

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CRMS, Inc., :  
Appellant :  
v. : No. 2258 C.D. 2013

Chester County Board of Assessment :  
Appeals :

CRMS, Inc., :  
Appellant :  
v. : No. 2302 C.D. 2013

Chester County Board of Assessment :  
Appeals :

CRMS, Inc., :  
Appellant :  
v. : No. 2303 C.D. 2013

Chester County Board of Assessment :  
Appeals :

CRMS, Inc., :  
Appellant :  
v. : No. 2304 C.D. 2013

Chester County Board of Assessment :  
Appeals :

CRMS, Inc., :  
Appellant :  
v. : No. 2305 C.D. 2013

Chester County Board of Assessment :  
Appeals :

CRMS, Inc.,	:
Appellant	:
	:
v.	: No. 2306 C.D. 2013
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Chester County Board of Assessment	:
Appeals	:
CRMS, Inc.,	:
Appellant	:
	:
v.	: No. 2307 C.D. 2013
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Chester County Board of Assessment	:
Appeals	:
CRMS, Inc.,	:
Appellant	:
	:
v.	: No. 2308 C.D. 2013
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Chester County Board of Assessment	:
Appeals	:
CRMS, Inc.,	:
Appellant	:
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v.	: No. 2309 C.D. 2013
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Chester County Board of Assessment	:
Appeals	:
CRMS, Inc.,	:
Appellant	:
	:
v.	: No. 2310 C.D. 2013
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Chester County Board of Assessment	:
Appeals	:

CRMS, Inc.,	:
Appellant	:
v.	: No. 2311 C.D. 2013
Chester County Board of Assessment Appeals	:
CRMS, Inc.,	:
Appellant	:
v.	: No. 2312 C.D. 2013
Chester County Board of Assessment Appeals	:
CRMS, Inc.,	:
Appellant	:
v.	: No. 2313 C.D. 2013
Chester County Board of Assessment Appeals	:
CRMS, Inc.,	:
Appellant	:
v.	: No. 2314 C.D. 2013
Chester County Board of Assessment Appeals	:
CRMS, Inc.,	:
Appellant	:
v.	: No. 2315 C.D. 2013
Chester County Board of Assessment Appeals	:

CRMS, Inc.,	:
Appellant	:
v.	: No. 2316 C.D. 2013
Chester County Board of Assessment Appeals	:
CRMS, Inc.,	:
Appellant	:
v.	: No. 2317 C.D. 2013
Chester County Board of Assessment Appeals	:
CRMS, Inc.,	:
Appellant	:
v.	: No. 2318 C.D. 2013
Chester County Board of Assessment Appeals	:
CRMS, Inc.,	:
Appellant	:
v.	: No. 2319 C.D. 2013
Chester County Board of Assessment Appeals	:
CRMS, Inc.,	:
Appellant	:
v.	: No. 2320 C.D. 2013
Chester County Board of Assessment Appeals	:

CRMS, Inc.,	:
Appellant	:
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v.	: No. 2321 C.D. 2013
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Chester County Board of Assessment	:
Appeals	:
CRMS, Inc.,	:
Appellant	:
	:
v.	: No. 2415 C.D. 2013
	: Argued: October 6, 2014
Chester County Board of Assessment	:
Appeals	:

BEFORE: HONORABLE DAN PELLEGRINI, President Judge  
HONORABLE BERNARD L. MCGINLEY, Judge (P.)  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
PRESIDENT JUDGE PELLEGRINI      FILED: October 23, 2014

CRMS, Inc. (CRMS) appeals from the orders of the Court of Common Pleas of Chester County (trial court) granting the Chester County Board of Assessment Appeals' (Board) motions for summary judgment and affirming the Board's denial of CRMS's applications for real estate tax exemption for 22 properties it owns in Chester County.<sup>1</sup> Finding no error by the trial court, we affirm.

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<sup>1</sup> Several school districts and municipalities in which the properties are located intervened in this matter. The Board joined the motion for summary judgment filed by Intervenor Phoenixville Area School District and Tredyffrin/Easttown School District.

In April 2011, KenCrest Centers (KCC), a Pennsylvania non-profit corporation, agreed to acquire the assets and program licenses of an affiliated group of corporations known collectively as Lynch Homes.<sup>2</sup> KCC formed CRMS to serve the role of acquiring title to the former Lynch Homes real property. In July 2012, CRMS, KCC and Lynch Homes executed a Property Agreement setting forth the relationships among the various entities. Pursuant to a Commercial Lease, CRMS rents the properties to KenCrest Services, Inc. (KCS), a non-profit corporation and subsidiary of KCC which provides direct services to the residents of the properties.

CRMS filed applications with the Board seeking real estate tax exemptions for the properties for tax years commencing on or after January 1, 2013. After holding hearings, the Board denied CRMS's applications. CRMS then appealed the denials to the trial court and presented the deposition testimony of William J. Nolan (Nolan), the Executive Director of KCC. Nolan testified that CRMS was established to hold title to real estate for the use of KCC and "does nothing but own the properties and hold them out to people with disabilities." (July 24, 2013 Deposition Transcript at 22). He stated that CRMS provides no direct services of any kind such as rehabilitative, training or medical services to the properties' residents, and confirmed that such services are performed predominantly by KCS. Nolan further testified that CRMS does not pay the salaries or benefits or provide any training to the staff members who reside at the properties and provide assistance to the residents; that CRMS does not have any assets such as computers or

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<sup>2</sup> Lynch Homes, a for-profit provider of group home services, operated programs for persons with developmental disabilities throughout Pennsylvania, including in Chester County.

equipment at any of the properties; and that CRMS is not responsible for repair, maintenance or utility costs for the properties. He also confirmed that CRMS is not licensed to operate a group home by the Pennsylvania Department of Public Welfare (DPW).<sup>3</sup>

In October 2013, Intervenor filed their motion for summary judgment, which the Board joined, arguing that CRMS is not entitled to real estate tax exemption for the properties because it does not occupy the properties as required by the Consolidated County Assessment Law (Assessment Law).<sup>4</sup> In its opinion, the

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<sup>3</sup> CRMS also submitted the deposition testimony of Tonya McNeil, the Chief Financial Officer of KCC and a Director of CRMS, who further testified as to the relationship between those entities and confirmed that CRMS provides no services to the individuals residing at the properties.

<sup>4</sup> Section 8812 of the Assessment Law, 53 Pa. C.S. §8812, “Exemptions from taxation,” provides, in relevant part:

**(a) General rule.**--The following property shall be exempt from all county, city, borough, town, township, road, poor, county institution district and school real estate taxes:

\* \* \*

(11) All real property owned by one or more institutions of purely public charity, used and occupied partly by the owner or owners and partly by other institutions of purely public charity and necessary for the occupancy and use of the institutions so using it.

\* \* \*

**(b) Exceptions.**—

\* \* \*

(2) Except as otherwise provided in subsection (a)(12), all property, real and personal, actually and regularly used and occupied

**(Footnote continued on next page...)**

trial court explained that, even if it were to assume that CRMS qualifies as a tax exempt “purely public charity,” given the undisputed facts that CRMS does not have any operations, assets or staff members on the properties; does not provide any services to the properties’ residents; and does not pay any of the properties’ operational expenses, “CRMS cannot demonstrate ... that as a matter of law it uses and occupies the properties as required by the plain language of the Assessment Law and the case law interpreting that statutory language.” (Trial Court’s November 25, 2013 Opinion at 5). Accordingly, the trial court held that CRMS is not entitled to a tax exemption for the properties and granted the Board’s and Intervenors’ motions for summary judgment. These consolidated appeals by CRMS followed.<sup>5</sup>

On appeal, CRMS contends that the trial court imposed an unreasonably restrictive interpretation of the Assessment Law’s use and occupancy requirements. CRMS argues that because it was formed to be a supporting organization for KCC and KCS, for the narrow purpose of providing real estate for use by those entities in direct fulfillment of their charitable purposes, it is entitled to a real estate tax exemption under the Assessment Law.

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**(continued...)**

for the purposes specified in this section shall be subject to taxation unless the person or persons, associations or corporation so using and occupying the property shall be seized of the legal or equitable title in the realty and possessor of the personal property absolutely.

<sup>5</sup> Our review in tax assessment matters is limited to determining whether the trial court abused its discretion, committed an error of law, or reached a conclusion not supported by substantial evidence. *Herzog v. McKean County Board of Assessment Appeals*, 14 A.3d 193, 199 n.15 (Pa. Cmwlth. 2011).



We begin by noting that an institution seeking a real estate tax exemption bears a heavy burden. *Guthrie Clinic, Ltd. v. Sullivan County Board of Assessment Appeals*, 898 A.2d 1194, 1198 (Pa. Cmwlth. 2006). The reason that this is so is that other property owners will have to pay increased taxes to make up for taxes that otherwise would have to be paid by those that receive a tax exemption. An entity seeking a statutory exemption for taxation must first establish that it is a “purely public charity” under Article VIII, Section 2 of the Pennsylvania Constitution. *Community Options, Inc. v. Board of Property Assessment*, 813 A.2d 680, 683 (Pa. 2002).<sup>6</sup> After proving that it is a purely public charity, the institution is then required to prove that it is eligible for a charitable tax exemption under the appropriate county assessment law. *Guthrie*, 898 A.2d at 1198. In order to qualify for a real estate exemption under the Assessment Law, “the charitable activity of the

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<sup>6</sup> In order to prove that it is an “institution of purely public charity,” an institution must satisfy the test set forth by our Supreme Court in *Hospital Utilization Project v. Commonwealth*, 487 A.2d 1306 (Pa. 1985) (“*HUP*”). Under *HUP*, 487 A.2d at 1317, a “purely public charity” must possess all of the following characteristics:

- (a) Advances a charitable purpose;
- (b) Donates or renders gratuitously a substantial portion of its services;
- (c) Benefits a substantial and indefinite class of persons who are legitimate subjects of charity;
- (d) Relieves the government of some of its burden; and
- (e) Operates entirely free from private profit motive.

“After meeting the *HUP* requirements, the institution still must satisfy all of the five quantitative elements established by the General Assembly in section 5 of Act 55, [Act of November 26, 1997, P.L. 508,] 10 P.S. §375, before the institution qualifies as a purely public charity.” *Guthrie*, 898 A.2d at 1198.

entity must occur on the specific property for which the exemption is sought, and the entity must be the owner and occupier of the property.” *Appeal of Northwestern Corporation from Dauphin County Board of Assessment Appeals*, 665 A.2d 856, 858 (Pa. Cmwlth. 1995) (“*Northwestern*”).

As the trial court ably explained in its thorough review of the case law, this Court has consistently denied tax exempt status to non-profit entities that do not meet the use and occupancy requirements of the Assessment Law. For instance, in *Northwestern*, a case factually similar to the present matter, this Court denied a non-profit corporation’s application for tax exemption for a property operated by one of its subsidiaries because the property was not “actually and regularly used and occupied” for the non-profit corporation’s charitable purposes. *Id.* at 859. *See also Veterans of Foreign Wars Post 1989 v. Indiana County Board of Assessment Appeals*, 954 A.2d 100, 104-06 (Pa. Cmwlth. 2010) (“*VFW*”) (denied tax exempt status to two parcels of real estate owned by VFW because VFW leased the property to a separate entity and did not have a physical presence on the property as required by Assessment Law); *In re Appeal of Friends of Pennsylvania Leadership Charter School*, (Pa. Cmwlth., No. 808 C.D. 2009 filed January 7, 2010) slip op. at 3 (denied tax exempt status to non-profit educational organization whose sole purpose was to support separate non-profit educational entity that was using its property).<sup>7</sup>

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<sup>7</sup> In *VFW*, 954 A.2d at 105, we distinguished *Borough of Homestead v. St. Mary Magdalen Church*, 798 A.2d 823 (Pa.Cmwlth.2002). In that case, we granted a tax exemption for a former parochial school owned by the Diocese of Pittsburgh because although the Diocese leased the property to another entity, it maintained “active, daily possession with some control over all activities on the property.” *Id.* at 829.

Given the testimony of CRMS's own witnesses, there is no dispute that CRMS does not use or maintain any presence whatsoever on the properties. As the trial court recognized, CRMS is essentially asking that we disregard the separate corporate entities and grant tax exemptions for its properties because they further the charitable purposes of KCC and KCS. However, to do so would be inconsistent with the plain language of the Assessment Law requiring use and occupancy by the owner of the property and the aforementioned case law. Because CRMS is merely a holding company which owns and leases properties to separate non-profit entities and does not actually use or occupy any of the properties, it is not entitled to a real estate tax exemption for those properties.

Accordingly, the trial court's orders are affirmed.

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DAN PELLEGRINI, President Judge

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Appeals	:

## **ORDER**

AND NOW, this 23<sup>rd</sup> day of October, 2014, the orders of the Court of Common Pleas of Chester County dated November 25, 2013, are affirmed.

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DAN PELLEGRINI, President Judge