

**BOARD OF ASSESSMENT APPEALS
STATE OF COLORADO
Docket Number 35105**

ORDER

ROGER CLINKENBEARD,

Petitioner,

vs.

PROPERTY TAX ADMINISTRATOR,

Respondent, and

PERSONAL AFFORDABLE LIVING, INC.,

Intervenor.

THIS MATTER was heard as a remand from the Court of Appeals, Case No. 99CA2205, by the Board of Assessment Appeals on November 30, 2000, Harry J. Fuller, Karen E. Hart and Mark R. Linné presiding. Petitioner, Roger Clinkenbeard, appeared pro se. Respondent was represented by Larry A. Williams, Esq. Intervenor was represented by Alice Kitt.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**CONDO UNIT #5, BIGGS CT CONDOMINIUMS, RECEP NO.
795053493 & 94 (Jefferson County Schedule No. 152202)**

Petitioner is protesting the 1999 exemption of the subject property, a residential condominium unit owned by Personal Affordable Living, Inc., which is a nonprofit charitable organization providing housing to persons with disabilities, located at 8870 West Jewell Avenue, in Lakewood, Colorado.

ISSUES:

Petitioner:

Petitioner contends that the Respondent has inappropriately granted a property tax exemption to the subject property in contravention to Colorado Revised Statutes.

Respondent:

Respondent and Intervenor contend that the exemption of the subject property was appropriate and in accordance with the procedures of the Property Tax Administrator, as well as Colorado Revised Statutes.

FINDINGS OF FACT:

1. Petitioner's witness, Cynthia Carole Carr, testified that she lived in the subject property during the period in question. Ms. Carr testified that she was the sole occupant of the apartment in 1999, though she had had a roommate earlier. The roommate moved out June 1, 1998. Ms. Carr filed a document with the Division of Property Taxation (DPT), which was identified as Respondent's Exhibit R-7.

2. Ms. Carr testified that her mother, Ruth Elaine Gurkey, obtained her signature by telling her that she was signing a "school document."

3. The witness for the Petitioner testified that she received support services. Community Support Services, Inc. (CSSI) services are required to live in the apartment.

4. Ms. Carr testified that she received a letter under her door saying that if she did not receive CSSI services, she would not be able to continue to live there. She testified that she made the Property Tax Administrator (PTA) aware of this problem.

5. Ms. Carr testified that she had never been determined to be disabled.

6. Ms. Carr testified that her name appeared in a CSSI brochure after she signed a consent form on January 20, 1992. CSSI kept using her name even when she no longer was a client. Ms. Carr testified that she felt CSSI helped her in the beginning, but not later on.

7. Ms. Carr testified during cross-examination that she had been living in the facility (the subject property) from May 18, 1991 until May 20, 1999.

8. Ms. Carr testified that she was familiar with the Rehabilitation Services Clinic, and was moved into the facility by her parents when she was 18-19 years of age. Ms. Carr testified that she signed documentation or paperwork at that time. She further testified that she had an interview with facility representative Alice Kitt, her mother and father, and roommate Cheryl Fucher.

9. Ms. Carr testified that her parents gave her the wrong address to the subject property, she was confused, but she finally got there. At that time, she was told it was an apartment rather than a condo.

10. Ms. Carr testified that CSSI has different kinds of support services. CSSI helped her with living conditions. They also instructed her on how to clean her apartment, and they helped with grocery shopping. Ms. Carr testified that CSSI helps people who need assistance with living. She further indicated that she needed this when she first moved in. CSSI helped in the beginning, but she felt that they were not nice to her later on.

11. Ms. Carr testified in redirect testimony that when she moved into the subject property in May 1991, her parents signed papers on her behalf; she recalled that it was her mother, Ruth Elaine Gurkey.

12. Ms. Carr testified that she was put into the property because her mother did not want her living with her father. She further testified that her mother was financially responsible.

13. Ms. Carr testified in cross-examination that she believed that she was not disabled. The witness further testified that she did not know what she was signing in 1998 when she signed a declaration of age, disability, and income. She indicated that her mother brought her the document and said it was a school paper. She just wanted her to sign it. She further testified that she had no idea why she should have to sign a school paper when she had not been in school for more than 10 years.

14. Ms. Carr testified that she received counseling services from Cottonwood Community Services during the period January through May 1999.

15. Ms. Carr further testified that she signed a participation agreement and lease, and that both documents indicated that participants must contract for support services.

16. Ms. Carr testified in redirect testimony that she went to Cottonwood Community Services and attempted to get signed up so that she would not be kicked out of her condo. She further testified that she did not want to go to CSSI, and only went because she did not want to be kicked out of the condo.

17. The Petitioner, Roger Clinkenbeard, testified with respect to his contact with CSSI. He testified that CSSI would just show up. He further testified that Ms. Carr would have to hand over as much as \$150.00 per month for CSSI services. Mr. Clinkenbeard indicated that the specific laws that he felt were applicable were on the second page of his opening comments. He testified that he felt that Personal Affordable Living, Inc. (PAL) and CSSI were benefiting, but not the federal government.

18. Mr. Clinkenbeard testified that the lease and participation agreement bears the signature of Ms. Carr's mother, not of Ms. Carr.

19. Intervenor, Ms. Alice Kitt, testified that she was employed by The Guardianship Alliance and had also performed mostly volunteer work for Personal Affordable Living (PAL). Ms. Kitt indicated that both were private not-for-profit organizations. She further testified that PAL was a private not-for-profit corporation organized solely for the purposes of purchasing and renting apartments to adults with developmental disabilities.

20. Ms. Kitt testified that the program is only for people with developmental disabilities. She indicated that Ms. Carr moved into the subject property in 1991. One of the requirements of the organizations is a psychological evaluation on the nature of the developmental disability.

Paragraph Nos. 21, 22, 23 and 24 have been redacted from this Order and have been placed under Confidential Seal of the Board of Assessment Appeals.

25. Respondent's Witness, Susan Whitfield, Manager of the Exemption Section for the Division of Property Taxation, testified that she was responsible for the review of currently exempt property.

26. Ms. Whitfield testified that Mr. Clinkenbeard appealed the continuing exemption of the subject property. Ms. Whitfield indicated that the appeal was reviewed by the Property Tax Administrator. She talked with Mr. Trogonoski, who wrote a report of Mr. Clinkenbeard's concerns. Ms. Whitfield indicated that she also talked to PAL for response.

27. Ms. Whitfield testified that Colorado Revised Statutes for exemption require that property must be occupied by those over 62, disabled, or meet certain income considerations. The organization must meet certain requirements as well.

28. Ms. Whitfield testified with respect to a letter from Ms. Kitt, informing the Division of Property Taxation that Ms. Carr refused to provide the required documentation to remain in the program. Ms. Kitt indicated in the letter that she felt that Ms. Carr was still disabled. Additionally, Ms. Kitt indicated in the letter that Ms. Carr's income was below appropriate limits, and that the property still met the tests for exemption.

29. Ms. Whitfield testified during cross-examination, that she did not survey each of the occupants of the 9,000 units to see if they qualified for inclusion in the program; instead, she indicated that she looks at the organization to see if they qualify. Ms. Whitfield indicated that the PTA had no reason to change their opinion of the exemption of the property, based on the appeal. Ms. Whitfield indicated that no documentation was submitted from 1999. This was due to the fact that PAL could not get the documentation. PAL sent a letter indicating the circumstances that prevented them from submitting the required documentation. Ms. Whitfield indicated that the letter stated that Cynthia Carr had been a resident for many years, and additionally, that her income was under the levels indicated by statute.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the subject property was exempt for tax year 1999.

2. The information presented to the Board by the Petitioner was not persuasive in its argument for the revocation of the exemption on the subject property.

3. Several of the issues raised by the Petitioner are beyond the scope of the Board's statutory purview, and are not relevant in the determination of the appropriateness of the exemption status for the subject.

4. Many of the issues pertaining to the Petitioner's appeal are opinion only, which are not supported by the evidence, or are irrelevant to the determination of the exemption status of the subject.

5. The Board concurs with the Property Tax Administrator that the mere fact that substantiation was unavailable for one year does not invalidate the exemption.

6. The Respondent concluded that the real property which is the subject of this appeal was occupied for exempt purposes on the annual assessment date, pursuant to C.R.S. 39-3-112(3)(a)(II)(A). The Board has examined the various memoranda filed as exhibits in this appeal, and it appears that the Respondent appropriately considered each of the elements of this appeal in its evaluation of the continuation of the exemption.

7. The Board is persuaded that the process implemented by the Respondent in evaluating the appropriateness of the exemption was consistent with the requirements set forth for exemption under Colorado Statutes, and meets all of the requirements thereof.

ORDER:

The petition is denied.

APPEAL:

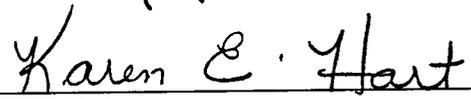
This order may be subject to appeal as provided in 39-4-109(1) C.R.S. to the Court of Appeals for judicial review within 45 days from the date of this decision.

DATED and MAILED this 9th day of January, 2001.

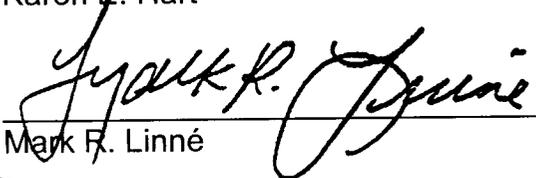
BOARD OF ASSESSMENT APPEALS



Harry J. Fuller



Karen E. Hart

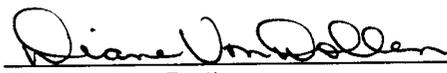


Mark R. Linné

This decision was put on the record

JAN 09 2001

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.



Diane Von Dollen

