

December 30, 2003

IN RE: JOSEPH SPIEWAK  
DOCKET NO: 35WRMERZX4730

STATEMENT OF RECORD:

1. Linda Goldman requested a review by the Tax Review Board on September 18, 2002 on behalf of her deceased father, Joseph Spiewak. The petition requested review of Water/Sewer bills for the property at 7900 Algon Ave. Philadelphia, Pa.
2. A public hearing was held before the Board on September 4, 2003. At the conclusion of the hearing the Board announced its decision to abate the penalties accrued against the bills being challenged.
3. Linda Goldman has appealed to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. Linda Goldman (hereafter Petitioner") petitioned on behalf of Joseph Spiewak, her late father. Mr. Spiewak was alive and managing the property for the periods in question.
2. Petitioner challenged the accuracy of the water/sewer bill for the property at 7900 Algon Ave. Philadelphia, Pa. for the period of August 4, 1997 through October 1, 2001. The principal amount in question was \$32,676.69 with penalties assessed through the date of the hearing of \$3,030.50.
3. The property is an apartment building with sixty six (66) units.
4. A water meter was installed at the property on April 28, 1989. This meter was not read on a regular basis by the Water Revenue Bureau meter readers. Estimated bills were sent to Mr. Spiewak for those periods when meter readings were not obtained.
5. It was the testimony of the Water Bureau Representative that the Bureau's record reflected that the meter was blocked and inaccessible to the meter reader. The meter was located outside of the building in what was described as a pit. It was not made clear why it was considered inaccessible. The meter was installed by the City's Water Department.
6. The Water Revenue Bureau's records indicated that the meter that was installed on April 28, 1989, was read for the first time on July 6, 1995, again on August 4, 1997 which was 25 months later, and then not read again for 50 months until it was removed and replaced on October 1, 2001.
7. The meter reading obtained on August 4, 1997 indicated that over the 25 month period from the previous meter reading, the average monthly consumption for the property was 74,416 cubic feet. The per unit consumption was 1127 cubic feet per month.
8. For the 50 month period between August 4, 1997 and October 1, 2001, the Water Revenue Bureau issued estimated bills based on usage of 39,000 cubic feet per month for most months, or 591 cubic feet per month. In actuality, once the meter reading was obtained, the metered usage for that time period was 69,638 cubic feet per month for the entire building, or 1055 cubic feet per month per unit. Therefore the large bill received by Petitioner for the October 2001 cycle covered all of the excess usage, actual usage over the estimated amounts billed, as established by the final actual reading taken by the Bureau when the meter was removed in October 2001. This accounts for the \$32,676.69 bill in question.
9. Each time the City read the meter, the account was adjusted and Mr. Spiewak was billed for any excess usage over the estimated bills issued between meter readings. This adjustment

also occurred on his behalf for any months where the estimate might have been over the actual usage.

10. Mr. Spiewak paid all bills, actual or estimated when issued during the 12 years, without question, including the billing challenged.
11. On October 2, 2001, the Water Department installed a new meter able to be read automatically, by electronic means. The meter has since been read every month and Petitioner has received bills based on these actual readings. Petitioner is satisfied that these are accurate readings and truly reflect the usage at the property. Petitioner argued that the Board should use an average of these readings as a true measure of the property's water consumption and make an adjustment to all of the readings from the removed meter going back to its installation in 1989. These readings range from 47,500 cubic feet per month to 70,200 cubic feet per month, with the exception of April 2003 which registered 11,400 cubic feet per month.
12. Petitioner's husband, Sam Goldman, testifying on behalf of Petitioner, stated that he had done his own calculations and determined the "real" usage for this property to be 57,500 cubic feet per month. This figure was arrived at by averaging these post October 2001 readings. He insisted that the Water Revenue Bureau had overcharged his father in law by failing to regularly read the meter and then using the higher actual readings from the meter that could not be proven by the Department to be accurate. Petitioner did not present any evidence that the meter was defective or that the actual readings were inaccurate.
13. Petitioner did not present any evidence as to tenancy of the 66 apartment units during any of the years under discussion, either before the October 2001 meter change or after.

#### CONCLUSIONS OF LAW:

The burden of proof to establish that the bill under challenge is inaccurate is on the Petitioner. The presentation by the City of the assessment or bill is sufficient as prima facie proof of their accuracy. The burden then shifts to the petitioning party to present evidence to establish that the assessment is incorrect. City of Philadelphia v. Litvin, 235 A.2d 157 (Pa. Super 1967) Petitioner failed to meet this burden to establish that the actual water meter readings on which the bills were based were incorrect or inaccurate

Petitioner argued that the meter readings from the first meter were inaccurate and therefore requested the Board to adjust the readings to reflect the usage being captured on the second meter that was installed in 2001. In reviewing the usage established by meter readings on both the first and second meters, the differences in per unit consumption do not appear to the Board as so significant as to establish that the readings on the first meter were inaccurate on their face.

Petitioner did not provide any evidence to establish that the first meter was defective. Nor did Petitioner provide any evidence as to the tenancy of the apartment units that might have shed some light on the water consumption at the building. A building with sixty six (66) apartment units over a period of 13 years could have any number of variations in its usage depending on unit occupancy, vacancy rates, condition of the building and its plumbing apparatus, rate of repair, etc.

The accumulation of a large billing delinquency appears to be purely a product of the City's failure to read the meter on a regular basis rather than on any defect with the meter. Estimated bills that did not accurately reflect the buildings monthly usage resulted in payments by Mr. Spiewak that did not cover the full cost for the water actually being used by the occupants of the property.

Petitioner requested the bills to be adjusted to reflect the current monthly average. However in looking at the monthly readings, the bills fluctuate in a range that does not lead the Board to the Petitioner's conclusion that the average monthly amount of 69,638 cubic feet is unreasonable or grossly inaccurate. In addition, even using Petitioner's figure of 57,500 cubic feet per month, Petitioner underpaid the Department, which was sending estimated bills averaging 39,000 cubic feet per month.

It is important to note that Petitioner's father did not challenge the bills at the time they were issued but paid them all. It is only now, many years later that the Petitioner, who recently has assumed control of the property, is questioning the accuracy of bills from the past. There is no evidence that asserts that Mr. Spiewak, at the time, believed the bills to be inaccurate. There was unsubstantiated testimony that by the late 1990's, Mr. Spiewak may not have been mentally capable of handling his affairs but this does not rebut the fact that in the 13 years covered by the first meter, Mr. Spiewak did not assert any error in the bills.

Petitioner and her father have paid all bills issued, both estimated and actual. It was the finding of the Tax Review Board that both Petitioner and her father acted in good faith at all times by paying the bills when issued and choosing to file for a review of the bills in question.

Although the Water Revenue Department may have referenced when the bills were estimates and not based on actual readings of the meter, and may have noted that the meter was inaccessible, it was the Water Department that installed the meter and chose to place it in whatever ditch it ended up being installed, thus making it difficult for the Water Revenue Bureau meter readers.

Therefore, the decision of the Board was to abate the penalties.

However, the Board found that Petitioner's challenge to the merits of the bills were not substantiated sufficiently to warrant an adjustment by the Board to the usage charged by the Water Revenue Bureau base on its actual meter readings.

Concurred:

Derrick Johnson, CPA, Chair  
Joseph Ferla