

November 5, 2008

IN RE: **BUSTLETOWN APARTMENTS**
DOCKET NO: **35WRMERZW9708**

STATEMENT OF RECORD:

1. On November 16, 2007, a petition was filed with the Tax Review Board for review of the water/sewer bill issued to Bustletown Apartments (hereafter "Petitioner") for the property at 842-54 Red Lion Road Philadelphia, Pa. for the November 2007 billing cycle. This bill covered the period from March 1983 through October 11, 2007.
2. A public hearing before the Tax Review Board was held July 10, 2008. At the conclusion of the hearing, the Board issued its decision to abate all usage and service charges from 1993 through October 1992, and for the period from November 1992 to 2008 to credit any payments made by Petitioner that were credited to the fire service account for 9951-75 Bustleton Avenue Philadelphia, Pa. to Petitioner's account at 842-54 Red Lion Road, and to abate all accrued penalties.
3. The City of Philadelphia has appealed the decision of the Tax Review Board to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner owns the property at 842 to 854 Red Lion Rd., Phila, Pa. and owned the property for all years in question.
2. Petitioner petitioned for review of the water/sewer charge issued in the November 2007 water/sewer bill. The principle due was \$66,670.13, with penalty accrued of \$3,333.51 as of the Tax Review Board hearing on July 10, 2008. This bill represented usage covering the period March, 1983 to October 30, 2007, over 24 years.
3. During the 24 years in question, Petitioner was being billed, unknowingly, for the fire service for an adjacent property and had been making payments on those bills.
4. In October 2007, the Philadelphia Water Department came to the Petitioner's property to put in a new water meter, read the meter at the property and made the realization that the meter had not been read for the 24 year period.
5. Petitioner did not own the adjacent property that the bills covered.
6. There was no dispute that the Petitioner had paid bills received for the other property.
7. The Water Revenue Bureau (WRB) representatives testified that Petitioner's actual property account had been coded by the Bureau as vacant in 1983, and billing had

been suspended until the new meter was installed in 2007. There was no explanation available from the City as to why the property was listed as vacant or why the City had failed to revisit it over the course of the 24 years.

8. The owner of the Petitioner property testified that the property had been an occupied shopping center for the entire 24 years, and had never been a vacant property, nor would they have contacted the Water Revenue Bureau to have the property listed as vacant.
In all the years he had been receiving and paying the bills, he believed it to be for his property and had been completely unaware that the WRB considered his occupied shopping center to be vacant.
9. Petitioner testified that at some point it appeared that the bill sent to his property listed the Busleton Ave. property across the street from his property. Phone calls to the WRB did not provide any clarification and Petitioner continued to pay the bills.
10. Any payments made by Petitioner were not credited to Petitioner's account.
11. Petitioner requested that his payments be credited to his correct account and that it be permitted to pay the past 15 years of billings with the Water Revenue Bureau abating the prior 9 ½ years of billings, as permitted by The Philadelphia Code Chapter 19-1605.
12. The City could not establish, at the hearing, where the bills had been sent over the 24 year period, nor what payments it had received from Petitioner.
13. Petitioner provided copies of billings it received.

CONCLUSIONS OF LAW:

For the period March 1983 through October 2007, Petitioner operated a business at the property known as 842-54 Red Lion Road Philadelphia, Pa. The property had a properly installed water meter and water was used. The City of Philadelphia failed to meet its obligation to obtain water meter readings for this property for the entire 24 year period, instead sending Petitioner water bills that pertained to activity at a nearby property.

Petitioner made payments for the bills it received and these payments were not applied to its property. Payments made by Petitioner were incorrectly applied to a neighboring property to which Petitioner had no ownership interest or responsibility.

Petitioner accepted that the billings had been in error and requested that, as per The Philadelphia Code Chapter 19-1605, it be held responsible for the previous 15 years of water/sewer charges only, based on the monthly usage determined from the actual meter reading of October 11, 2007.

This provision in the Code provides that the “Department may waive any claim for delinquent water or sewer rent after the expiration of 15 years following the year in which such water or sewer rent becomes due.”

The Board accepted that Petitioner had met its burden to establish that it had met its responsibility to pay for water/sewer charges by making payments for the bills it received from the City and accepted its proposed solution. The Board issued its decision to abate all charges for the period from 1983 through November 1992, to charge Petitioner based on the meter reading for the period from November 1992 to the hearing date, to credit all payments made by Petitioner to its account and to abate accrued penalties.

The WRB position was that Petitioner was responsible for full payment for the 24 year period and that the WRB bore no responsibility for its failure to read the meter, its failure to correctly bill either of the properties involved or its failure to correctly apply any of Petitioner’s payments or to be able to account for them so that Petitioner could at least know where its money went.

It was also the position of the City that because the meter had been unread for 24 years, any penalties assessed on the 24 year delinquency would only begin to accrue after the first billing cycle when the 24 year delinquency first appeared on the bill. Therefore the first bill with the more than \$66,000 delinquent amount of principle should have had \$0 penalties applied. AT the public hearing, this bill was presented with over \$3000 in penalties assessed.

The Tax Review Board abated all penalties accrued against this account, finding Petitioner “acted in good faith, without negligence and no intent to defraud the city.” The Philadelphia Code Chapter 19-1705(2). Petitioner paid the bills sent to it during the period in question, and came forward promptly to attempt to resolve the matter when notified. Penalties were assessed before petitioner even had an opportunity to respond.

Concurred:

Monique DeLapenha, Esq., Chair
Joseph Ferla
Lavon Wells-Chancy
T. David Williams
Beatrice Turner