

May 29, 2015

**In re: Kelly Dutton**

**Docket Nos.: 36REINPZY9432, 36REINPZY9433, 36REINPZY9434**

**Statement of Record**

- 1) Kelly Dutton (“Petitioner”) filed Petitions for Appeal with the Tax Review Board (TRB) on April 8, 2014 requesting abatement of interest, penalties, and liens for four Philadelphia properties: 48 North 51<sup>st</sup> Street; 5601 Warrington Avenue; 5518 Market Street; and 5609 Spruce Street.
- 2) A public hearing before a TRB Master was scheduled for June 13, 2014, and continued at Petitioner’s request.
- 3) A public hearing before a TRB Master was scheduled for July 30, 2014. The decision of the Master, as ratified by the TRB, was to abate 100 percent of the penalty, with the Petitioner to have 30 days to make payment arrangements. The decision was the same for all properties.
- 4) Petitioner requested and was granted a rehearing before the full TRB.
- 5) A public hearing before the full TRB was scheduled for October 7, 2014. At the conclusion of the hearing, the decision of the TRB was to abate one half of the interest and 100 percent of the penalty, with Petitioner to have 30 days to make payment arrangements. The decision was the same for all properties.
- 6) Petitioner appealed the Tax Review Board decisions to the Philadelphia Court of Common Pleas for the following 3 properties: 48 North 51<sup>st</sup> Street; 5601 Warrington Avenue; and 5518 Market Street.

**Findings of Fact:**

- 1) Petitioner owned the property at 48 North 51<sup>st</sup> Street from March 1, 2001 to June 3, 2001. It was then owned by Petitioner’s mother, Marguerite Dutton, from June 3, 2001 to February 12, 2014, at which time ownership transferred back to Petitioner. Petitioner has owned the property since that time.
  - a. The tax years under appeal for 48 North 51<sup>st</sup> Street were 2008 to 2012; all years prior had already been heard by the TRB and could not be relitigated. The principal amount due was \$3,123.59, with interest \$1,057.16 and penalties of \$218.63 as of the date of the TRB hearing, lien charges of \$100.00 and legal fees of \$419.96, for a total due of \$4,919.34.
  - b. There were no payments on record for this property from any owner, prior or current. Petitioner provided no evidence of any payments.
- 2) Petitioner has owned the property at 5601 Warrington Avenue since February 12, 2014. From June 3, 2001 until February 14, 2014, this property was owned by Petitioner’s mother.

- a. The tax years under appeal for 5601 Warrington Avenue were 2008 to 2012; all years prior had already been heard by the TRB and could not be relitigated. The principal amount due was \$2,741.10, with interest of \$927.71 and penalties of \$191.89 as of the date of the TRB hearing, lien charges of \$100.00 and legal fees of \$387.64, for a total due of \$4,348.34.
  - b. The most recent payment for this property occurred on June 26, 1991. Petitioner provided no evidence of any additional payments.
- 3) Petitioner owned the property at 5518 Market Street from December 14, 2000 until April 26, 2001. It was then owned by Petitioner's mother until February 12, 2014, at which time ownership transferred back to Petitioner. Petitioner has owned the property since that time.
  - a. The tax years under appeal for 5518 Market Street were 2008 to 2012; all years prior had already been heard by the TRB and could not be relitigated. The principal amount due was \$3,378.55, with interest of \$1,143.46; penalties of \$236.50 as of the date of the TRB hearing, lien charges of \$100.00 and legal fees of \$441.52, for a total due of \$5,300.03.
  - b. The most recent payment for this property occurred on March 31, 1987. Petitioner provided no evidence of any additional payments.
- 4) All transfers of all properties for the period in question (and for the past 30 years) were one dollar deed transfers between Dutton family members.
- 5) The City was prepared to foreclose on the properties while Petitioner's mother owned them; however, she entered into bankruptcy, preventing the foreclosure. Since then, she has been removed from bankruptcy and a court has cleared the property for foreclosure and sheriff sale.
- 6) Petitioner was attempting to use the properties as loan collateral to perform rehabilitative maintenance; however, he was refused due to the amount of outstanding taxes.
- 7) Petitioner has been rehabbing the properties and has begun to lease some of them to tenants; 2014 was the first year he received rental income on any of the properties.

### **Conclusions of Law**

The party initiating an action carries the burden of proving his or her claim in an administrative hearing. *Dep't of Transportation v. Pa. Human Relations Comm'n*, 84 Pa. Commw. 98, 480 A.2d 342 (1984). As the petitioning party, Mr. Dutton has the burden of proof to establish that there is a basis to abate or reduce the penalties and interest that have accrued on the properties due to unpaid property tax.

The Philadelphia Code Chapter 19-1705(2) provides that "(u)pon the filing of any petition for the waiver of interest and penalties accruing upon any unpaid money or claim collectible by the Department of Revenue, for or on behalf of the City or the School District of Philadelphia, the Tax Review Board may

abate in whole or in part interest or penalties, or both, where in the opinion of the Board the petitioner acted in good faith, without negligence and no intent to defraud.”

For two of the three properties in question, Petitioner owned them for less than four months in 2001. He gained or regained ownership of all three in February 2014, and initiated this action shortly thereafter in April 2014. Petitioner was not the responsible party for the vast majority of the time during which the principal, interest, and penalties were accruing. Petitioner was not the owner of any of the properties during the period in question here, from 2008 to 2012.

Petitioner has made good faith efforts since becoming the owner of these properties in 2014 to address the outstanding taxes. Petitioner has also made good faith attempts to rehabilitate the property and has begun bringing in rents as a result, which will greatly increase his ability to address the outstanding taxes in the future. He has not turned his back on either the properties or the tax liabilities.

However, Petitioner cannot be found completely harmless of the outstanding interest and penalties. He has been part of a chain of custody of these properties that has been negligent as to the taxes to the point of foreclosure.

Therefore, the finding of the Tax Review Board was that Petitioner met his burden of proof to establish a basis for relief from some, but not all, of the outstanding interest and penalties. It is the decision of the TRB to abate, for each property, one half of the interest and 100 percent of the penalty, with Petitioner to have 30 days to make payment arrangements.

Concurred:

Nancy Kammerdeiner, Chair

Joseph Ferla

George Mathew, CPA

Christian DiCicco, Esq.