

January 12, 2016

IN RE: David Rudy

Docket No: 35WRMERZW5833

Statement of Record:

- 1) David G. Rudy (Petitioner) filed a Petition for Appeal with the Tax Review Board (TRB) on December 16, 2013 requesting review of a Water Revenue Bureau (WRB) bill for the property at 1944 East Monmouth St. Philadelphia PA.
- 2) A public hearing before a Tax Review Board Hearing Master was held on April 7, 2014. The decision of the Master, as ratified by the TRB, was that there was no action needed.
- 3) Petitioner requested and was granted a rehearing before the full TRB.
- 4) A public hearing was scheduled before the TRB on March 12, 2015. Following the hearing, the Board announced its decision that no action was needed.
- 5) Petitioner filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Fact:

- 1) Petitioner owned the property at 1944 E. Monmouth for all periods under appeal.
- 2) Petitioner requested review of the Water Revenue bill for the period December 26, 2008 to December 10, 2012. The principal amount due was \$1290.64, with no additional charges. (Notes of Testimony, March 12, 2015, page 2, lists principal due of \$12,900.64, in error.)
- 3) During the time period this was a rental unit with tenants, although not necessarily the same tenants throughout the period.
- 4) At some point in or around December 2008, it was discovered that the water meter reflected 0 usage for the years under appeal although, as Petitioner admitted, the property was occupied and water was used.
- 5) On October 17, 2009 a new water meter was installed by the Philadelphia Water Department (PWD). The meter began to register usage but the electronic transmitter, the ERT, did not work properly and did not transmit the usage for WRB to bill. Therefore the property continued to be billed at zero usage.
- 6) On December 10, 2012, PWD visited the property and changed the battery on the ERT.
- 7) The Water Revenue Bureau used readings received subsequent to December 10, 2012 to determine an average usage figure of approximately 800 cubic feet per month. The period of January 2013 through December 2013 actual usage was reviewed to calculate an amount due for water usage for the years 2008 to 2011 when the property was not being billed for water usage because of the defective meter issues.
- 8) In calculating the bill for this delinquent period, the WRB used the approximately 800 cubic feet of usage per month and applied its "zero usage policy". The result of this policy was that the period from December 26, 2008 through December 10, 2011 was billed at 50% of the estimated usage, or 400 cubic feet per month; and the period of December 10, 2011 through December 10, 2012 was billed at 100% of the usage amount of 800 cubic feet per month.

- 9) The actual usage recorded on a monthly basis for a 6 month period after change on December 10, 2012 showed actual usage amounts ranging from 600 cubic feet per month to 1100 cubic feet per month.
- 10) Petitioner testified that new tenants moved in after the December 10, 2012 ERT change and they use substantially more water than the prior tenants, and more water than most of his other tenants in other properties. Therefore he contested having the basis of the bill for prior years be the 2013 usage of these new tenants.

#### Conclusions of Law:

Philadelphia Water Department Regulation 305.1(a) provides that "(w)hen an accurate reading cannot be obtained at the time of a scheduled meter reading or when necessary for administrative purposes, the quantity of water used may be estimated for billing purposes. Estimated usage will be based upon actual meter readings from prior cycles or by such other fair and reasonable methods as shall be approved by the Water Commissioner."

Petitioner challenged the usage calculation of WRB for the period December 26, 2008 to December 10, 2012. A malfunctioning meter during the period required WRB to estimate the actual usage for this period once this malfunction was discovered. As permitted by the PWD Regulation, the WRB used actual usage readings from the period immediately following the replacement of the malfunctioning equipment to calculate an average expected usage for this property. This usage estimate of 800 cubic feet per month was then billed to Petitioner for the entire 4 year period under appeal.

However, when calculating the billing for this time period with the 800 cubic feet per month estimated usage, the WRB applied its "zero usage policy" to mitigate the hardship to Petitioner of being billed for a 4 year period in one bill as a result of malfunctioning equipment.

The result of applying the zero usage policy was to bill 3 of the 4 years at issue using a monthly average of 400 cubic feet per month, one half of the estimated usage. Only the final year, 2012, was billed at the full 800 cubic feet per month.

Although Petitioner testified that the tenant in the property in 2013 used far more water than the prior tenants and tenants in other properties he owns, he offered no substantiating evidence for these statements.

And in fact, at 400 cubic feet per month for 3 of the 4 years under appeal, Petitioner was actually billed at a usage rate much lower than the 2013 tenants were using.

The burden of proof to establish that the assessment under appeal is incorrect and/or that the petitioner is entitled to an abatement of some or all interest and penalty rests with the petitioner as the moving party. "(T)he burden of proof is upon the Taxpayer to establish that the...tax has been improperly assessed." Ernest Renda Contracting Co., Inc. v. Commonwealth of PA, 516 Pa. 331 (1987).

The City's presentation of the assessment is sufficient as prima facie proof and shifts the burden to the petitioning party to establish that the assessment is incorrect. City of Philadelphia v. Litvin, 235 A.2d 157 (Pa. Super 1967).

Petitioner did not meet his burden of proof to establish that any further adjustments to the bill were warranted. He provided no evidence to prove the water usage for the years in question was lower than the WRB's calculations, particularly when considering the application of zero usage policy which dropped the monthly billed usage to 400 cubic feet per month for 3 of the 4 years under appeal.

Petitioner insisted prior tenants in this property and tenants in other similar properties used less water. However, he did not offer any evidence of this assertion.

The WRB provided an account history showing actual usage for this property for years prior to 2008 and years subsequent to 2011. All of the actual readings presented showed varying amounts of usage, consistent with Petitioner's testimony of having different tenants throughout the years who could be presumed to use differing amounts of water, as different people will have different water usage habits.

In looking at this account history for both before and after the years under appeal, the WRB estimated usage was well within the actual recorded usage at the property.

Applying the zero usage policy was a reasonable accommodation by the City to accept responsibility for the malfunctioning equipment that caused Petitioner to be billed at zero usage for 4 years and to then receive a large delinquent bill covering these 4 years.

There was no dispute that water was used at the property during the period in question and occupied by tenants. If there were any vacancy periods, Petitioner did not give the TRB any proof.

The fact of the large bill received by Petitioner was the result of a bill that covered 4 years of usage and not due to billing for excessively high usage.

Therefore the decision of the TRB was that an adjustment to the bill was not warranted and no action was needed by the Board.

Concurred:

Nancy Kammerdeiner, Chair

Joseph Ferla

George Mathews