

October 20, 2011

IN RE: Jammacy Miller and Brenda Turner
DOCKET NO: 35WRMERZW8563

STATEMENT OF RECORD:

1. Brenda Turner (hereafter "Petitioner"), Executrix for the Estate of Jammacy Miller, filed a Petition for Appeal with the Tax Review Board on September 10, 2009 requesting review of the water/sewer bill for the property at 1242 North 12th St. Philadelphia, Pa..
2. A public hearing was held March 12, 2010 before a Tax Review Board Master. The decision of the Master, as ratified by the Tax Review Board, was to adjust the water usage for the period 1-8-01 through 7-3-01 based on 1000 cubic feet per month with payment arrangements to be entered into within 30 days of the date of the adjusted bill.
3. Petitioner requested and was granted a rehearing before the full Tax Review Board.
4. A public hearing before the Tax Review Board was held December 12, 2010. At the conclusion of the hearing, the Board announced its decision to deny Petitioner's request for an adjustment to the bill as reduced by the decision of the Master and to allow Petitioner 90 days to enter into payment arrangements.
5. Petitioner filed an appeal to the Court of Common Pleas.

STATEMENT OF FACTS:

1. Petitioner filed a Petition for Appeal of the water/sewer bill for the property at 1242 North 12th St. Philadelphia, Pa. requesting review of the water billing cycles from 1992-01 to 2009-09. The principal due was \$14,891.22, with penalty due as of the Tax Review Board hearing date of \$73.67, and lien charges of \$170, for a total due of \$15,140.89.
2. The property belonged to Petitioner's now deceased parents. She presented Letters Testamentary to establish she was the Executrix of her mother's estate and therefore had standing to file this appeal.
3. Petitioner's mother died in 2003 and her mother died in 2003.
4. Her sister, now deceased, handled their mother's affairs including bills associated with the property until 2002.
5. The house was vacant for the years in question, 2002 to 2009.
6. The bills issued after 2001 were for service charge only, reflecting no water usage at the property.
7. At the TRB Master's hearing, the decision of the Master, ratified by the TRB, was to reduce the usage and waive accrued penalties. The adjusted bill was in the amount of \$9319 as testified to by counsel for the City.

The 2001 usage was calculated at 1000 cubic feet per month following the Master's evaluation of the evidence presented at the Master hearing. All periods subsequent to 2001 were for service charge only with no charges for water usage.

8. Petitioner testified that a Discontinuance Permit had not been obtained from the City of Philadelphia Department of Licenses and Inspections (L&I) to discontinue water service to the property.

DISCUSSION:

Petitioner originally requested review of a bill that was in the amount of \$15,140.89. This amount was adjusted by the TRB to \$9319 by a combination of usage reduction and penalty waiver pursuant to a public hearing with a TRB Master.

Petitioner admitted that prior to 2002 the property was occupied by family members. Water was supplied by the City to the property and water was used by her mother, who owned the property and sister who lived at the property with her mother.

Following the public hearing on March 12, 2010, at the direction of the TRB Master the water usage calculation for January 8, 2001 through July 3, 2001 was reduced from monthly usage ranging from 3,800 cubic feet to 27,500 cubic feet to the amount of 1000 cubic feet of water per month and accrued penalties were abated.

In evaluating Petitioner's testimony as to the property's use and status at the hearing on December 12, 2010, it was the decision of the Board that the reduction in usage charges made by the Master was correct and that no further reductions were warranted based on the evidence presented.

To have the service charges discontinued where water may not be in use at a property, The Philadelphia Code Chapter 19-1601(1)(a) states "(a) customer may cause the Department to discontinue water and sewer service charges on his property, other than charges relating to storm water management and disposal, when he...secures a permit to discontinue water service from the Department of Licenses and Inspections...". Petitioner did not secure such a permit.

The Petitioner bears the burden of proof to establish by substantial evidence that the City assessment is inaccurate and requires adjustment by the TRB. Petitioner did not present evidence to establish that the reduced bill as presented was incorrect. While the Board could sympathize with the problem of having a family member act irresponsibly and fail to meet her obligations by not paying certain bills, this did not establish that the bills were incorrect or that the property owner, be it Petitioner or her mother's estate, should somehow not have to pay this bill for water that had been used at the property or for water service that had been made available by the City of Philadelphia.

Concurred:

T.David Williams, Esq., Chair
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