

February 02, 2004

IN RE: ADRIAN C. LYNCH  
DOCKET NO: 14LDMERZZ9988

STATEMENT OF RECORD:

1. Adrian C. Lynch (hereafter "Petitioner") filed a Petition for Review with the Tax Review Board on November 5, 2002 to appeal a bill issued by the Philadelphia Department of Public Health for removal of lead based paint.
2. A public hearing was held on February 4, 2003 before a Tax Review Board Master. The decision of the Master, ratified by the Tax Review Board was to reduce the bill from \$8341.30 to \$6,000.00, with allowance to arrange within thirty (30) days to pay the balance in installments.
3. Petitioner appealed the decision of the Master to the full Tax Review Board for a de novo hearing.
4. A public hearing was held before the Tax Review Board on September 18, 2003. At the close of the hearing, the Board announced its decision to reduce the bill of \$8,341.30 to \$4000.00 with payment arrangements not to exceed 24 months.
5. Petitioner has appealed to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner was the record owner of the property located at 4311 North 16<sup>th</sup> St. Philadelphia, Pa. for all periods in question and continuing through to the present.
2. Petitioner resides in the property with her husband and children.
3. At least one of Petitioner's children tested positive for having high amounts of lead in his system. Petitioner entered this child in a program at Children's Hospital of Philadelphia designed to reduce the lead levels. It is unclear whether the original blood test that determined the lead amounts in this child were too high was performed by the staff at Children's Hospital or at some other doctor's office.
4. At some point prior to July 2001, the Philadelphia Department of Public Health (hereafter "Department") was notified about these test results and the fact that this child had abnormally high levels of lead in his blood.
5. There was conflicting testimony as to whether the Department initiated contact with Petitioner or Petitioner made the calls to the Department for assistance. In either event, after July 1, 2001 there was contact with the Department regarding the need to abate the lead in Petitioner's house.
6. In July 2002, a city representative came out to her house and tested the lead levels to determine if her child's exposure to toxic lead levels was occurring in her home. She was told that there were many places in her house that had tested as having high lead levels. The City representative walked with her around the house and showed her where the lead poisoning was coming from in the house and on the porch.
7. Petitioner admitted receiving 2 letters from the Department that notified her of the high lead levels in her house and the requirement to take action to abate the lead problem. The first letter was sent July 2001 and the second letter was sent October 2002. She acknowledged that she did not read these letters in their entirety and so was unaware that non-compliance

with the directive to abate the lead could result in having the City act to have the work done and bill her for the cost.

8. An action was filed in the Philadelphia Court of Common Pleas by the City of Philadelphia for an Order to permit the City of Philadelphia to enter the property to abate the lead conditions. Prior to the entry of such an Order, the Petitioner and the City representatives reached an agreement that Petitioner would allow Department workers into her property to do the lead abatement work. The matter before the Tax Review Board was a challenge to the bill presented by the City for the lead abatement work, not a question of whether lead abatement work was required.
9. Petitioner testified that she lived in this property with her children and husband, who was out of the country as a member of the Army Reserves, during the time of the Department activity in her property.
10. Petitioner testified that she was aware of the high lead levels in her home that were a danger to her children. She testified that she received information and instruction pamphlets from the Department on abating the high lead levels in her house and had taken steps to correct the problems as best she could by cleaning, as directed, all the surfaces that might be a danger and hiring a worker to do lead abatement. She acknowledged that this worker was not certified to do this kind of lead abatement work, but due to her financial circumstances she was doing the best she could to rectify the situation. She testified that her child's lead levels had started to decrease but she did not provide any documentation to substantiate her statements.
11. The Department representative, William P. Hardy, went through the house with Petitioner to ascertain what work needed to be done and to explain to Petitioner the numerous areas that would need to be cleaned. Mr. Hardy is a project designer and labor crew chief with Childhood Lead Prevention Program of the Philadelphia Department of Public Health. The Environmental Inspection Record submitted as City's Exhibit 6  
At the time of Mr. Hardy's visit, a worker or workers were in the house, hired by Petitioner to paint over the affected areas.
12. Petitioner was again notified in August 2002 that the high lead hazard had to be removed and that she was still in violation of the City's requirements. It was about this time that she was still attempting to clean up the lead problem herself and with the worker she hired, that Mr. Hardy again visited her home to explain that the City would do this work on her house.
13. Petitioner's understanding of the program offered by Mr. Hardy was that a grant would cover the costs for temporarily relocating her family and the lead abatement work itself.
14. Mr. Hardy testified that he spoke with Petitioner and explained that there would be a bill from the City of Philadelphia for this work. However he did not tell her what her expected costs would be for the City lead abatement program to do the work in her house. He testified that he did not tell Petitioner that the work would be free.
15. Petitioner in her testimony was adamant that she believed, based on her conversations with Mr. Hardy, all costs would be covered by a grant. She acknowledged that she did not receive any paperwork, fill out any applications nor have any written confirmation regarding any grant money.
16. After her discussion with Mr. Hardy, and believing that there would be no cost to her family, Petitioner agreed to have the City provide for the lead paint abatement. Petitioner and her children were relocated to a hotel, where the room and food costs were paid for by the City

- for the several weeks that it took for the City's workers to perform the lead abatement work in her home. Petitioner and her children were out of their house for more than a month
17. Petitioner testified that Mr. Hardy represented to her that her home would be clean and orderly when the work was complete and she was permitted to return.
  18. When she returned to the house after the work was completed, Petitioner was dissatisfied and refused to move back in with her children. She returned to the hotel. She telephoned Mr. Hardy with her complaints and he agreed to have a cleaning crew sent to her house to address her complaints.
  19. Although the City did do some additional clean up following Petitioner's complaints, Petitioner was still dissatisfied with the quality of the work performed by the City and the condition of the home. She testified that the house was dirty when she returned, two windows and a back door were broken and window shades were missing. Floor mats stapled down where carpet had been were coming up.
  20. At a later date, Petitioner received a bill for the work that was done. This bill did not contain a description of the services performed nor did Petitioner receive any testing results to show whether the lead levels in the house were abated following the City's intervention.

#### CONCLUSIONS OF LAW:

The Philadelphia Code Chapter 6-403(2)(d) prohibits lead based coating on any surfaces, either exterior or interior, fixtures or appurtenances of any dwelling where such surface may be readily accessible to children under the age of six years and where the Department determines that the presence of lead based coating creates a health hazard to children under the age of six.

Testing by the Department of Public Health in the premises owned by Petitioner where she lived with her young children determined the presence of lead levels dangerous to her children. By the time the testing on her house was performed, it had already been determined that at least one of her children was suffering from high levels of lead in his blood.

In addition The Philadelphia Code Chapter 6-403(b) requires that where the testing determines presence of such lead based coating, the Department shall issue an order to the owner, his agent or occupant to eliminate the health hazard in accordance with methods prescribed by regulations issued by the Department. Petitioner received such notifications on two occasions, July 2001 and August 2002.

In this case, Petitioner was well aware of the lead paint hazard in her house because she had already been told by doctor's that one of her children had a high level of lead in his system, and she testified that she had been taking him to Children's Hospital of Philadelphia for treatment.

She acknowledged receipt of the City's violation notices although she admitted that she may not have read them in their entirety. The time frame of the notices indicated that they had been sent out about 10 months apart so that Petitioner had sufficient notice and time to abate the lead paint hazard before the City stepped in to correct this violation.

As Petitioner testified, she did her best with the limited resources she had available, by cleaning the surfaces as directed and hiring a non-certified worker to abate the lead paint. However, at the time of the inspection in July 2002 by Mr. Hardy, the problem still existed and the City stepped

in to abate the violation as permitted under The Philadelphia Code Chapter 6-403(b)(.1)(.a). This provision provides that the Department “may, itself or by contract, correct the condition by eliminating the hazard, charge the costs thereof to the owner, and, with the approval of the Law Department, collect the costs by lien or otherwise” if the owner does not comply with the order issued by the Department to correct the lead abatement problem.

In addition, the workers hired by Petitioner did not have the required certification to perform lead paint abatement, but were merely general handymen or painters.

It was clear from the testimony of both Petitioner and Mr. Hardy that the hazardous condition of lead paint had not been corrected in Petitioner’s house despite her efforts.

Petitioner had close to a year to bring her house into compliance with the order issued to abate the lead paint hazard to her children. Petitioner was aware of the problem and knew what had to be done but due to financial constraints was not able to complete the abatement as required.

Therefore, the City stepped in as needed.

As to the existence of a grant to pay for the work to her house, Petitioner’s bare testimony was in direct conflict with the testimony of Mr. Hardy, the Department’s representative. Petitioner had no paperwork or other corroboration to support her testimony that the City had represented that the work would be completely free of charge. She had not filled out any applications and did not have an award letter for a grant of any kind.

However the Board did take note that Petitioner was dissatisfied with the quality of some of the work and that Mr. Hardy did not disagree with her assessment that her house was not put back in the condition that it was found.

The decision of the Tax Review Board was to reduce the bill from \$8341 to \$4000 with an allowance for payment arrangements not to exceed 24 months.

Concurred:

Derrick Johnson, Chair  
Christopher Booth, Jr., Esq.  
Una Vee Bruce  
Joseph Ferla