

PT 09-15

Tax Type: Property Tax

Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

In re	)	Docket Nos.	08-PT-0034
2007 Exemption Applications of	)		07-56-35
LIFE ABUNDANT OUTREACH, INC.	)	PIN	20-31-400-007-0040
OF GLENVIEW	)	John E. White,	
	)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Ray Martin appeared, *pro se*, for the Life Abundant Outreach, Inc. of Glenview; Marc Muchin, Special Assistant Attorney General, appeared for the Illinois Department of Revenue; Donald Leist, Assistant State's Attorney, McHenry County, appeared for Intervener, McHenry County Board of Review.

Synopsis:

This matter involves Life Abundant Outreach, Inc. of Glenview's (Life or Applicant) religious application for a non-homestead property tax exemption for a parcel of property, which the Illinois Department of Revenue (Department) denied. The issue is whether Life is entitled to a tax exemption for that property pursuant to § 15-40 of Illinois' Property Tax Code (PTC).

The hearing was held at the Department's offices in Chicago. The parties entered into evidence a stipulation of facts and stipulated exhibits. In addition, Life offered the testimony of Ray Martin, its pastor and president. I have reviewed that evidence, and I am including in this recommendation findings of fact and conclusions of law. I recommend that the Director finalize the denial of Life's exemption application, so that

the property remains on the tax rolls for 2007.

Findings of Fact:

1. Life completed and filed form PTAX-300-R, Religious Application for Non-homestead Property Tax Exemption — County Board of Review Statement of Fact (exemption application form), to apply for a religious exemption for property situated in McHenry County and assigned a PIN of 20-31-400-007-0040 for 2007. Department Ex. 2 (copy of Life's completed 2007 exemption application form).
2. The Department denied Life's 2007 exemption application. Department Ex. 1 (copy of Department's denial).
3. At hearing, Intervener offered into evidence a written stipulation, signed by counsel for the Department, counsel for Intervener, and by Martin, for Life, which provides:

It is hereby stipulated by the parties to this matter as follows:

1. The documentation referred to in 06-PT-0035 and admitted into evidence therein shall be admitted into evidence as evidence in this case.
2. The hearing in the above cause shall be limited to evidence that shows a change in the use of the property or the character of the entity in title to the property in question.
3. The hearing officer shall decide the case based on the evidence stipulated to by this stipulation and the evidence that is submitted under the limitations of paragraph 2[] above.
4. Based on this stipulation, the McHenry County Board of Review and the Illinois Department of Revenue agree that they will not engage in further discovery in this cause by way of depositions or interrogatories or notices to produce.

McHenry County Board of Review (hereinafter, Stipulation (Stip.)) Ex. A.

4. When offering Stipulation Ex. A and other stipulated exhibits into evidence, the following colloquy took place:

Mr. Leist [counsel for Interveners]: *** The stipulation which is attached as the McHenry County Board of Review's Exhibit A essentially indicates that there are certain matters that are not really in dispute, and that this matter has previously been litigated in 06-PT-0035.

And that being said, it seems to me that there need no — there does not need to be any foundation or any introduction of evidence as the same would be duplicative of the evidence which was entered in 06-PT-0035.

At deposition Mr. Martin and I entered into this stipulation, and essentially what we agreed to is the facts are as the facts are described in 06-PT-0035 with some changes as will be adduced at hearing[.] [B]ut to the extent anything is not controverted at hearing, at this hearing, the facts — the finding of facts will be stipulated to by the parties in this case in order to expedite the matter.

The parties have agreed that the evidence in this case will be limited to the use of the property or the character of the entity entitled to the property which is the subject matter of this case, and pursuant to said agreement, no discovery — any further discovery was had other than the deposition of Mr. Martin.

And as far as the exhibits, your honor, I don't believe that we will have any objection to the exhibits. I have tendered a copy of the exhibits to your honor, and also I tendered [them] over to Mr. Martin.

These are documents that would have been previously tendered over and given to the — Mr. Martin.

I don't suppose there is going to be an objection, but to the extent it's necessary, Ray [Martin] is free to make any objection he deems appropriate. But I just don't think we're going to have anything, but if you need necessary foundation for some of these documents, I will lay it. [ALJ] White: Well, that — I have in front of me separate documents with labels McHenry County Board of Review Exhibits A through G, like George.

Reverend Martin, is it correct that you have no objection or that you — well, that you have no objection to the admission of these exhibits as exhibits in this matter?

Mr. Martin: I have no objection, your honor.

[ALJ] White: Okay. Then McHenry County Board of Review Exhibits A through G shall be admitted as the stipulation and as stipulated exhibits.

Mr. Muchin?

Mr. Muchin: No objection.

[ALJ] White: Okay. All parties agree that McHenry County Board of Review Exhibits A through G are admitted into evidence.

Hearing Transcript (Tr.), pp. 5-7.

5. Stipulation Exhibit B is a copy of the Notice of Decision issued by the Department in docket number 06-PT-0035, a contested case that was held to determine whether Life

was entitled to a property tax exemption for the same parcel for 2005. Stip. Ex. B.

6. Stipulation Exhibit C is a copy of one version of Life's bylaws bearing handwritten signatures and dates of June 19, 2007 and June 25, 2007. Stip. Ex. C.
7. Stipulation Exhibit D is a copy of one version of Life's bylaws bearing handwritten signatures and dates of December 21, 2007 and November 25, 2008. Stip. Ex. D.
8. Stipulation Exhibit E is a copy of one version of Life's constitution bearing handwritten signatures and dates of December 21, 2007 and December 25, 2007. Stip. Ex. E.
9. Stipulation Exhibit F is a copy of the Notice of Decision issued by the Department in docket number 01-PT-0098, a contested case that was held to determine whether Life was entitled to a property tax exemption for the same parcel for 2001. Stip. Ex. F.
10. Stipulation Exhibit G is a copy of the Notice of Decision issued by the Department in docket number 04-PT-0015, a contested case that was held to determine whether Life was entitled to a property tax exemption for the same parcel for 2003. Stip. Ex. G.
11. Although the parties stipulated that the documents admitted into evidence in the contested case having docket number 06-PT-0035 would also be admitted as evidence in this case, the parties did not include as separate exhibits the two Department exhibits and two Applicant exhibits that were admitted into evidence in that prior matter. Therefore, I take administrative notice of the content of those documents, which I shall designate and refer to as follows:
 - Stipulation Exhibit B-1 is a copy of the two documents admitted as Department Group Exhibit 1 in 06-PT-0035, and consists of a copy of the Department's denial of Life's exemption application for 2005, and a copy of Life's completed

exemption application form for 2005. Stip. Ex. B-1.

- Stipulation Exhibit B-2 is a copy of a one-page document admitted as Department Exhibit 2 in 06-PT-0035, and consists of a copy of one version of Life's bylaws, bearing six handwritten signatures and the dates of May 21, 2005 and August 21, 2005. Stip. Ex. B-2. That document provides as follows:

Life Abundant Outreach, Inc. A 501[C]3 not for profit Corporation
Fed # 31-0844866, approved to do business in Illinois, certificate # 4152 -
By-Laws

Life Abundant Outreach Inc. was started & founded by Pastor, Evangelist Ray Martin for the spreading of the Gospel of Jesus Christ by preaching, pasturing churches, [and] auditorium crusades. Also, by radio, TV, US Mail, printed page and any other means of communication that would be possible on March 24, 1974 to run importunity [sic] or forever.

Evangelist Ray Martin is president, Janice M. Martin: is vice president. Either Ray or Jan may act as Secretary-Treasure[r]. Both Ray & Janice have been voted in these positions for the remainder of their lives. Listed below are other board members voted in by the congregation.

Until otherwise changed, Ray and Janice Martin, or either of them shall have the authority to take any action on behalf of the corporation and sign any contracts or other documents including mortgages or promissory notes.

Evangelist Ray Martin is founder and pastor of Word of Faith Cathedral Church, 7048 S Western Ave., Chicago IL. World of Faith Cathedral Church is owned by Life Abundant Outreach Inc. It is a condition of Evangelist Ray Martin's employment to reside in the parsonage owned by Life Abundant Outreach Inc. — World of Faith Cathedral located at 93 W County Line Road, Barrington Hills IL to be employed as Life Abundant Outreach Inc. — World of Faith Cathedral Church. This property is used exclusively for religious purposes, for the ministers housing facilities ... performing the duties of the vocation as minister. This complies with the Section 15-40 of the Property Tax Code, 35 ILCS 200/1 *et seq.*

The congregation of Life Abundant Outreach Inc. — World of Faith Cathedral voted in as Pastor, Evangelist Ray Martin for life as pastor, with Jan Martin to succeed him for the rest of her life at the time of the founding of World of Faith Cathedral Church [May 24, 1974] and has no ownership interest and must reside in the parsonage owned by Life Abundant Outreach to be employed at World of Faith Cathedral.

If Rev. Ray Martin dies or leaves the President, Pastor position, Jan Martin will become President and Pastor, if she dies or leaves, the Board members will elect by voting in a new President, Pastor. The Board Members and the Church members will vote in a new pastor for the congregation.

If Rev. Ray Martin or all the board members leave Life Abundant Outreach Inc. — World of Faith Cathedral Church because of death or voluntary, the church would be taken over by Full Gospel Fellowship of Churches and Minister International, Inc., and operated by them.

Salaries for Rev. Ray Martin and Janice M. Martin will be paid by Life Abundant Outreach Inc. and/or World of Faith Cathedral Church.

This copy of by-laws updates all previous by-laws for Life Abundant Outreach Inc., World of Faith Cathedral Church by-laws.

All property, real or personal, shall be taken, held, sold, transferred, or conveyed in the corporate name of Life Abundant Outreach Inc. The president and/or vice-president of Life Abundant Outreach Inc. shall certify in such conveyance, lease or mortgage that the same [h]as been duly authorized by the vote of the board or agreement only by Ray & Janice M. Martin until the time of their deaths. Such certificate shall be held to be conclusive evidence thereof since 03-24-74.

Board members:

[handwritten] Pres. & Founder Rev Ray Martin 8/21/05

[handwritten] V. Pres, Sec Janice M. Martin 8-21-05

[handwritten] Gwendolyn Jones 8/21/05

[handwritten] Ruth O Hudley 5 25 05

[handwritten] Mary Quinney Aug. 21, 2005

[handwritten] Carol Avant August 21, 2005

Stip. Ex. B-2.

- Stipulation Exhibit B-3 is a copy of a three-page document admitted as Applicant Exhibit 1 in 06-PT-0035, and consists of a copy of one version of Life's Constitution and bylaws which provides, in pertinent part, as follows:

CONSTITUTION AND BYLAWS
of Life Abundant Outreach Inc.

State of Illinois

Article 1. Corporate Name

The name of the corporation shall be Life Abundant Outreach Inc., located at the Word of Faith Cathedral Church, in the City of Chicago, Illinois. Services are also held in the City of Barrington Hills, State of Illinois.

Article 2. Purpose

A. This shall be a not-for-profit corporation (hereinafter also referred to as the Church) established in compliance within the guidelines of the Internal Revenue Service and the not-for-profit regulations of the State of Illinois.

1. To establish and maintain a place of worship;
2. To conduct the work of ministering/evangelizing in obedience to the command of the Lord Jesus Christ;
3. To promote and promulgate true Christian living by all legal and practical means;
4. To have the right to own, hold in trust, use or otherwise possess, sell convey, mortgage, lease, or otherwise dispose of such property, real or personal, as may be needed for the furtherance of its work;
5. To govern itself in accordance with this Constitution and Bylaws;
6. To be consistent with the "Articles of Incorporation" and any subsequent amendments.

B. Consistent with the purposes of the Church this corporation shall have the right, power and authority to

1. Engage in and conduct educational, benevolent and charitable work.
2. Maintain its inherent right to sovereignty in the conduct of its own affairs;
3. To meet its stated objectives including all powers granted under the Illinois Not-for-profit Corporation Act.

Article 3. Membership

The legal voting membership of the Church shall consist of all persons who attend regularly, financially support and agree to be governed by its Constitution and Bylaws.

Article 4. Government

A. The government of this Church shall be vested in the congregation, whose action by majority ballot shall be decisive in all matters.

B. There shall be a governing body of the Church referred to as the Official Board who are responsible for carrying out the policies established by the congregation. The official board, (consisting of a minimum of two individuals plus the Pastor) shall be nominated by the Pastor and approved by the Church. The term of office for any member of the Official Board shall be for an indefinite period; the term to expire upon thirty days notice given by resignation of the individual or by action of the membership of the Church.

Article 5. Meetings

A. Meetings for public worship shall be held each Sunday and during the week as determined by the Pastor and the Official Board.

B. An annual business meeting of the church shall be held to conduct items of business as provided in the Bylaws.

Article 6. Finances

A. Funds for the Church shall be provided by the tithes, voluntary contributions and offerings.

B. No part of the net assets of the Church shall inure to the benefit of any donor, member or officer of the corporation or any private individual.

Article 9. Officers

A. Pastor/President

1. The Pastor shall be a properly ordained minister in good standing with the State of Illinois.

2. The Pastor shall be considered the spiritual overseer of the Church and shall direct all of its activities. The Pastor shall be President of the Church and shall act as chairman of all its business meetings.

3. The Pastor shall be nominated by a pulpit committee. Election for a new Pastor shall be by secret ballot at a business meeting of the Church. A two-thirds majority of all votes cast shall be required to constitute an election.

4. The term of office shall be for an indefinite period; the term to expire upon thirty days notice given by the resignation of the Pastor or by action of the membership of the Church.

B. Secretary and Treasurer

The Secretary and Treasurer of the Church shall be individuals of mature age and sound business judgment. They shall be appointed by the Pastor and approved by a majority of the voting membership of the Church. Their terms of office shall be for an indefinite period; the term to expire upon thirty days notice or by action of the membership of the Church.

Article 10. Compensation

A. The Pastor will be given regular and adequate financial support; the amount and manner shall be determined by the Official Board. In addition, the Church shall provide adequate housing to the Pastor as a facility owned by the Church and utilized by the Pastor and his family. The Pastor must vacate the property upon termination of his office.

B. The salaries of all other full or part-time employees shall be recommended by the Pastor and approved by the Official Board.

Article 11. Amen[d]ments

These bylaws may be amended by a majority vote of the membership of the Church who are present at a meeting called for that purpose.

The current Constitution and Bylaws were revised and adopted on November 19, 2006.

Stip. Ex. B-3.

- Stipulation Exhibit B-4 is a copy of a one-page document admitted as Applicant Exhibit 2 in 06-PT-0035, and consists of a copy of the purported written minutes to a September 10, 2006 meeting of Life's board, at which meeting the board

adopted an amendment to Life's bylaws, which amendment is described as follows: "Pastor must live in the parsonage provided as a condition for his employment as the law states. The parsonage is located at 93 W County Line Road, Barrington Hill IL 60010. This is a board resolution by this board. Carried unanimously." Stipulation Exhibit B-4 further provides that "Meeting called to order by Pastor, and Founder, President, Evangelist, Minister Ray Martin. Board members present were: Minister Ray Martin, Jan Martin, Gwen Jones, Mary Quin[n]y, Carol Avant." Stip. Ex. B-4.

12. The McHenry County Board of Review Intervened in each of the prior contested cases reflected by Stipulation Exhibits B, F and G. Stip. Exs. B, F-G. In each such case, Martin represented Life, as its pastor. Stip. Exs. B, F-G.

13. In the prior contested cases reflected by Stipulation Exhibits B, F and G, the Department denied Life's applications after it determined that the property was not in exempt use. Stip. Exs. B, F-G.

Facts Regarding Life's Organization and Operations During 2007

14. Martin founded and incorporated Life to be the legal entity through which he could follow his calling to be a travelling evangelist. Tr. pp. 25-26, 28; *see also* Applicant Ex. 2 (*quoted infra*, pp. 10-11). Specifically, Martin explained that:

I just want the court to know that I do this because I have a calling from God to be an evangelist, and I make sure I keep my ministry lined up with the word of God rightly divided.

So to do this the right way in America, the best way to do it is have your own 501(c)(3) with approval from the federal and the state to be law-abiding and to be able to give tax receipts and to be able to book auditoriums and buy radio time and television time. So that's why we founded Life Abundant Outreach, Inc[.]

Tr. pp. 25-26.

15. To support its claim that the property was in exempt use during 2007, Life offered, as Applicant Exhibit 2, a copy of one version of Life's bylaws bearing four handwritten signatures, and the dates of December 21, 2007 and November 25, 2008, which dates are handwritten next to those signatures. Applicant Ex. 2; Tr. p. 49 (Martin).
16. The full text of Applicant Exhibit 2 provides:

Life Abundant Outreach, Inc. A 501[C]3 not for profit Corporation
Fed # 31-0844866, approved to do business in Illinois, certificate 4152
By-Laws

Life Abundant Outreach Inc. is law abiding, was started & founded on March 25, 1974 by Evangelist Ray Martin {who is called of by Almighty God to be an Evangelist, Minister according to Matthew 28:18-20. Led of God to minister by God's Holy Spirit and miracle manifestation as persons in the Bible. Such as Peter, James, John, Philip, Paul, etc. to encourage in God's agape love everyone that will hear that accepting Jesus Christ as their personal Saviour, letting Him wash away all sin by faith alone in Him by His Precious Blood. Rev. 1:5, along with His mighty healing and yolk breaking power. Isaiah 10:27. In love, warning, failure to accepting Jesus as their personal Saviour will result in them being lost in eternal hell forever, never to escape. Isaiah 66:24, Luke 16:19-31. The Bible also warns all of us not to oppose ministries ordained by Almighty God such as this one. "*Touch not mine anointed, and do my prophets no harm.*" Psalms 105:19, I Chr. 16:22. Doing so, causes life to spiral downward. Jesus said, "*Go ye forth and teach all nations ...*" worldwide, Matthew 28:19-20} for the spreading of the Gospel of Jesus Christ by preaching in, and/or starting churches, tent revivals and auditorium crusades. The Gospel of Jesus Christ is also spread by Radio, TV, US Mail, internet, printed page and any other means of communication. Life Abundant Outreach is to run importunity [sic] or forever.

Evangelist Ray Martin, also started and founded Word of Faith Cathedral Church located at 7048 S Western Ave Chicago IL 60636. At the time of acquiring The Word of Faith Cathedral in June, 1986, Evangelist Ray Martin was voted in as Bishop, Pastor {not required to be at the Church location each time services are being conducted because Evangelist Ray Martin's calling is to be a Traveling Evangelist} by the congregation for the rest of his life.

Evangelist Ray Martin is president. Rev. Janice M. Martin, is vice-president, sec.-treasurer. Rev. Deborah Colon, Christina DiJohn, and Rev.

David Ray Crawford Martin are board members. God the Father, God The Son and God the Holy Ghost are the foremost board members.

Life Abundant Outreach, Inc. operates their minister's housing facilities, some Church services and Evangelistic headquarters {law: Property Tax Code, 35 ILCS 200/1-3 *et seq.*}, Section 200/15-40} out of 93 W County Line Road, Barrington Hills, IL.

Evangelist Ray Martin's ministerial duties are not limited to a single congregation and ministers, evangelizes and pastors in other locations as the need or God's leading arises. {See above law mentioned in the previous paragraph}.

Life Abundant Outreach Inc. and its board members requires that Minister, President Evangelist Ray and Jan Martin live in the parsonage, housing facility as a condition for their employment.

Unless otherwise changed, Ray and Janice Martin, or either of them shall have the authority to take any action on behalf of the corporation and sign any contracts or all other documents including mortgages or promissory notes. All property, real or personal, shall be taken, held, sold, transferred, or conveyed in the corporate name of Life Abundant Outreach Inc. The president and/or vice-president of Life Abundant Outreach Inc. shall certify in such conveyance lease or mortgage that the same [h]as been duly authorized by the vote of the board or agreement only by Ray & Janice M. Martin. Such certificate shall be held to be conclusive evidence thereof.

[handwritten] Evangelist Ray Martin, President & Founder 12-21-07

[handwritten] Janice M. Martin, Vice President 12-21-07

[handwritten] Approved by rest of board by phone board meeting 12-21-07

[handwritten] Rev Eldon Tracy came on the board 11-25-08

[handwritten] Rev Ray Martin 11-25-08

[handwritten] Janice M. Martin, Vice President 11-25-08

Applicant Ex. 2.

17. Martin has a website at www.evangelistraymartin.com. Applicant Ex. 3 (copy of printout of page from www.evangelistraymartin.com); Tr. pp. 27-28 (Martin). Martin offered into evidence a copy of a printout of what Martin described as "our web page ... that shows the people when they visit our website where my ministry has taken place in the past." Tr. pp. 27-28 (Martin).

18. When offering Applicant Exhibit 3, Martin was asked the following question and

gave the following answer:

[ALJ] White: Okay. Am I to understand that Evangelist Ray Martin is the same as Life Abundant Outreach, Inc., of Glenview?

Martin: Yes, sir. Yes, sir. The answer to that would be yes.

Tr. p. 28.

19. During 2007, Martin's primary function for Life was not to conduct services at the Word of Faith Cathedral Church in Chicago. *Compare* Stip. Ex. B, p. 3 (finding of fact number 5) *with* Applicant Ex. 3 *and* Tr. pp. 27-28.
20. During 2007 and previously, Martin received a salary from Life. Applicant Ex. 2; Stip. Ex. B, p. 5 (finding of fact number 10) (*quoting* version of Life's bylaws offered as evidence in 06-PT-0035).
21. The salary given to Martin by Life depends on the amount of tithes, voluntary contributions and offerings that Life collects. Stip. Ex. B-3; Tr. p. 48.
22. Martin and the other board members of life, all but one of whom are members of Martin's immediate family, determine how much salary Life will pay, and has paid, to Martin. Tr. p. 48; *see also* Stip. Ex. B-3.
23. Martin acknowledged at hearing, and previously, that Life's other board members generally approve what he determines Life should do and/or does, because they trust his judgment. Tr. pp. 47-49; Stip. Ex. F, p. 8 n.1.
24. Martin uses an office at the property to write sermons and/or answer mail. Tr. pp. 41-42.
25. On the part of Life's exemption application form where it was asked to "Identify the property's use", Martin wrote, "Parsonage 24/7, Bible study weekly." Department Ex. 1, p. 1 (Part 3, line 11 of form). No additional evidence was offered to corroborate that any bible study sessions were conducted on the property. *See* Tr. *passim*.

26. Martin does not pay rent to Life in exchange for residing there. Tr. p. 42.
27. The Department issued a letter to Life, dated September 19, 2008, in which it wrote, in pertinent part: “We have received your recent letter, and based on the information you furnished, we believe Life Abundant Outreach Inc of Glenview ... is organized and operated exclusively for religious purposes.” Applicant Ex. 4.
28. Except for the last two digits, the exemption number issued to Life on the letter admitted as Applicant Exhibit 4 is the same number that Life identified as its “Illinois sales tax exemption number” on its exemption application form for 2007. *Compare* Applicant Ex. 4 *with* Department Ex. 2, p. 1 (Part 2 of exemption application form). I take note that the last two digits of the exemption identification number reflect the number of times the Department has issued the exemption number to the addressee. The last two numbers on Applicant Exhibit 4 are “05” (Applicant Ex. 4), indicating that this was the fifth time the Department was issuing an exemption number to Life.

Conclusions of Law:

Issues and Arguments

The Department denied Life’s exemption application after determining that the property was not in exempt use. Department Ex. 1. By stipulation, however, the parties agreed that the issue to be resolved also included whether, during the year at issue, there was any change in the character of the Applicant. From this stipulation, I infer that the parties were referring to a change, during 2007, from the way Life had been organized and operated previously, during the years at issue in prior contested case hearings, or at least during 2005, the year at issue in the contested case having docket number 06-PT-0035. Stip. Exs. A-B.

In support of its claim, Martin argued:

After talking to several lawyers and other — mostly the lawyers, ... I came up with these bylaws and these constitutions ... that's been presented to you.

And something was said about the distance from the church to the parsonage. There is nothing in the law that says it's wrong to be forty-eight miles from the church, but a lot of times I am not even in the city. I'm hundreds and sometimes thousands of miles away on Sunday and any other time preaching.

So distance wouldn't make a difference, and there is nothing in there that says it's wrong for it to be that distance if I was to do nothing but pastoring that church.

Also, there's nothing in the law that says it's wrong for me to have my family on the board. There is nothing in the law that says that's wrong.

And we've all made sure that we've measured up to the way the rules are set forth, that I have to live in the parsonage as a condition of my employment, because that is on the application, and I was told by my attorneys in a roundabout way that that should be in my bylaws.

I found out that some laws are concrete in doing this, and sometimes the honorable judge will give us some leeway. And I'm asking you to give leeway, and if there's something wrong with any of this, I sure don't mean for it to be wrong. I'll change it, straighten it up, and make it right, your Honor, because that's the way — the kind of person I am, and I'm asking you for mercy, if I need to have some from you.

And thank you in advance for what you will do to rule in favor of the church to have that parsonage off the tax rolls, and thank you for listening to my case.

Tr. pp. 65-67.

Intervener's closing argument was, in large part, as follows:

*** the sole issue before you is whether the house that's located in Barrington Hills is used exclusively for religious purposes and thus entitled to tax exempt status.

It is the petitioner's burden to demonstrate to you through this hearing, through the evidence and through the testimony and through the exhibits, that it is entitled to an exemption for the residence as a parsonage.

In order to do so, you have to satisfy the requirements of 35 ILCS 200/15-40. You have to satisfy all of the elements.

Really the only element that is in question here is that the — Mr. Martin be required — is required to live at the house in Barrington Hills as a condition precedent to his job or as a condition to his job.

Frankly, there is absolutely no evidence that would support that any board has made a due consideration or due deliberation on that issue.

There has been no evidence adduced why Mr. — why Mr. Martin has to live at the subject property in Barrington Hills when his church is forty-eight miles away and, by his own admission, by his own testimony, he is away most of the time traveling in Canada and various other places evangelizing.

There has been no evidence in here that suggests that somehow this parsonage is uniquely beneficial to Mr. Martin. There has been no testimony that there is anything about this property other than it provides a place for him to sleep and be when he's not on the road.

This matter has been before the Department now four times, and while we're not arguing that one year should apply to the next year, I think the Department, in light of our stipulation and in light of the evidence that's presented, can certainly look back and see what's going on here.

And unfortunately, what I believe the facts demonstrate is going on here is that the Board, which is comprised of all of the children, are the — are Mr. Martin, himself, and his wife, essentially follow Mr. Martin's lead in that he asks that the changes in the bylaws to require him to reside at the property in Barrington Hills, and therefore they are.

There has been no minutes. There's been no corporate minutes listed. There has been no deliberations tendered to your Honor. There has been absolutely no evidence that there is any valid justification for a sound business judgment rule or judgment or any sound judgment of that organization that Mr. Martin reside in Barrington Hills.

What we have is the honest admission from the — from Mr. Martin that, "The only reason we did that is so that we could get the tax exemption. I was told by lawyers, lots of lawyers, who told me that I had to put that in our bylaws."

There was no reason that was given at this hearing why Mr. Martin had to live at the subject property in Barrington Hills other than for the sole purpose of getting around taxation, and it's not like Mr. Martin hid it. He told the truth. "That's why we did it, and we're looking for our exemption because of it."

It's [amendments to Life's constitution and bylaws] enacted by the Martin family for the Martin family, and there is absolutely no justification that would entitle them to the exemption that they would seek in this case.

Tr. pp. 68-72.

Analysis

Conclusions Regarding Life's Use of the Property in 2007

Article IX of the 1970 Illinois Constitution generally subjects all real property to

taxation. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285, 821 N.E.2d 240, 247 (2004). Article IX, § 6 permits the legislature to exempt certain property from taxation based on ownership and/or use. Ill. Const. Art. IX, § 6 (1970). One class of property that the legislature may exempt from taxation is property used exclusively for religious purposes. Ill. Const. Art. IX, § 6 (1970). For purposes of Article IX, § 6 of the Illinois Constitution and Illinois' tax statutes, the term "exclusively" means "primarily." People ex rel. Nordlund v. Assoc. of the Winnebago Home for the Aged, 40 Ill. 2d 91, 101, 237 N.E.2d 533, 539 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 435, 507 N.E.2d 141, 145 (1st Dist. 1987).

Pursuant to the authority granted under the Illinois Constitution, the General Assembly enacted § 15-40 of the Property Tax Code (PTC), which provides — and, during the years at issue, provided — in relevant part:

§ 15-40. Religious purposes, orphanages, or school and religious purposes.

(a) Property used exclusively for:

- (1) religious purposes, or
- (2) school and religious purposes, or
- (3) orphanages

qualifies for exemption as long as it is not used with a view to profit.

(b) Property that is owned by

- (1) churches or
- (2) religious institutions or
- (3) religious denominations

and that is used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations, including the convents and monasteries where persons engaged in religious activities reside also qualifies for exemption.

A parsonage, convent or monastery or other housing facility shall be considered under this Section to be

exclusively used for religious purposes when the persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

35 ILCS 200/15-40.

Statutes granting tax exemptions must be construed strictly in favor of taxation, and the party claiming an exemption has the burden of proving clearly and conclusively that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed. Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill. 2d 542, 547, 494 N.E.2d 485, 488 (1986); *see also* In the Matter of Jones, 285 Ill. App. 3d 8, 13, 673 N.E.2d 703, 706 (3rd Dist. 1996) (clear and convincing evidence defined “as the quantum of proof which leaves no reasonable doubt in the mind of the fact finder as to the veracity of the proposition in question.”).

As the ALJ pointed out in docket number 06-PT-0035, “Property owned by a church and used as a parsonage or monastery was taxable prior to 1957.” Stip. Ex. B, p. 6. In 1957, the Illinois General Assembly amended Illinois’ PTC and added statutory sections expressly authorizing an exemption for, among other things, property used as a parsonage. McKenzie v. Johnson, 98 Ill. 2d 87, 94, 456 N.E.2d 73, 76 (1983). The McKenzie case involved a taxpayer’s challenge to those 1957 amendments as being beyond the legislature’s power authorized by Article IX § 6 of the 1970 Illinois Constitution. *Id.*

The McKenzie court upheld the constitutionality of the provision granting an exemption for a parsonage, reasoning as follows:

In essence McKenzie argues that our cases hold that a parsonage, by its very nature, can never be used exclusively for religious purposes

because in every case its residential character must predominate over any other religious uses of the property. (*Cf. People ex rel. Carson v. Muldoon* (1922), 306 Ill. 234, 239, 137 N.E. 863 (“it is settled that [a parsonage] is not exempt”).) Under this view the language referring to parsonages was added by the legislature to section 19.2 solely to encourage public officials to approve exemptions for parsonages, which exemptions, McKenzie claims, would violate the Constitution as it is interpreted by this court.

This court has long held that property satisfies the exclusive-use requirement of the property tax exemption statutes if it is *primarily* used for the exempted purpose; “if property is devoted, in a primary sense, to a religious purpose, the fact that it is incidentally used for secular purposes will not destroy the exemption ***.” (*First Congregational Church v. Board of Review* (1912), 254 Ill. 220, 224, 98 N.E. 275.) In *First Congregational Church v. Board of Review*, however, the parsonage was denied an exemption even though it was used extensively for religious services and instruction and for the pastor’s offices. Three justices filed a lengthy dissent in that case observing:

“A church building for public worship is essential to the successful carrying out of the work of the church, and a pastor or priest is also necessary for efficient work. *** The evidence in this case is that the work of the church cannot be carried on efficiently without the constant care and attention of the pastor. The parsonage was paid for with contributions made by the church congregation. It was erected for the benefit it would be in promoting the work of the church and not for the benefit of the pastor. There is nothing in the constitution or statute which limits church property that may be exempted from taxation to that necessarily used for public worship. The limitation is to property exclusively or primarily provided and used for religious purposes.” 254 Ill. 220, 229-31, 98 N.E. 275 (Farmer, J., Carter, C.J., and Vickers, J., dissenting).

The extremely narrow construction of primary religious use, embraced by the cited cases, is out of step with more recent Illinois authority on tax exemptions, and these cases do not establish that parsonages may never be used exclusively -- that is primarily -- for religious purposes. For example, in *MacMurray College v. Wright* (1967), 38 Ill. 2d 272, 230 N.E.2d 846, this court held that an exemption of school property “will be sustained if it is established that the property is primarily used for purposes which are reasonably necessary for the accomplishment and fulfillment of educational objectives, or efficient administration, of the particular institution.” (38 Ill. 2d 272, 278, 230 N.E.2d 846, see also *Locust Grove Cemetery Association v. Rose* (1959), 16 Ill. 2d 132, 139-42, 156 N.E.2d 577.) In *MacMurray College*, this court held that faculty and staff residences were not reasonably necessary for carrying out the school’s educational purposes because it was not established that “any of the faculty or staff members *** were required, because of their educational duties, to live in these residences, or that they were required to

or did perform any of their professional duties there.” 38 Ill. 2d 272, 279, 230 N.E.2d 846.

Under the *MacMurray* standard a parsonage qualifies for an exemption if it reasonably and substantially facilitates the aims of religious worship or religious instruction because the pastor’s religious duties require him to live in close proximity to the church or because the parsonage has unique facilities for religious worship and instruction or is primarily used for such purposes. Given that residence facilities have, on occasion, qualified for exemption from taxation under the school exemption (see *People ex rel. Goodman v. University of Illinois Foundation* (1944), 388 Ill. 363, 368, 58 N.E.2d 33 (student dormitories on university campus); *Monticello Female Seminary v. People* (1883), 106 Ill. 398, 400 (house occupied by superintendent of grounds at seminary); *People ex rel. Pearsall v. Catholic Bishop* (1924), 311 Ill. 11, 13-14, 142 N.E. 520 (gardener’s residence, archbishop’s summer home and a student dormitory at seminary); *People ex rel. Hesterman v. North Central College* (1929), 336 Ill. 263, 266, 168 N.E. 269 (student dormitories at college)), we cannot say that a parsonage could never qualify for exemption as property used exclusively for religious purposes solely because it is also used for residential purposes. (See generally *Taxation: Exemption of Parsonage or Residence of Minister, Priest, Rabbi or Other Church Personnel*, Annot., 55 A.L.R.3d 356, 378-79 (1974). Whether a particular parsonage may be entitled to exemption turns on the evidence showing how the parsonage is being used, but the language exempting parsonages in section 19.2 is not unconstitutional on its face.

McKenzie, 98 Ill. 2d at 97-100, 456 N.E.2d at 78-79.

The plain text of the statute in effect in 2007 makes clear that, at least for property used as “[a] parsonage, convent or monastery or other housing facility,” the legislature intended the scope of the exemption described in § 15-40(b) to be limited to property that is primarily used by “persons who perform religious related activities” and such persons “shall, as a condition of their employment or association, reside in the facility.” 35 ILCS 200/15-40(b); see also Chicago Bar Ass’n. v. Department of Revenue, 163 Ill. 2d 290, 301, 644 N.E.2d 1166, 1171-72 (1994) (“[T]axation is the rule. Tax exemption is the exception. Article IX, section 6 (Ill. Const.1970, art. IX, § 6), and any statutes enacted under its provisions must be resolved in favor of taxation.”).

At the same time, however, just because an entity's organizing documents satisfy a particular statutory requirement does not mean that it also satisfies the constitutional requirement for exemption. Eden Retirement Center, Inc., 213 Ill. 2d at 290, 821 N.E.2d at 250 ("The legislature could not declare that property, which satisfied a *statutory* requirement, was *ipso facto* property used exclusively for a tax-exempt purpose specified in section 6 of article IX of the Illinois Constitution.") (emphasis original). Here, I understand McKenzie to mean that the statutory parsonage exemption is within the embrace of Art. IX, § 6 of the Illinois Constitution where the primary use of the property "reasonably and substantially facilitate[] the aims of religious worship or religious instruction because the pastor's religious duties require him to live in close proximity to the church or because the parsonage has unique facilities for religious worship and instruction or is primarily used for such purposes." McKenzie, 98 Ill. 2d at 100, 456 N.E.2d at 79. That is because the McKenzie court also held that "[w]hether a particular parsonage may be entitled to exemption turns on the evidence showing how the parsonage is being used" *Id.*

On this, the constitutional point, the facts show that the property is forty-eight miles away from where the church that Life operates is located. Tr. p. 52. Notwithstanding Martin's argument that "there is nothing in the law that says it's wrong to be forty-eight miles from the church ..." (Tr. p. 66), the law he is referring to is obviously the letter of the statute (see Applicant Ex. 1), and not the supreme court's prior holding that the statutory parsonage exemption is within Illinois' constitutional requirement that property be used primarily for religious purposes where the primary use of the property actually meets what the McKenzie court referred to as the MacMurray

standard. McKenzie, 98 Ill. 2d at 100, 456 N.E.2d at 79; *see also* MacMurray College v. Wright, 38 Ill. 2d 272, 279, 230 N.E.2d 846, 850 (1967).

Because the property here is located so far away from the church, it is hard to see how Martin's presence there reasonably and substantially facilitated the aims of religious worship or religious instruction. There is no evidence, for example, that Martin regularly provided any type of religious counseling, guidance, or instruction to church members at the property. Certainly Martin did not testify as such. And while Life's application said the property was used for "Bible studies weekly" (Department Ex. 1), the fact that such a report was made on the application is not evidence of its truth. *See* Bohannon v. Commissioner, T.C. Memo. 1997-153 (March 26, 1997) ("A tax return does not establish the correctness of the facts stated in it.") (*citing* Seaboard Commercial Corp. v. Commissioner, 28 T.C. 1034, 1051 (1957)). More importantly, there was no evidence that any church members knew that any such religious counseling, guidance or instruction was to be had at the property. Indeed, during the prior hearing, three church members each testified that she did not know where Martin resided. Stip. Ex. B, pp. 10-13. And these three witnesses were persons Life had claimed were responsible for requiring that Martin reside on the property, as a condition of his employment with Life. *Id.*; Stip. Ex. B-2.

The only evidence offered to show that the property was actually used for any religious purposes consisted of the testimony of Martin, who said that he used an office on the property to write sermons and respond to letters. Tr. pp. 41-42. But that mere testimony is extremely vague, and does not constitute the type of clear and convincing evidence required to show entitlement to an exemption based on the primary use of a

parcel of property that, in this case, consisted of 4.6 acres. See Board of Certified Safety Professionals of the Americas, Inc., 112 Ill. 2d at 547, 494 N.E.2d at 488.

The religious property tax exemption for parsonages is intended to benefit the public community that the church or other exempt owner of the property was formed to serve, not the individual minister who resides on the property. See McKenzie, 98 Ill. 2d at 100, 456 N.E.2d at 79; see also People ex rel. McCullough v. Deutsche Evangelisch Lutherische Jehovah Gemeinde Ungeanderter Augsburgische Confession, 249 Ill. 132, 136-37, 94 N.E. 162, 164 (1911) (“As applied to the uses of property, a religious purpose means a use of such property by a religious society or body of persons”). This record, however, is devoid of credible, documentary evidence showing that the primary use of the property “reasonably and substantially facilitate[d] the aims of religious worship or religious instruction because the pastor’s religious duties require[d] him to live in close proximity to the church or because the parsonage has unique facilities for religious worship and instruction or is primarily used for such purposes.” McKenzie, 98 Ill. 2d at 100, 456 N.E.2d at 79.

Instead, the property here was primarily used as the personal residence of Life’s pastor, Life’s dominant and controlling officer and director, and his wife, who was also one of Life’s officers and directors. Stip. Exs. A-B; Department Ex. 1. The stipulated evidence, moreover, shows that Life has *always* dedicated the property to be used for that purpose. Stip. Exs. F-G. Here, the Martins’ personal use of the property as their own, private, residence predominated over any claimed religious use of the property.

The Martin’s enjoyment of the use of Life’s asset as their own private, residence also constituted a profit to them. Under PTC § 15-40(a), property used primarily for

religious purposes qualifies for exemption as long as it is not used with a view to profit. 35 ILCS 200/15-40(a). With regard to corporations seeking benefit of exemptions authorized by Illinois' tax laws, Illinois courts have recognized that the determining feature of profit is whether there is inurement of benefit to a private individual. DuPage Co. Bd. of Review v. Joint Comm. on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 470, 654 N.E.2d 240, 246 (2d Dist. 1995). Profit has been found not only where there is a direct pecuniary benefit to an insider of the organization, but even where the members of an organization obtain some non-pecuniary benefit which non-members cannot obtain. DuPage Art League v. Department of Revenue, 177 Ill. App. 3d 895, 901-02, 532 N.E.2d 1116, 1120 (2d Dist. 1988) (a primary purpose of organization was to benefit its members, and was, therefore, not entitled to the statutory exemption). The Martin's enjoyment of the use of the property during 2007, and since 2001, has provided them with a direct and substantial benefit in the form of a cost-free private residence. Stip. Ex. F, pp. 3-4, Department Ex. 1; Tr. p. 42.

Moreover, Martin himself was the Life insider who was most instrumental in deciding, ostensibly on Life's behalf, to dedicate this property, a corporate asset of Life, to his own use as a personal residence. Applicant Ex. 2; Tr. pp. 25-26, 28, 42, 47-49; *see also* Stip. Exs. A-G.¹ I conclude that since the primary use of the property provided a substantial private benefit to the insiders of the corporation that owned the property, it was used by the Martins during 2007 with a view toward their own profit. 35 ILCS

¹ While the historical evidence the parties stipulated was admissible is probative on the question of whether Life is, in fact, organized and operated primarily for religious purposes (*see, e.g., People of God Community v. Commissioner*, 75 T.C. 127 (Oct. 14, 1980); 26 C.F.R. § 1.501(c)(3)-1), no party makes any such argument in this matter, and, therefore, I make no findings or conclusions regarding the question.

200/15-40(a). Therefore, the property was not being used primarily for religious purposes. 35 ILCS 200/15-40(a).

Conclusions Regarding Whether, During 2007, There Was A Change In The Character Of Life's Organization And Operations

The parties also agreed that the issue at this hearing would include whether, during 2007, there was a change in the character of the entity holding title to the property. Stip. Ex. A, ¶ 2. On this point, the parties stipulated to the admission of Stipulated Exhibits B through G (Stip. Ex. A, ¶ 1; Stip. Exs. B-G), and also agreed that the evidence would be limited to that showing any such changes during 2007. Stip. Ex. A, ¶ 2. I begin by reviewing the agency's findings and conclusions regarding Life's organization and operations during prior years.

Following the contested case hearing in 01-PT-0098, the ALJ concluded that Life's organizing documents provided a profit to Martin's children, since Life's bylaws expressly granted equal shares of all of Life's assets — including the real property at issue — to those interested insiders upon the Martins' death. Stip. Ex. F, pp. 3 (*quoting* Life's bylaws), 7-8. Further, the ALJ found that Life's organization and operations permitted Martin to personally control Life's board of directors, which the bylaws then described as consisting of Martin, his wife and his three children. Stip. Ex. F, pp. 3, 8-9.

To support his conclusion that Life's operations permitted Martin to personally control Life's board of directors, the ALJ cited to and quoted the following portions of Martin's testimony at hearing:

[On cross examination, by counsel for the Board] Now you say that you're required to live in this parsonage in Barrington?

[By Evangelist Martin] Yes, sir.

Q. And the requirement comes from the board of directors?

A. Yes, sir.

Q. You are the board of directors essentially, are you not?

A. No. I've got my family too. It's just not me personally. I'm not the board of directors.

Q. But your decision to put the parsonage in Barrington, some 48 miles from your ... church, was a decision you felt led to by the Lord?

A. Yes, I did.

Q. So, it sounds like what you decide is what is decided; is that correct?

A. Most of the time.

Q. Right, because you're the father of the family, the leader of the family, are you not?

A. Yes, I am.

Stip. Ex. F, p. 8 (citing pages 65-66 of the hearing transcript in 01-PT-0098).

The bylaws that were introduced into evidence at the hearing held in 01-PT-0098 contained an outright devise of all of Life's assets to its remaining directors upon the death of Martin and his wife. Stip. Ex. F, pp. 3, 7-8. The ALJ concluded that Martin's ability to control the actions of Life's board of directors caused him (the ALJ) to distrust any action of Life's board regarding the terms or conditions of Martin's employment, and that Martin's exercise of such control "serve[d] no purpose other than to further the private pecuniary interest of Evangelist Martin and his family" Stip. Ex. F, pp. 8-9.

During the second contested case, held to determine whether the property was entitled to an exemption from Illinois property tax for 2003, the parties entered into a stipulation much like the one entered into in this current matter. *Compare* Stip. Ex. G, p. 2 *with* Stip. Ex. A. At that hearing, Life admitted into evidence a version of Life's written bylaws bearing the signatures of Martin and his wife, and which were dated June 20, 2004. Stip. Ex. G, pp. 7-8. In his conclusions of law, the ALJ cited to and quoted from this version of Life's bylaws, as follows:

*** The new bylaws state that Life Abundant's Board of Directors is now composed of Rev. Martin, his wife, their three children and "Rev. and Mrs. James Smart and Mrs. Ruth Hudley." App. Ex. No. 1 (9-30-04). The Board now consists of eight members. Tr. pp. 29-30. Rev. Martin "thought" that Rev. Smart was retired and that Mrs. Hudley was a

housewife and bible teacher. Tr. pp. 30-31. Neither Rev. nor Mrs. Smart or Mrs. Hudley was present at the September 30, 2004 evidentiary hearing.

The new bylaws state further that “it is a condition of Evangelist Ray Martin’s employment to reside in the parsonage owned by Life Abundant” and Rev. Martin must reside in the parsonage owned by Life Abundant to be employed at Word of Faith Cathedral. The bylaws also state that “Ray and Janice Martin [Rev. Martin’s wife], or either of them, shall have the authority to take any action on behalf of the corporation and sign any contracts or other documents including mortgages or promissory notes.” App. Ex. No. 1 (9-30-04).

Stip. Ex. G, p. 8.

After considering the evidence offered in 04-PT-0015, the ALJ made, and the Director adopted, the following pertinent conclusions of law:

Based on the testimony and evidence admitted at the evidentiary hearings including the new bylaws, I am unable to conclude that Rev. Martin resides on the subject property as a condition of his employment. There are several obvious problems with the new bylaws. There are no provisions in these bylaws for amendment of the bylaws. No corporate minutes were presented to show the amendment of the bylaws. There was no testimony as to when the new bylaws were amended, whether the bylaws were amended after the new members of the Board were added to the Board and whether the new members voted on the amendment. “The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws.” 805 ILCS 105/102.25. There was no testimony at the September 30, 2004 evidentiary hearing as to whether the amendment of the bylaws was, in fact, voted on by any members of Life Abundant’s Board of Directors.

The new bylaws were signed by Rev. Martin and his wife on June 20, 2004. The tax year at issue in the present case is 2003. Rev. Martin did not cite and my research does not indicate any Illinois case that allows retroactive amendment of bylaws. Furthermore, there is no provision in the bylaws for retroactive application of the bylaws. Finally, the provision in the bylaws that allows Rev. Martin and his wife to take any action and sign any documents on behalf of the corporation indicates to me that the new bylaws, which include their signatures, could have been amended by them alone, without any input or voting by the Board. Rev. Martin would therefore be in the unique position of ordering himself to live in the residence in Barrington, 48 miles from his church, as a condition of his own employment.

The stipulation agreed to by the parties at the September 30, 2004 evidentiary hearing states that evidence at the hearing shall be limited to changes in the use of the property or to changes in the character of the entity in title to the property in question. No evidence was presented showing changes in the use of the property. The new bylaws indicate that Rev. Martin still controls Life Abundant's Board of Directors. Accordingly, I am unable to conclude that there is any change in the entity in title to the property in question.

Stip. Ex. G, pp. 8-9.

Here again, the conclusions reflect the ALJ's refusal to give any weight to the documents offered to show that Life made an independent corporate decision to require Martin and his wife to reside on the property as a condition of his employment with Life. *Id.* This refusal was based, in part, on the ALJ's determination that Life's board was still controlled by Martin, and that the putative corporate decision to require Martin to reside on the property was actually a decision that Martin imposed upon himself. *Id.*

In the contested case hearing held in docket number 06-PT-0035, held to determine whether Life was entitled to the exemption for the property for 2005, the ALJ made, and the Director adopted, the following pertinent findings of fact:

3. On the PTAX-300-R, Religious Application for Non-homestead Property Tax Exemption – County Board of Review Statement of Facts submitted by the Applicant, in response to question 12(b) which states, "Is the minister or other official required to reside in the property as a condition of employment or association?" the Applicant responded "[Y]es." *Id.*

4. The Department's position in this matter is that the subject property is not in exempt use. *Id.*

6. The subject property is located in Barrington Hills, Illinois and improved with a one story residential facility in which Rev. Martin, the Applicant's pastor, resides. Department Ex. No. 1.

7. The subject property is located about 48 miles from the Word of Faith Cathedral Church, a church owned and operated by the Applicant located on the south side of Chicago. Tr. p. 18; Department Ex. No. 2.

8. Applicant obtained ownership of the subject property by means of a warranty deed dated February 28, 2001. Department Ex. No. 1.

9. The Department introduced into the record by-laws of the Applicant which “[update] all previous by-laws for Life Abundant ...[.]” Department Ex. No. 2. These by-laws state that “[I]t is a condition of Evangelist Ray Martin’s employment to reside in the parsonage owned by Life Abundant Outreach Inc.-Word of Faith Cathedral located at 93 W County Line Road, Barrington Hills IL to be employed at Life Abundant Outreach Inc.-Word of Faith Cathedral Church.” *Id.* These by-laws were, purportedly, signed by Rev. Ray Martin, Janice Martin, Gwendolyn Jones, Ruth Hudley, Mary Quinny and Carole Avant on August 21, 2005. *Id.*

10. The aforementioned by-laws state, *inter alia*, that:

B. “All property, real or personal, shall be taken, held, sold, transferred or conveyed in the corporate name of Life Abundant Outreach Inc. The president and/or vice-president of Life Abundant Outreach Inc. shall certify in such conveyance, lease or mortgage that the same [has] been duly authorized by the vote of the board or agreement only by Ray & Janice M. Martin until the time of their deaths. Such certificate shall be conclusive evidence thereof .. [.]”

C. Applicant was started and founded by Evangelist Ray Martin in order to spread the Gospel of Jesus Christ by preaching in churches, tent revivals, auditorium crusades and “by radio, TV, US Mail, printed page and any other means ... [.]”

D. Evangelist Ray Martin is president of the corporation; Janice M. Martin, Ray Martin’s wife, is vice-president.

E. Either Ray or Janice Martin may act as secretary-treasurer.

F. Both Ray and Janice Martin shall remain in their respective positions for life.

G. Janice Martin shall become Applicant’s president and pastor at the time of Evangelist Ray Martin’s death or departure from office.

H. Salaries for Rev. Ray Martin and Janice Martin will be paid by Life Abundant Outreach Inc. and/or Word of Faith Cathedral Church.

Id.

Stip. Ex. A, pp. 2-5.

At the hearing held in 06-PT-0035, Intervener subpoenaed three witnesses, Gwendolyn Jones, Ruth Hudley, and Mary Quinny, who appeared, were sworn as witnesses, and offered testimony. Stip. Ex. B, pp. 10-13. These three witnesses are individuals Life contended were some of Life’s directors who, on or about August 21, 2005, approved and signed the original of what was admitted into evidence in that

hearing as Department Exhibit 2. Stip. Ex. B, p. 10; Stip. Ex. B-2; *see also* Stip. Ex. B-4.

At the hearing held in 06-PT-0035, Gwendolyn Jones was asked some of the following questions and gave the following answers:

Q. Are you familiar with a corporation by the name of Life Abundant Outreach of Glenview, Inc.?

A. Yes.

Q. And have you ever been a director of that corporation?

A. No.

Q. I'm showing you [a copy of the August 21, 2005 by-laws]. Does that bear your signature?

A. Yes.

Q. And for what purpose did you sign that document?

A. We -- I don't remember seeing this document at all. We signed a -- I believe it was a legal pad. I don't remember seeing this document at all.

Q. Did you believe on that date -- What date is your signature there?

A. August 21st, '05.

Q. On that date did you believe you were a director of Life Abundant Outreach of Glenview, Inc.?

A. No.

Q. Did you ever have any discussions about the issue of where Reverend Martin lived?

A. Not to my knowledge. ... This was just a meeting. He said we're going to have a meeting. It wasn't stated that it was a board meeting or anything. We just thought it was a regular little church meeting.

Q. But, as far as you know, you were never elected to a board of directors?

A. No, I was not.

Stip. Ex. B, pp. 10-11 (citing to pages 58-60 of the hearing transcript in that matter).

At the same hearing, Ruth Hudley was asked some of the following questions and gave the following answers:

Q. And you're a member of Reverend Martin's church?

A. Yes.

Q. Are you a director of Life Abundant Outreach ... ?

A. Director?

Q. Yes.

A. No.

Q. Have you ever been a director of Life Abundant Outreach, Inc.?

A. No.

Q. I'm showing you [Applicant's by-laws dated August 21, 2005] ... Do you remember why you signed this document that I'm showing you?

A. No.

Q. Do you know where Reverend Martin lives?

A. ... I can't think of the place. ... Glenview.

Stip. Ex. B, pp. 11-12 (citing to pages 68-70 of the hearing transcript in that matter).

At the same hearing, Mary Quinny was asked some of the following questions and gave the following answers:

Q. Now, I'm going to ask you: Are you a director of Life Abundant Outreach of Glenview, Incorporated?

A. I am not a director, but my name is on there, up on the board.

Q. You are on the board. When did you become a board member?

A. Well, at first I didn't know what it was about, but now I do. ...

Q. Did you sign this document [Applicant's by-laws dated August 21, 2005]?

A. Yes, I did. That's my signature.

Q. And is that the one when you say you signed you didn't know what it was about?

A. Yes. ...

Q. Do you know where Reverend Martin lives?

A. Yes, near Fairbanks. Fairbanks.

Q. On [September 5, 2006] did you believe he lived in Glenview, Illinois?

A. Yes, I did.

Q. So you didn't know he lived in Barrington until [September 10, 2006]?

A. Right. ...

Q. (By Rev. Martin) It really doesn't make a difference to you where I live, does it?

A. No.

Stip. Ex. B, pp. 12-13 (citing to pages 75-78 of the hearing transcript in that matter).

After quoting the testimony of Intervener's witnesses, the ALJ who wrote the recommendation in 06-PT-0035 concluded as follows:

*** The above-indicated testimony raises doubts as to whether the signatories of the Applicant's August 21, 2005 by-laws executed this document in any official capacity or as members of the Applicant's Board. Moreover, this testimony rebuts the presumption noted above that the Applicant's Board responsibly deliberated the issue whether a requirement that Rev. Martin live in the parsonage located in Barrington Hills was in the Applicant's best interest. Significantly, two of the witnesses admitted under oath that they did not know where Reverend Martin lives. Moreover, Mary Quinny testified that she did not believe that where the pastor resides is relevant to his church functions in any way. Tr. p. 78.

This testimony raises serious doubts concerning the legitimacy and credibility of the by-laws dated August 21, 2005 and rebuts any presumption that the Applicant's Board properly exercised their fiduciary duties in enacting the by-law provision relating to the pastor's residence.

*** As noted above, there are obvious problems with the record concerning the enactment of the by-laws dated August 21, 2005. However, the fundamental difficulty with the Applicant's case is that testimony in the record from purported members of the Applicant's Board that signed the Applicant's by-laws in August, 2005 flatly contradicts any claim that the by-laws were properly deliberated, or reflected a consensus of the Applicant's Board that the pastor must live in the parsonage in Barrington Hills as a condition of his employment. Indeed, this testimony supports the conclusion that the Board considered where the pastor resides to be irrelevant to Life Abundant and the conduct of its religious affairs. Tr. p. 78. Given this testimony, the by-laws cannot be accepted as probative evidence supporting the Applicant's contention. Moreover, there is no other credible evidence in the record to support the Applicant's claim that residing in Barrington Hills was a condition of Rev. Martin's employment.

Stip. Ex. B, pp. 13-14 (emphasis original).

When considering the Director's adoption of the ALJ's conclusions of law in 06-PT-0035, it is clear the fact finder gave no weight to the corporate documents offered to show that Life required Martin and his wife to reside at the property as a condition of his employment with Life. *Id.* The ALJ did not trust that the corporate documents reflected an independent, disinterested, consideration and adoption of the particular amendment to Life's bylaws — that Martin was required to live on the property as a condition of his employment. *Id.*

After reviewing all of the evidence, I conclude that there was no change in Life's organization and operations sufficient to show that, during 2007, it was using the property primarily for religious purposes. Under Illinois corporation law, Martin, as Life's director and president, has a fiduciary relationship with Life. Mile-O-Mo Fishing Club, Inc. v. Noble, 62 Ill. App. 2d 50, 56-57, 210 N.E.2d 12, 15 (5th Dist. 1965) ("the rule is well established in Illinois that directors of a corporation occupy a fiduciary

relation to the corporation.”). Duties imposed upon a corporate director as a fiduciary require him to manage the corporation with undivided and unqualified loyalty, and prohibit him from profiting personally at corporate expense or permitting his private interests to clash with those of his corporation. Weiss Medical Complex, Ltd. v. Kim, 87 Ill. App. 3d 111, 115, 408 N.E.2d 959, 963 (1st Dist. 1980); 805 ILCS 105/108.60 (Director conflict of interest). Where the existence of a fiduciary relation is established, Illinois law presumes that any transaction between the parties by which the fiduciary has profited, is fraudulent. Mile-O-Mo Fishing Club, Inc., 62 Ill. App. 2d at 57, 210 N.E.2d at 16.

Here, both during the year at issue and previously, Martin has been on both sides of the bargaining table when determining the salary he would receive from Life. Stip. Ex. F, pp. 2-3; Stip. Ex. B-3, p. 3 (art. 10); Tr. p. 48. But as a fiduciary of a non-profit corporation doing business in Illinois, Illinois’ General Not-for-Profit Corporation Act of 1986 (NFPCA) precluded Martin from even voting to grant any compensation or salary to be paid to himself, from Life’s earnings, since he was an interested party to that transaction. 805 ILCS 105/108.60. Where an individual sits on both sides of the table to a transaction involving the compensation to be paid to himself from the corporate treasury, “[t]he presumption is that [he] acted in [his] own interest.” Santarelli v. Katz, 270 F.2d 762, 769 (7th Cir. 1959).

The stipulated evidence shows that, during 2007 and previously, Martin, Life’s founder, had a personal and private stake in Life’s receipts. Stip. B-3 (articles 4, 6, 10); Stip. Ex. C; Stip. Ex. E; Stip. Ex. F, p. 3; Tr. p. 48. Martin has always been Life’s dominant and controlling director. See Stip. Ex. F, pp. 2-3, 8; Stip. Exs. A-B. Thus, he

has always been the individual who decided the measure of the salary he would draw from Life, and he testified at this hearing that his salary would depend on how much finances came in to the church or ministry. Stip. Exs. A-B, F-G; Tr. p. 48. All of this evidence was gleaned during the course of four different hearings held to determine Life's entitlement to a property tax exemption for different years for the same parcel of property. Stip. Exs. B, F-G. The evidence shows that, since at least 2001, Martin has operated Life in a way that allowed him to direct some measure of Life's receipts to himself in the form of a salary, and to enjoy the residence Life ostensibly provided for himself and his wife. Stip. Ex. F, pp. 2-3, 8-9; Stip. Ex. B-3; Tr. p. 48. This type of self-dealing is presumed to be motivated by self-interest. Katz, 270 F.2d at 769; Mile-O-Mo Fishing Club, Inc., 62 Ill. App. 2d at 57, 210 N.E.2d at 16. The direct effect of a grant of Life's exemption applications, moreover, would be that Life would have more of its receipts available for Martin to draw from, in the form of salary. See Tr. p. 48. In sum, the evidence shows that, during 2007, Martin retained the same measure and manner of control over Life's board and operations as he previously exercised. Stip. Exs. B, B-1, B-2, B-3, B-4, C-G; Applicant Ex. 2; Tr. pp. 45-51.

The evidence also provides no basis for giving the version of Life's bylaws that was offered as evidence in this hearing (Applicant Ex. 2) any more weight than the other ALJ's previously gave to other versions when they were admitted in prior hearings. This conclusion is based on the nature and content of the putative amendments, and on the evidence showing Martin's role in drafting them. In this record, for example, there are several different documents identified as different versions of Life's constitution and/or bylaws. Stip. Exs. B-2, B-3, B-4; C-E; Applicant Ex. 2; *see also* Stip. Exs. B, F-G

(quoting earlier versions of Life's bylaws). Ordinarily, one would expect a corporation that intends to amend a particular section of its bylaws to identify, in the amendment itself or elsewhere, the particular section of the existing bylaws that the corporation seeks to amend. Yet none of the versions of Life's bylaws does so. *See* Stip. Exs. B-2, B-3, B-4, C-E; Applicant Ex. 2.

Instead, the documents reflect that if Martin perceived that a particular provision in Life's bylaws would help it obtain the exemption it has been seeking, Martin would put such words onto a piece of paper and thereafter present and identify that piece of paper as an amendment to Life's bylaws. Tr. pp. 65-66 ("After talking to several lawyers and other — mostly the lawyers, ... I came up with these bylaws and these constitutions ... that's been presented to you. ... I was told by my attorneys in a roundabout way that that should be in my bylaws"). Further, the evidence here strongly suggests that Martin manipulated Life's corporate documents inappropriately, so as to make a reader believe something about Life that was not true.

The evidence I refer to here is the testimony of the three church members, Jones, Hudley, and Quinny, regarding a document that was offered and admitted into evidence in that hearing. Stip. Ex. B, pp. 3-4, 10-13. For purposes of this hearing, I have designated that exhibit as Stipulation Exhibit B-2. Stip. Exs. A, B-2. That exhibit, again, consists of a copy of what purports to be a version of Life's bylaws signed by Jones, Hudley, and Quinny, and requiring Martin and his wife to reside on the property as a condition of his employment with Life. Stip. Ex. B-2; Stip. Ex. B, pp. 3-4. Two of these female church members, however, testified directly that she was not a director of Life (Stip. Ex. B, pp. 10-11, 11-12), and the third did not appreciate that being a member of

Life's "board" meant that she was a director of Life. *See* Stip. Ex. B, pp. 12-13. Even if I gave the benefit of the doubt to Life and Martin, and assumed that: (1) each witness had actually been fully informed of the nature of the offer of becoming a member of Life's board of directors; (2) each had accepted the offer of the office and attendant responsibilities; (3) each had been appointed to Life's board following a vote by the members of Life in the manner set forth in whatever organizing document existed at that time (*see* Stip. Ex. B-3, articles 3-4); and (4) thereafter, that each had simply forgotten all of those previous events when testifying at hearing, that does not account for the fact that the witnesses testified that they did not know and/or care where Martin lived. Stip. Ex. B, pp. 10-13. If none of the witnesses knew where Martin resided, then how is it that those three directors could have intended to require Martin to reside where he did as a condition of his employment with Life?

These witnesses' testimonies lead me to conclude that Martin purposefully identified those three innocents as Life's directors on prior versions of Life's organizational documents simply to create a paper trail — a paper trail that was not correct — to persuade the tax collector (or the Board of Review) that some disinterested corporate governing body required Martin to reside at the property. This conclusion is confirmed by Martin's own testimony at hearing:

Q: And subsequently those previous board members, Ruth Hudley, Mary Quinney, and Gwen Jones, they were not on [Life's] board as of 6/19/07?

A: No, sir.

Q: And why was that?

A: Okay, These are wonderful people that came to hear me preach and came to my services, and I kept trying to get this [property] off the tax roll, and somebody said, "Take your family off the board and put them on and it's easier to get it off." So I tried that.

Tr. p. 47.

In sum, the only change that occurred during 2007 was that Martin stopped identifying Hudley, Quinny and Jones as Life's directors on versions of Life's organizational documents. *Compare* Applicant Ex. 2 with Stip. Exs. B-2, B-4 and Tr. pp. 47-48. But this is not a change that mitigates in favor of exemption, because it did not change the fact that Martin continued to have and exercise singular control over Life's operations. See Stip. Exs. B, B-2, B-3, F-G; Applicant Ex. 2; Tr. pp. 45-52. Taken together, the evidence does not reveal any changes in Life's operations sufficient to show that, during 2007, Life was using the property primarily for religious purposes.

Conclusion:

I recommend that the Director finalize the Department's tentative denial of Life's application for a property tax exemption, and that the property remain taxable for all of 2007.

August 28, 2009
Date

John E. White, Administrative Law Judge