

May 20, 2015

15-13

IN RE: Pennsport LLC

DOCKET NUMBER: 35WRMERZW6847

Statement of Record:

1. Pennsport LLC (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board (TRB) April 24, 2012. This petition requested a review hearing for a City of Philadelphia Water Revenue bill for the property located at 325-31 Bainbridge Street, Philadelphia, PA
2. A public hearing before a TRB Hearing Master was scheduled for October 19, 2012. No one appeared at this hearing on behalf of Petitioner. The decision of the Master, as ratified by the TRB, was to deny the petition as Petitioner failed to appear to present its case. Petitioner was so notified by letter dated October 26, 2012.
3. Petitioner requested and was granted rehearing.
4. A public hearing before a TRB Hearing Master was scheduled for January 18, 2013. No one appeared at this hearing on behalf of Petitioner. The decision of the Master as ratified by the TRB, was to deny the petition as Petitioner failed to appear to present its case. Petitioner was notified by letter dated January 24, 2013.
5. Petitioner again requested and was granted a rehearing.
6. A public hearing before the TRB was scheduled for September 12, 2013 and continued at that time.
7. A public hearing before the TRB was scheduled for January 28, 2014 and continued prior to the hearing date at Petitioner's request due to a personal matter.
8. A public hearing before the TRB was scheduled for May 22, 2014 and continued prior to the hearing date at Petitioner's request due to personal matter.
9. A public hearing before the TRB was scheduled for October 9, 2014 and continued prior to hearing date at Petitioner's request due to a personal matter.
10. A public hearing before the TRB was scheduled for December 30, 2014. No one appeared for Petitioner. The decision of the TRB was to deny the petition as Petitioner failed to appear to present its case. Petitioner was notified by letter dated January 2, 2015.

11. On February 4, 2015, Petitioner submitted a new Petition for Appeal for the same matter covered by the Petition for Appeal submitted to the TRB on April 4, 2012. This rehearing request was reviewed by TRB and denied. A letter was sent to Petitioner, dated February 6, 2015, stating its request for a rehearing was denied.

12. Petitioner filed an appeal to the Philadelphia Court of Common Pleas.

Discussion:

Petitioner filed a Petition for Appeal on April 24, 2012 requesting the TRB provide an administrative review of the Water Revenue bill issued to the property at 325 Bainbridge Street, Philadelphia, PA. 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. Commwlth. 98, 480 A.2d 342 (1984). As the petitioning party, Pennsport, LLC has the burden of proof to establish with substantial evidence that the assessment under appeal is in some way defective or in error and should be adjusted by the TRB.

As provided in The Philadelphia Code Chapter 19-1702, the TRB provides an administrative review for water/sewer bills through a public hearing process. This review process is initiated by the taxpayer with the filing of a Petition for Appeal.

This case was scheduled for review on 7 different hearing dates. Petitioner requested a continuance prior to the scheduled hearing date on 3 occasions and failed to appear with no notice to the TRB on 3 other scheduled hearing dates. The hearing which Petitioner did attend was continued to allow Petitioner to provide additional documentation at the next hearing. Each time Petitioner was granted another hearing date based on a timely rehearing or continuance request.

After the December 30, 2014 hearing date at which Petitioner again failed to appear with no notice to the TRB, Petitioner did not request a timely rehearing but attempted to simply file a new Petition for Appeal approximately 8 weeks later as though to start the entire process over again.

The TRB reviewed this filing as a rehearing request since the case was already in the TRB docket. The TRB denied the request for yet another hearing opportunity.

The TRB Regulation Article 15 states that "(t) he Board, in its discretion, may grant a rehearing if, within thirty (30) days after the mailing date of the notice of the decision, a party files a written request. The request for a rehearing should set forth new grounds or other appropriate reasons that rehearing is warranted. "

Petitioner filed a new Petition for Appeal of the same Water Revenue assessment well past the 30 day time period for a rehearing and presented no compelling or new reason to warrant an 8th hearing opportunity.

Petitioner first filed his Petition for Appeal seeking a review of this water bill on April 24, 2012, and was given multiple opportunities to present his case. Time and again he simply failed to show up and asked for another hearing date, or requested continuances over and over again. The TRB was more than generous with Petitioner, and far more respectful of his time than he was for the Board's time.

The Board receives thousands of Petitions for Appeal each year and at any given time, hundreds of Petitioners are waiting for their turn to be heard. Each time Petitioner's case was scheduled and chose not to appear to use the scheduled slot on the docket, someone else did not get their opportunity.

It is the Board's determination that Petitioner was provided more than a sufficient number of opportunities over a two and a half year time span to attend a hearing and put forth its case. The Board was more than accommodating and Petitioner failed in its responsibility to show up on multiple occasions for its requested hearing.

Concurred:

Nancy Kammerdeiner, Chair

Christian DiCicco, Esq.

Joseph Ferla

Martin Bednarek