

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of Two Instruments Executed

by

TRUSTEES OF SAILORS' SNUG HARBOR

to

UNIVERSITY PROPERTIES, INC.

DETERMINATION

AND REFUND

ORDER

The 29-45 Tenants' Corporation filed a petition to the State Tax Commission under the provisions of Sections 251 and 263 of the Tax Law for review of the determination of the Recording Officer of New York County and for the refund of mortgage recording taxes and additional amounts totalling seven thousand three hundred sixty-seven dollars and forty-seven cents, (\$7,367.47).

A formal hearing was held on October 28, 1965, and continued on June 5, 1967, and December 8, 1967, in the offices of the State Tax Commission in the city of New York.

APPEARANCES:

Trustees of Sailors' Snug Harbor, by Kelley, Drye, Newhall,
Maginnes and Warren, Esqs., (Chauncey L. Walker and Alfred W.
Roberts, Esqs., of counsel).

University Properties, Inc., a liquidated corporation, by
Emil and Kobrin, Esqs., (Lawrence A. Kobrin, Esq., of counsel).

29-45 Tenants' Corporation, by Irving L. Kalish, Esq.

The City Register of New York County by J. Lee Rankin, Esq.,
(Samuel K. Handel, Esq., of counsel).

FINDINGS OF FACT:

1. On October 1, 1955, the Trustees of the Sailors' Snug Harbor leased to University Properties, Inc., the land and buildings located at 29 East Ninth Street, 35-45 East Ninth Street, and 40-50 East Tenth Street, all of which are located in New York

City. The terms of the leases are for an initial period of 21 years, and for three additional renewal periods of 21 years, 21 years and 36 years, respectively, or total terms of 99 years.

The leases with respect to the properties located at 29 East Ninth Street and 35-45 East Ninth Street were modified on January 1, 1959, and thereafter assigned to 29-45 Tenants' Corporation which assumed the obligations undertaken by University Properties, Inc.

2. The lessee was authorized to demolish the existing buildings and to erect new buildings. Upon termination of the leases, the tenant is required to deliver possession of the property to the landlord in good condition, allowing for reasonable wear and tear and any improvements that have been made. Upon default of the lessee, the lessor may re-enter the premises and terminate the lease.

3. The leases, (as amended), provide that University or its assignee shall, at its own cost and expense, pay all taxes, assessments, sewer rents, water rents and other charges levied, charged, assessed or imposed upon the premises and buildings located at 29 East Ninth Street and 35-45 East Ninth Street.

4. The purchase price for the leaseholds of the three properties was \$1,850,000 of which \$300,000 was to be paid at the execution of the leases and \$250,000 payable on the second anniversary. The balance of \$1,300,000 is payable over a period of 19 years with interest at 4 1/2 per cent. The payments applicable to the respective properties are included in Article Second of each lease.

5. Article Second of the lease pertaining to 29 East Ninth Street provides, in part, that University or its assignee shall pay to Trustees the capital sum of \$342,032.90 of which \$67,183.66 shall be payable in installments of \$3,500 on April 1, 1959, and \$3,500 on the first days of July, October, January, and April until October 1, 1976, when the unpaid balance of \$29,849.25 shall be due and payable.

6. Article Second of the lease pertaining to 35-45 East Ninth Street provides, in part, that University or its assignee shall pay to Trustees the capital sum of \$832,145.86 of which \$164,655.06 shall be payable prior to January 1, 1959, and the balance of \$667,490.80 shall be payable in installments of \$8,500 on April 1, 1959, and like installments on the first days of July, October, January, and April in each year until October 1, 1976, when the unpaid balance of \$72,490.80 shall be due and payable.

7. The leases also provide that during the initial term of the lease (first 21 years) University or its assignee shall pay a net annual rent, payable in equal monthly installments, of \$8,040 and \$19,560 with respect to the properties located at 29 East Ninth Street and 35-45 East Ninth Street, respectively.

8. The memoranda of the leases (as amended) were recorded on April 20, 1961, in the office of the Register of New York County, in Liber 5147 of Conveyances, page 257 and Liber 5147, page 262, respectively. Memoranda of the assignments of the leases (as amended) from University Properties, Inc., to the Claimant dated the 1st day of January, 1959, were recorded in the office of the Register of New York County, in Liber 5147, of Conveyances, page 289, and Liber 5147 of Conveyances, page 294 on April 21, 1961, respectively.

9. On June 3, 1965, the petitioner, 29-45 Tenants' Corporation, paid under protest to the Recording Officer, of New York County, two payments as follows: A. The sum of \$5,221.42 with respect to the recording of the lease memorandum of the premises 35-45 East Ninth Street, New York, New York, including tax in the sum of \$4,160.50 and an additional amount in the sum of \$1,060.92 measured from April 20, 1961. to date of the payment; B. The sum of \$2,146.05 with respect to the lease memorandum of the premises 29 East Ninth Street, including tax in the sum of \$1,710.00 and an additional amount in the sum of \$436.05, measured from April 20, 1961. to date of the payment.

10. Under the special statutes, (Ch. IV, L.1806; Ch. 276, L.1828) of the New York Legislature constituting the Trustees of Sailors' Snug Harbor as a body corporate, the Trustees were authorized to lease, but were precluded from conveying a fee to or mortgaging the premises here involved.

DETERMINATION:

A. The leases dated October 1, 1955. (as amended on January 1, 1959), are not deemed to contain the elements of a mortgage within the meaning and intent of Article 11 of the Tax Law.

B. The recording officer of New York County erroneously collected mortgage recording tax and additional amounts aggregating the sum of \$7,367.47 on June 3, 1965.

ORDER:

I. The recording officer of New York County is authorized and directed to deduct the sum of \$7,367.47 from mortgage tax monies in his hands, or which shall come into his hands and to refund this amount to the 29-45 Tenants' Corporation.

II. Two certified copies of this order shall be mailed to the recording officer of New York County, one of which shall be filed with the records of his office, and the other with the treasurer of the city of New York as a warrant for the disbursement.

DATED: Albany, New York

January 5, 1971

STATE TAX COMMISSION

Norman Halloran

COMMISSIONER

COMMISSIONER

Milton Koerner

COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

INSTRUMENT BY
IN THE MATTER OF THE ~~XXXXXXXXXXXXXX~~ :
TRUSTEES OF SAILORS' SNUG :
HARBOR :
to :
UNIVERSITY PROPERTIES, INC. :

ATTIDAVIT OF
MAILING

State of New York) ss.
City and County of Albany)

Louis C. Johnson, being duly sworn, deposes and
says:

That your deponent is over the age of eighteen and
an employee in the Office of the State Tax Commission, Depart-
ment of Taxation and Finance, Mortgage & Real Estate Transfer
Tax Section.

That on the *19th* day of *February* 1971, your
deponent deposited in a letter box exclusively maintained and
controlled by the United States Government at *Fuller Road*
in the Town of Colonie ~~in the City~~ and County of
Albany, New York, a copy of the determination of the State Tax
Commission in this proceeding, copy of which is hereto annexed,
contained in a securely closed, postpaid cover, directed to the
herein below named parties in this proceeding, their representa-
tives and the recording officer of *New York* County at the
addresses set forth below:

Sworn to before me this *22nd* day
of *February* 1971.

Arthur Maxwell

✓ Trustees of Sailors' Snug Harbor
262 Greens Street
New York, New York 10003

/ 29-45 Tenants' Corporation
c/o Irving L. Kalish, Esq.
55 Liberty Street
New York, New York 10005

Mr. Victor M. Rivera
City Register of New York
31 Chambers Street
New York, New York 10007

University Properties, Inc.
c/o Emil & Kobrin, Esqs.
32 East 57th Street
New York, New York 10022