



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE  
CHARITIES BUREAU

January 17, 2017

Michael J. Toohey, Esq.  
Snyder, Kiley, Toohey, Corbett & Cox, LLP  
P.O. Box 4367  
Saratoga Springs, NY 12866

RE: Congregation & Yeshiva Pardes Yosef D'Chasidei Belz  
Application for Leave to Sell Real Property  
Our File No. 2-2014-062

Dear Mr. Toohey:

This is in response to your letter, dated October 1, 2014, by which the Congregation & Yeshiva Pardes Yosef D'Chasidei Belz (the "Yeshiva") requested that the Attorney General consent to its proposed Petition to the Supreme Court (the "Petition"), verified by the Yeshiva's president, Joel Aronson ("Joel"), on September 28, 2014, for leave to sell its 15-acre parcel located on Union Avenue (the "Union Avenue Lot" or "Lot") in Saratoga Springs to the City of Saratoga Springs (the "City") for \$200,000. For the reasons set forth below, we decline to consent to or approve the Petition.

Undisclosed in the Petition is the fact that the Yeshiva's sale of the Union Avenue Lot to the City was made contingent on the sale, by the City, of a valuable piece of real estate to a related party.<sup>1</sup> During the course of our investigation of this matter, we learned that a third party, the Algonquin Building LLC (the "LLC"), owned by Ben Aronson ("Ben"), Joel's son, was a party to a three-way transaction among the Yeshiva, the City and the LLC involving the Union Avenue Lot as well as a parking lot next to the Algonquin Building, owned by the LLC, on Broadway, known as the Collamer Lot (the "Three-way Transaction").

---

<sup>1</sup> As set forth in N-PCL § 102(a)(23):

"Related party" means (i) any director, officer or key employee of the corporation or any affiliate of the corporation, or any other person who exercises the powers of directors, officers or key employees over the affairs of the corporation or any affiliate of the corporation; (ii) any relative of any individual described in clause (i) of this subdivision; or (iii) any entity in which any individual described in clauses (i) and (ii) of this subdivision has a thirty-five percent or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent.

According to Eileen Finneran, the City's Deputy Commissioner of Public Safety, the origins of the Three-way Transaction date back to 2008 when she first approached Joel with regard to the City's interest in the Union Avenue Lot for the site of a new public safety building.<sup>2</sup> According to Finneran, Joel offered the Lot to the City for \$700K, an amount that Finneran believed exceeded the Lot's fair market value.

Then, in 2013, the City issued a Request for Proposals ("RFP") for the purchase of the Collamer Lot that required bidders to sell the City a parcel of land in close proximity to the Union Avenue Lot. Ben, on behalf of the LLC and the Yeshiva, was the sole bidder on the RFP. In his bid, Ben specified that the Lot would be sold to the City "assuming successful acquisition of the Collamer Lot" by the LLC. In December 2013, the Three-Way Transaction was approved by the City Council. In 2014, contracts were signed for the City's purchase of the Union Avenue Lot from the Yeshiva and the sale of the Collamer Lot to the LLC.

The Petition seeks authority from the Supreme Court, pursuant to Religious Corporations Law ("RCL") § 12(1) and Not-for-Profit Corporation Law ("N-PCL") §§ 510 and 511, to sell the Union Avenue Lot to the City. The standard, as set forth in N-PCL § 511(d), is as follows:

[i]f it shall appear, to the satisfaction of the court, that the consideration and the terms of the transaction are fair and reasonable to the corporation and that the purposes of the corporation or the interests of the members will be promoted, it may authorize the sale, lease, exchange or other disposition of all or substantially all the assets of the corporation, as described in the petition, for such consideration and upon such terms as the court may prescribe.

(Emphasis Added).<sup>3</sup>

The purposes of the Yeshiva are set forth in its Certificate of Incorporation. Paragraph Second, subdivision (d), for instance, states that the Yeshiva will "establish, maintain and conduct a school for the study of the holy Torah." Paragraph Second, subdivision (i), further

---

<sup>2</sup> Finneran's affidavit, dated February 3, 2015 and attached hereto, was filed with the Supreme Court in support of the City's motion to dismiss a lawsuit filed by certain taxpayers to block the Three-way Transaction.

<sup>3</sup> Since the Yeshiva does not maintain a house of worship, the interests of the three members of the Yeshiva are solely to further the Yeshiva's religious purposes, including the maintenance of a religious school. Accordingly, the alternative "interests of the members" reference in N-PCL § 511(d) does not provide a different standard for approval of the Petition. Although the Union Avenue Lot does not constitute "all or substantially all" of the Yeshiva's assets, RCL § 12(1) requires Supreme Court or Attorney General approval for the sale of any real property owned by religious corporations like the Yeshiva.

Michael J. Toohey, Esq.  
January 17, 2017  
p. 3

states that:

[t]he corporation is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, as specified in Section 501(c)(3) of the Internal Revenue Code . . .

(Emphasis Added). The federal regulations for Code § 501(c)(3) elaborate on the statute by providing that:

[a]n organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

26 CFR § 1.501(c)(3)-1(d)(1)(ii).<sup>4</sup> *See also* N-PCL § 102(a)(5) and RCL §§ 2 & 2-b(1) (religious corporations may be formed “exclusively for a [religious] purpose or purposes, not for pecuniary profit or financial gain.”)

It appears that the Three-way Transaction will provide a private benefit to a related party. As the Three-way Transaction does not promote exclusively religious purposes, it is our opinion that it fails to satisfy the standard of 511(b) (“that the purposes of the corporation or the interests of the members will be promoted”). Furthermore, the Three-way Transaction would jeopardize the Yeshiva’s tax-exempt status and subject it to dissolution. N-PCL § 1101(a)(2).

For the reasons set forth in this letter, the Attorney General will not consent to or approve Petition. If the Yeshiva decides to file a Petition in the Supreme Court, for authorization to sell the Union Avenue Lot to the City, please provide this office with the minimum 15-days’ notice required by N-PCL § 511(b).

Very truly yours,



NATHAN M. COURTNEY  
Assistant Attorney General

---

<sup>4</sup> 26 CFR § 1.501(c)(3)-1d(1)(i), referenced in the quoted regulation, recites the exempt purposes in Code § 501(c)(3) and quoted in Paragraph Second, subdivision (i) of the Yeshiva’s Certificate of Incorporation.

THOMAS McTYGUE, REMIGIA FOY, and  
RAYMOND WATKIN,

*Petitioners-Plaintiffs,*

*- against -*

CITY OF SARATOGA SPRINGS, CITY OF SARATOGA  
SPRINGS CITY COUNCIL, JOANNE D. YEPSER, MAYOR,  
JOHN FRANCK, COMMISSIONER OF ACCOUNTS,  
MICHELE MADIGAN, COMMISSIONER OF FINANCE,  
ANTHONY SCIROCCO, COMMISSIONER OF PUBLIC  
WORKS, CHRISTIAN MATHIESEN, COMMISSIONER OF  
PUBLIC SAFETY, THE ALGONQUIN BUILDING, LLC, and  
CONGREGATION & YESHIVA PARDES YOSEF  
D'CHASIDEI BELZ, a New York Religious Corporation,

*Respondents-Defendants.*

**AFFIDAVIT  
OF  
EILEEN FINNERAN**  
**Index No. 2014-3552**

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF SARATOGA    )

**EILEEN FINNERAN**, being duly sworn, deposes and says:

1. I am the Deputy Commissioner of Public Safety for the City of Saratoga Springs (the "City").

2. I make this affidavit based upon my personal knowledge or, where stated, upon information and belief, in support of the motion to dismiss the Petition/Complaint and in opposition to the Petition.

3. From 2006 through to 2007, I was the Deputy Mayor for the City. Since then, I have been the Deputy Commissioner of Public Safety, for two different Commissioners. Currently, I am the Deputy Commissioner of Public Safety and serve with Commissioner Christian Mathiesen.

4. For many years there has been discussion and efforts made within the City to find property on the east side to locate a public safety facility. When I was the Deputy Mayor back in 2006, finding such a location was on the docket.

5. In 2007, a study was commissioned by the City that found that somewhere near the Union Avenue and Gilbert Road intersection would be the best place to build a public safety facility.

6. Over the years, I have spoken to several land owners near the Union Avenue and Gilbert Road intersection to determine if the City could purchase land for a fire and EMS facility.

7. For various reasons, the City has not been able to purchase the necessary land for the facility. In some instances the asking price was too high, in others the physical conditions of the property were not suited to the potential use (wetlands, odd shapes, too much site work required), and in other cases the landowners wanted the City to make some sort of concession that was not acceptable to the City (e.g., change zoning for other parcels they owned).

8. Sometime in 2008, when I was making inquiries about land near the Union Avenue and Gilbert Road intersection, I spoke to Joel Aronson about a parcel he had for sale. Mr. Aronson, who owns property in the City, including the Algonquin Building, told me that the property was listed for \$700,000.

9. I considered that price to be too high and did not do anything more at that time to pursue that property.

10. From time to time over the next several years, Mr. Aronson would call me to see if the City had an interest in that property.

11. I would tell him that the City, which had a budget of about \$200,000 for the purchase of property on the east side, and about \$200,000 for site work and water connection, felt the asking price, was just too high.

12. In 2013 the City was again pushing to try and find property for the east side public safety facility.

13. This time I called Mr. Aronson to see if the price had come down on the property out near Union Avenue. Mr. Aronson told me that his son was now handling much of his business dealings, and that I should speak to him.

14. Mr. Aronson also, suggested that I speak to Larry Novik, from Bonacio Construction, about the property.

15. Mr. Novik came to the City offices to discuss the property out near Union Avenue, and suggested that the Aronsons would have an interest in selling the Union Avenue Parcel if the City would sell them the Collamer Lot, which is adjacent to the Algonquin Building.

16. Mr. Novik explained that the Aronsons were doing work on the Algonquin Building and would like to use the Collamer Lot, which was owned by the City and being used for parking, for part of the expansion of the Algonquin Building.

17. In discussing this option, Mr. Novik felt that the parties should get appraisals for both properties, and the City agreed.

18. The City then hired an appraiser, after getting referrals from the Commissioner of Accounts, and appraisals were conducted.

19. At the same time, my office spoke to the City Attorney about this option, to ask if it was permissible to purchase the Union Avenue Parcel at the same time the City sold the

Collamer Lot. The City Attorney felt that it was and provided an outline of the steps that needed to be taken to accomplish a purchase and sale for the properties, which my office followed.

20. When the appraisals commissioned by the City came back, I recall negotiation back and forth with Mr. Novik, who stated that the Aronsons wanted a higher price on the Union Avenue property.

21. The City insisted that the prices be at the appraised amounts.

22. After several months, the Aronsons agreed to the appraised prices.

23. The proposal for purchasing the Union Avenue lot and selling the Collamer Lot was discussed at the City Council meeting in July of 2013.

24. The proposal was well received by the other Commissioners, but then Mayor Johnson was opposed because of his concern for what it would cost in the future to staff an east side public safety facility.

25. One or two of the Commissioners suggested that an RFP be done for the sale and purchase, and although not required or even typical, we agreed to prepare and issue an RFP.

26. The RFP was prepared and sent out by the Accounts Department.

27. There was only one bid, which came from the Aronsons, and that process was concluded in September of 2013.

28. There was discussion within the City Council about the timing of bringing a resolution for the purchase and sale of the properties, and some felt that it should wait until after the election. It was agreed that the resolution would wait, and the issue of the sale of the Collamer Lot and the purchase of the Union Avenue Parcel became a discussion point during the election campaign.

29. After the election, which returned Commissioner Mathiesen as Commissioner of Public Safety, there was a public hearing which spanned two public meetings, on December 3, and 17, 2013, to discuss the sale and purchase of the two lots.

30. At the December 17, 2013 City Council meeting, a Resolution was passed, four to one, to approve the sale of the Collamer Lot and the purchase of the Union Avenue Parcel.

31. It took several months for the contracts to be completed. The contracts and the SEQRA documents were completed and approved at the August 5, 2014 City Council meeting.

32. At that City Council meeting, the comments made by those from the public that attended were very positive and people seemed to be in favor of the sale and purchase of the properties.

33. During the public comment period of the August 5, 2014 City Council meeting, a man, who said his name was Zappone, stood up and said he would pay \$1.1 million for the Collamer Lot. During the same comment period, he then offered \$1.4 million for the Collamer Lot. Also, during the public comment period, former City Attorney Sarah Burger, passed around Zappone's proposal for the Collamer Lot to the City Council members and their Deputies.

34. The offer was not seriously considered because the decision had already been made back in December to accept the RFP, and this offer made no sense whatsoever.

35. The City Council then voted five to zero to accept the SEQRA findings and execute the final contracts.



  
EILEEN FINNERAN

Sworn to before me this 3<sup>rd</sup>  
day of February, 2015.

Notary Public



**NICOLE R. BORLA**  
Notary Public, State of New York  
No. 01BO6030276  
Qualified in Saratoga County  
M<sup>o</sup> Commission Expires Sept. 7, 2017