

February 14, 2005

IN RE: **CLIFFORD COHN**
DOCKET NO: **35WRMERZX4867**

STATEMENT OF RECORD:

1. Clifford Cohn (hereafter "Petitioner") filed an appeal with the Tax Review Board on August 12, 2002 for review of Water Revenue Bureau usage charges for the property at 129 North 20th St. Philadelphia, Pa.
2. Hearings were scheduled for January 17, 2003 and May 16, 2003 with each being continued at Petitioner's request.
3. A public hearing was held before a Tax Review Board Master on September 19, 2003. The decision of the Master, as ratified by the Tax Review Board, was to deny the petition.
4. Petitioner appealed for a hearing before the full Tax Review Board.
5. A public hearing was held before the Tax Review Board on January 13, 2004. The decision of the Tax Review Board, announced at the end of the hearing, was to direct the Water Revenue Bureau to adjust the meter reading taken on May 11, 2002 that covered the period from August 13, 1998 through May 11, 2002 and reflected usage of 9,813 cubic feet per month for that 45 month period by reducing it to 4700 cubic feet of usage per month for that time period, and to abate the penalties and lien charges for that period.
6. Petitioner has appealed the Tax Review Board decision to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner purchased the property located at 129 North 20th St. Philadelphia, Pa. in 1986 and remains the owner.
2. This property consists of four (4) apartments.
3. Petitioner resided in one of the apartment units and rented the other three units to tenants until 1992. After 1992, Petitioner moved to another residence and rented out the remaining apartment.
4. There were four (4) to six (6) tenants in the building during the period under review.
5. Petitioner requested a review of the water usage charges based on a final meter reading of the water meter replaced on May 11, 2002.
6. Petitioner paid all bills received from the Water Revenue Bureau for the period in question. The usage charges on these bills were estimated as the meter was not read during this time period and therefore charges for the actual amount of water used were not ascertained by the Water Revenue Bureau.
7. A meter reading was obtained on May 11, 2002. According to the records of the Water Revenue Bureau, this was the first reading since August 13, 1998, resulting in a period of 45 months during which Petitioner's water bills were estimated as to usage charges.

8. This actual reading showed a per month consumption of 9,813 cubic feet for the period of August 13, 1998 to May 11, 2002.
9. The bills sent to Petitioner during this period reflected an estimated usage that was less than the 9,813 cubic feet per month calculated by the Water Revenue Bureau from the May 11, 2002 meter reading.
10. Petitioner received a deficiency bill with a principal amount due of \$8,451.03 following the May 11, 2002 reading.
11. Actual meter readings both before and after May 11, 2002 exhibited a range of monthly usage ranging from 408 cubic feet to 6,600 cubic feet. Although there was no consistent pattern of usage, there were no meter readings approaching the 9,813 cubic feet of usage per month.
12. Petitioner argued that the reading was in error based on past history and current readings that were lower than the reading in question. He questioned whether the meter had been broken and testified that the meter had been unavailable for any testing after it had been replaced in May 2002.
13. Petitioner also argued the statute of limitations as a bar to collecting a bill dating back to 1998.

CONCLUSIONS OF LAW:

The Philadelphia Code Chapter 19-1605(1) Limitation on Action provides that “(t)he Department may waive a delinquent water or sewer rent after the expiration of 15 years following the year in which such water or sewer rent becomes due.” Therefore, the City is well within the time frame allowed by the ordinance to bill and collect on the bill Petitioner is disputing.

Petitioner failed to meet his burden of proof to establish his argument that the estimated bills issued during the 45 month period in question were the true and accurate reflection of the water usage at the property.

Petitioner did not provide the Board with any evidence, either by way of testimony or documentation, that showed what was happening at the property, who was living there, how big the apartment units were, etc. or that, in some way, would have provided some demonstration as to what amount of water usage could have been occurring.

The property was entirely tenant occupied during the time frame in dispute. Petitioner could not speak first hand as to how water was being used in the building.

The Tax Review Board adjusted the usage charge after a review of the account history of meter readings provided by the Water Revenue Bureau. This account history showed that during the entire period of Petitioner’s ownership, both before and after the period in question and where regular meter readings were occurring, water usage never approached the 9,813 cubic feet per month that was the basis for the disputed bill.

As there was no showing that any event such as a significant leak or plumbing problem had occurred, nor was there information as to actual tenant activity, the Board used the account history to fashion an adjustment to the usage based on readings on the building's current meter.

The Tax Review Board abated all penalties based on the good faith efforts of Petitioner who paid all estimated bills when received. It was the responsibility of the Water Revenue Bureau to read the meter on a regular basis and there was no testimony from the Water Revenue Bureau to explain a 45 month gap in meter readings or to attribute the failure to read the meter to any actions by Petitioner.

Concurred:

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