to September of 2004.

Granted.

13. Shirley DeScenza chairs Farmsteads fund raising committee.

Granted.

14. Alfred DeScenza spent most weekends from March to September 2004 at the Hillsborough property.

Granted.

15. The party who sold the Hillsborough property to Farmsteads, Steven Slowick, lives rent free in the carriage house on the property, as caretaker of the farm.

Neither granted nor denied.

16. The minutes of the March 24, 2004 meeting of the Board of Selectmen indicate that there were no clients at the Hillsborough property at that time.

Neither granted nor denied.

17. In a document prepared in July 2004, Deborah Gray stated that Farmsteads had two day clients as of April 1, 2004.

Neither granted nor denied.

18. Farmsteads did not hire a fulltime program director until June 2004.

Granted.

Requested Rulings of Law.

1. The Board of Selectmen's denial of Farmstead's exemption application should be affirmed because officers of the corporation benefit from its operations.

Granted.

2. The Board of Selectmen's denial of Farmstead's exemption application should be affirmed because Farmsteads is not providing charitable services to the general public or a substantial and indefinite segment of the general public.

Neither granted nor denied.

3. The Board of Selectmen's denial of Farmstead's exemption application should be affirmed because the charitable services being provided by Farmsteads out of the Hillsborough property are not obligatory.

Neither granted nor denied.

4. The Board of Selectmen's denial of Farmstead's exemption application should be affirmed because, on the relevant date of April 1, 2004, it was not providing charitable services to the general public or a substantial and indefinite segment of the general public.

Neither granted nor denied.

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Sharon J. Rondeau, Esq., Post Office Box 962, Franklin Street, Exeter, New Hampshire 03833, counsel for the Taxpayer; Chairman, Board of Selectmen, Town of Hillsborough, Post Office Box 7, Hillsborough, New Hampshire 03244; and Michael Donovan, Esq., Post Office Box 2169, Concord, New Hampshire 03302, counsel for the Town.

Date: February 18, 2005

Anne M. Stelmach, Deputy Clerk