

February 19, 2002

IN RE: DOLLAR RENT A CAR SYSTEMS INC.

DOCKET NO: 35WRMERZX5776

STATEMENT OF RECORD:

1. Dollar Rent A Car Systems Inc. (hereafter "Petitioner") filed a petition for review on August 6, 2001 for certain water-sewer charges for a property at Island Ave. and Essington Aves. Philadelphia, Pa.
2. A public hearing was held before the Tax Review Board on January 8, 2002. At its conclusion, the Board issued its decision to abate the unpaid penalty of \$4,783.32 and the lien charge of \$10.
3. Petitioner has appealed to the Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner is a national car rental agency with its Philadelphia location inside the Philadelphia International Airport.
2. Robert Raymond Speruto, manager of the Philadelphia location, testified before the Tax Review Board on Petitioner's behalf. He has managed this location since 1994, when it was a franchise. It became a corporate run store sometime in 1994 or 1995 and Mr. Speruto stayed on as manager. Among Mr. Speruto's responsibilities as manager is payment of any utility bills.
3. Prior to 1994, the franchise was owned and operated by a company named Dry, Inc. They began their operation in 1990. Mr. Speruto worked for Dry, Inc., beginning in February 1993.

There were other franchisees prior to Dry, Inc. The franchise began operating at its airport location in approximately 1981.

4. Petitioner has always rented its location from the airport. The land is owned by the City of Philadelphia.
5. The first water/sewer bill that was received by Mr. Speruto arrived in January 2001. He testified that there were no water/sewer bills received by Petitioner during his time as manager for Dry, Inc. nor during his time as manager for the parent corporation until the January 2001 bill arrived.
6. The principle amount of the bill was \$70,637.34, with penalties of \$5,381, and a lien charge of \$10.

7. Petitioner has a lease with the airport for the space it uses. Mr. Speruto testified that although he was aware that there was a water meter on the property but that since he never saw a bill, he assumed that the lease included the water/sewer charges.
8. In December 2000, a new water meter was installed on the premises. Following the installation of this new meter, monthly bills began to be generated and sent to Petitioner.

At the time the new meter was installed, a reading was obtained by the Water Revenue Department from the meter that had been in the building since 1984. This was the first reading obtained by the department since the meter's installation. Petitioner was then billed for the usage that had accumulated on this meter. Any previous bills had been in the amount of the service charge only since there were no meter readings to determine usage.

The first bill received in January 2001 is the bill that Petitioner challenged before the Tax Review Board. This bill represented the Water Revenue Department's calculation of all usage charges owed by Petitioner from July 11, 1984 to December 2000. The reading taken from the old meter was used to calculate the usage for the 197 month period from when the old meter was installed in 1984. The calculation was spread out over the entire period, taking into account the changes in water rates charged by the City over that time period.

Subsequent monthly bills based on current usage from the new meter ranged from \$300 to \$500. Petitioner had paid those bills as they were issued.

9. Petitioner admitted to using the water service for years and to owing some amount of delinquent water/sewer bills for this use, as they had never paid a water bill in any of the prior years, but protested the lengthy period for which it was being held liable. Particularly, Petitioner protested any amount due beyond three years, claiming statute of limitations protection, and in the alternative claiming that it was not the responsible party for periods prior to 1994 when its franchisees had control of the site.
10. The Water Revenue Department representative, Bonita Grant, testified that prior to January 2001, the bills were issued under the name of the Department of Community Development or Division of Aviation, Philadelphia International Airport. They were sent to Room 1030 of the City's Municipal Services Building from 1987 forward.
11. Ms. Grant also testified that, at some point, the property was marked as having been torn down, and that billing then continued at a service charge only rate. Mr. Sperduto testified that the building had never been torn down and that Petitioner had operated without interruption during all the years in question.
12. The bill under challenge was issued in January 2000. When the bill remained unpaid in July 2001, a lien was placed against Petitioner by the City of Philadelphia.

13. The City placed a water meter on the premises in 1984 but failed to have the meter read for a period of 16 years. Petitioner testified that the business was open 7 days per week, 24 hour a day except for Friday and Saturday when the business closes from 12:30 a.m. to 5:30 a.m. Thus there was ample opportunity for the City to have the meter read on a regular basis.

#### CONCLUSIONS OF LAW:

1. Petitioner argues that the statute of limitations found in 53 P.S. §7143 prohibits the City from collecting on the bill in question because it has as its basis, charges for water used during periods more than three years prior to the billing period. The statute cited addresses the filing of claims for water rents by the City of Philadelphia, in either the Municipal Court or Court of Common Pleas, whichever may be appropriate based on the claim amount. It states “(a)ll such claims shall be filed on or before the last day of the third calendar year after that in which the taxes or rates are first payable, except that in cities and school districts of the first class claims for taxes and other municipal claims, which have heretofore become liens pursuant to the provisions of this act or which have been entered of record as liens or which have been liened and revived, shall continue and remain as liens for the period of twenty years...”.

The bill that petitioner is challenging does not represent a claim filed by the City in either the Municipal Court or Court of Common Pleas, thus calling into question the applicability of the statute for purposes of the Tax Review Board hearing which was a proceeding initiated by Petitioner, not by the City of Philadelphia, and based on a filing by Petitioner, again, not by the City of Philadelphia.

But even so, the assessment in question was only determined and billed for the first time in December of 2000. Petitioner received the bill in January 2001. This is the first date on which this bill was payable. The City entered its lien in July 2001. All of this activity is well within any three year statute of limitation period.

In addition, Petitioner admitted that it had not been billed on any previous occasion although it had been using water at the premises during the period in question.

2. The Philadelphia Home Rule Charter Section 6-201(c) states that the department “shall cause all water meters to be read promptly by its employees”. Admittedly this did not occur in this instance. Testimony by the Water Revenue department representative, Bonita Grant, indicated that the department meter readers had caused the account to be mislabeled and misbilled as though the building had been torn down, plus the department had been billing another department of the City of Philadelphia at least from 1987 through 2000. It appears that this department had not forwarded the bills to the correct party.

In determining whether abatement of penalty is appropriate, The Philadelphia Code Chapter 19-1705(2) instructs the Tax Review Board to make a determination as to whether “the petitioner acted in good faith, without negligence and no intent to defraud”.

It was the opinion of the Tax Review Board that Petitioner met this standard by virtue of the following facts: Petitioner did not receive a bill from the Water Revenue Department because the City was, essentially, billing itself and not turning over the bill to Petitioner for timely payment. The Water Revenue Department did not have the meter read for 16 years despite the availability of the meter to be read. Petitioner acted promptly upon receipt of its first bill in January 2001. Petitioner has paid all monthly bills received since January 2001.

However, Petitioner did admit to using the water and must pay for charges related to the actual usage.

Therefore the decision of the Tax Review Board was to abate penalties in the amount of \$4783.32 and the lien charge of \$10.00.

**CONCURRED:**

Daniel Saidel, Chairman  
Derrick Johnson, Vice Chairman  
Una Vee Bruce  
Joseph Ferla