

19-14

6/30/2014

In Re: Jack Blumenthal t/a Jack B. Fabrics, Inc.

Docket No: 26LIMERZZ9240

Statement of Record:

1. Jack & Rose Blumenthal trading as Jack B. Fabrics, Inc. filed a Petition for Appeal with the Tax Review Board for review of a bill issued for work performed by the Philadelphia Department of Licenses & Inspections (L&I). The work on the bill was described as "Site improvement" to the property known as 748 South 4th St. Philadelphia, Pa. and was in the amount of \$74,439.12. The Petition for Appeal was filed on July 5, 2013.
2. A public hearing before the Tax Review Board was scheduled for December 19, 2013 and continued at Petitioner's request.
3. A public hearing was scheduled before the Tax Review Board for March 27, 2014. At the conclusion of the hearing, the Board announced its decision to adjust the bill as follows:

Reduce the principal to \$22,505.13; Abate all lien charges; Abate all interest; Abate all administrative charges.
4. The City of Philadelphia filed an appeal to the Court of Common Pleas.

Findings of Fact:

1. A Petition for Appeal was filed for the property known as 748 South 4th St. Philadelphia, Pa. by property owners Jack & Rose Blumenthal t/a Jack B. Fabrics, Inc. Petitioners' requested review of a bill received as a result of work done at the property by the Department of Licenses & Inspections (L&I) to assist the Philadelphia Fire Marshall in a fire investigation. The principal amount of the bill was \$61,519.33, with an administrative charge added by the City of \$12,919.19, interest as of the TRB hearing of \$4,094.10, and a lien charge of \$3,728.45, for a total due of \$82,261.67.
2. A major fire occurred at the property on April 6, 2013. A firefighter was killed and there was significant damage to the property. The fire was primarily in the rear of the building.
3. The site was sealed by the Fire Marshall with the assistance of the Philadelphia Police Department. An arson investigation ensued.
4. Petitioners did not have access to the property during the fire investigation which took about a week.
5. To assist with the investigation, L&I arranged for a contractor to bring in heavy equipment and remove parts of the exterior and interior of the building. Debris would be removed by the contractor and inspected by the Fire Marshall. Also debris was removed to provide better access into the fire area for the inspectors.

6. Petitioners were present during much of this time. The property was insured and Petitioners were prepared to enter the property and begin demolition as soon as access was granted by the City agencies.
7. At the conclusion of the Fire Marshall investigation, Petitioners paid a contractor approximately \$70,000 to get the necessary city permits, demolish the building and remove all debris from the site, stucco adjacent walls, etc. This work began on or about April 23, 2013.
8. Petitioners then received the City's bill, in excess of \$74,000, labeled "site improvement", which became the subject of this appeal before the TRB.
9. Petitioners asserted that while the City's contractor took out a lot of debris that the Fire Marshall sifted through, the debris was then dumped back into the property to be later hauled away by Petitioners' contractor.
10. The City asserted that its contractor hauled away the debris after the Fire Marshall released it. The L&I Building Inspector, Albert McCarthy, who was present during the Fire Marshall's investigation testified at the TRB hearing that the City, through its contractor, took away 135 tons of debris as part of its assist efforts. Much of this debris was removed to allow access to the area of the building where the fallen firefighter was fatally injured. The Fire Marshall was also looking through the debris to determine the cause or origin of the fire. The debris then had to be taken away from the site so as not to contaminate the site.
11. Petitioners were not found to be at fault for the fire.
12. Most of the investigation and assist from the L&I contractor focused on the back of the building, leaving the front façade intact. L&I did not remove the remaining parts of the building because they were not part of the investigation. However, at the conclusion of the investigation, a violation notice was issued to the owners to notify them that the building was considered a danger and they were required to take action, which they had been waiting to do throughout the investigation.
13. Mr. McCarthy explained that the term "site improvement" is used by L&I to generally describe work at a property that is "anything short of demolition ." See Notes of Testimony, 3-27-2014, page 10.
14. The City presented 2 invoices for the tonnage hauled away. The subtotals were equal to the total invoice or bill principal amount presented to Petitioners.
15. There were no photos from the City to document any debris that the City's contractor hauled away from the scene.
16. The City distinguished between the work done by the Fire Department and Fire Marshall and the work handled by L&I so that the Fire Marshall could complete its investigation. Petitioners were not billed for any work done by the Fire Department to extinguish the fire or for the investigation into the cause of the fire undertaken by the Fire Marshall. The bill in question is related only to the cost for removing debris that was required to enable the fire investigation to proceed.
17. The City representatives provided the TRB with bills corresponding to the work days by the L&I hired contractor. Each bill showed the hourly pricing rate for the various trucks, equipment and operators used for the emergency fire investigation and any hauling away of debris from the fire site for each day.

Next to the each item of equipment and operator, there were the hours worked or used that day, the hourly rate for the specific equipment and /or operator and then the total cost for that equipment and/or operator. There was a separate list for each day from Sunday April 7, 2013 through Friday April 12, 2013.

The bill for Sunday April 7 stated "double time" under the date and day.

18. In reviewing this bill as part of the hearing, TRB member Christian DiCicco questioned Mr. McCarthy for an explanation as to why the hourly rates noted on Sunday as double time were also the hourly rates listed on the weekdays when double time was not noted.

By way of example, as part of the list of workers and equipment for Sunday April 7, 2013, the invoice listed 9 hours of work for a foreman and utility truck at the rate of \$118 per hour.

The bill for Monday April 8, 2013 also listed an hourly rate of \$118 for a foreman and utility truck but did not label the rate as double time.

When questioned about what the double time billing rate and normal or straight time billing rate should be, Mr. McCarthy testified that in his opinion, the \$118 per hour should be considered double time and the "straight time would be \$59 per hour. That sounded "reasonable" to him. He confirmed that there were 5 days of billings provided for at the double time rate of \$118 that should have been at the straight or non-double time rate. Notes of Testimony, 3-27-14, Page 25.

Conclusions of Law:

Petitioners' requested a review by the Tax Review Board to determine their liability for a bill issued by the City of Philadelphia for work performed by the Department of Licenses & Inspections to assist the Fire Department in its investigation of a major fire at the property.

In reviewing the bill issued by L&I, it was admitted by the City that 5 days of billing by the outside contractor was erroneously calculated at what would be considered "double time" or twice what was expected for weekday work. In reviewing the bill submitted by the City, the TRB could see clearly that all 6 days of contractor work were billed at the same rates. Therefore as part of its decision to reduce the bill and by how much, the TRB assumed all rates billed were at the Sunday double time rate and recalculated the bill to reflect that 5 of the 6 days should not have been billed at the Sunday double time rate. By the City's own admission, the double time hourly rates which were the basis for all of the invoice totals should not have been the hourly rate to the city, then passed on to these Petitioners for 5 of the 6 days of their work.

In addition, the TRB abated the interest as it had been accruing solely as a result of Petitioners' decision to appeal the bill to the TRB. It was not disputed that Petitioners addressed the property issues and the bill quickly and without delay. Petitioners' should not be penalized with interest charges when they had a well founded basis for their timely appeal of this bill that was exorbitant due to significant double billing by the contractor that the city did not even notice when reviewing the invoice.

The administrative charge which is assessed by the city to cover its own costs in these matters was also abated by the TRB. It was the determination of the TRB that a significant portion of even the reduced charge was for work done to assist the Fire Department to investigate a fire that Petitioners were found to be in no way responsible. The contractor work was not directly related to demolition or clean up of the property. In addition, given the overlooked double billing for the work performed by the City contractor, it is questionable as to how much effort or assistance L&I provided to Petitioners for which they could claim reimbursement through their administrative charge added on to the bill.

Concurred:

Nancy Kammerdeiner, Chair

Christian DiCicco, Esq.

Joseph Ferla

George Mathew, CPA