

November 24, 2015

IN RE: James Campenella

Docket#: 35WRMERZW5538

Statement of Record:

- 1) James Campenella (hereafter "Petitioner") filed a Petition for Review with the Tax Review Board (TRB) on April 14, 2014 requesting review of a Water Revenue Bureau (WRB) bill for the property located at 928 Christian St. Philadelphia, PA.
- 2) A public hearing before a TRB Master was held August 4, 2014. The decision of the Master, as ratified by the TRB, was to adjust the water usage for the period January 19, 2001 through November 6, 2013 based on 4200 cubic feet per month, direct the department to apply its zero usage policy, and provide 30 days from the adjusted bill date for Petitioner to make payment arrangements.
- 3) Petitioner requested and was granted a rehearing before the full TRB.
- 4) A public hearing was held before the TRB on March 31, 2015. At the conclusion of the hearing the Board announced its decision to maintain the decision from the hearing on August 4, 2014 to adjust water usage for the period January 19, 2001 through November 6, 2013 based on 4200 cubic feet per month, direct the WRB to apply its zero usage policy and provide 30 days from the new bill date to arrange installments.
- 5) Petitioner filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Fact:

- 1) Petitioner owned the property at 928 Christian St. Philadelphia, PA during all periods in question.
- 2) Petitioner received and paid bills from the Philadelphia Water Revenue Bureau for water service to the property from 2001-2013. These bills did not contain any charges for water usage although the property was occupied and water was being used.
- 3) On November 6, 2013, a Philadelphia Water Department representative entered the property to install a new water meter in the property. At that time it was discovered that the water meter that was in the property during the years now under appeal had not been registering the property's water usage.
- 4) A review of the Water/Sewer bills by WRB revealed that the property had not been billed for water usage since January 19, 2001. All of the bills paid by Petitioner through the years had been for service & stormwater charges only.
- 5) After monitoring the water usage recorded by the meter installed on November 6, 2013 from that date through January 15, 2014, WRB used an average of this actual monthly usage to

determine a usage bill for the property dating back to 2001. Petitioner then received a bill for the almost 14 years of usage that had not been billed.

- 6) Petitioner's testimony was inconsistent as to whether the bills prior to the meter change were higher or lower than the bills that followed the installation of the new meter. He did not provide any documentation to dispute the WRB usage information and billing or provide his own usage or property information either by way of testimony or documentation.
- 7) The property is an old church building converted into 8 apartment units.
- 8) Petitioner in reviewing water/sewer bills for the time period in question failed to recognize that he was being billed for service & stormwater charges only, with zero usage added to the bills.

Discussion:

Philadelphia Water Department (PWD) regulations provide as follows:

§305.0 BILLING FOR WATER, SEWER AND STORMWATER SERVICE 305.1 Billing.

(a) Estimated Usage and Billing. When an accurate meter 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. Where the water usage is estimated because of inability to read the meter, any necessary corrections shall be made at the time of the next actual meter reading, or when appropriate.

In this appeal, Petitioner paid each bill as it arrived, but the bills for the period in question did not contain charges for water usage. Petitioner did not dispute that water was used at the property during the years under appeal.

As there were no actual readings for over 12 years, the department took readings for the months following the installation of the new meter and used those readings as representative of water usage at the property for all years in dispute. Based on these new meter readings after November 6, 2013, a bill was prepared for the period from January 19, 2001 to November 6, 2013 and sent to the Petitioner. The new bill was issued on February 11, 2014.

Petitioner filed this Tax Review Board petition and had his first hearing before a Master on August 4, 2014. As a result of the Master hearing, using the estimated usage from the 1/15/14 water meter reading, WRB applied its "zero usage policy" as follows:

The period 1/19/2001 to 11/6/2013 was rebilled at one-half of the usage estimated; for the period from 11/6/2013 to 7/6/2014, 100% of the usage was abated.

Recalculation of remaining usage, at the Master's decision was of 4200 cubic feet per month.

These adjustments resulted in a credit of \$15,177.95 and a remaining principal balance of \$13,763.73, with no penalties accrued.

In reviewing the evidence, the TRB reviewed, among other things, the account history both prior to and subsequent to the new meter installation on November 6, 2013.

For the period from November 6, 2013 to January 15, 2014, the reading for water usage averaged approximately 5666 cubic feet per month. However, actual readings for subsequent months dropped below that average.

As there is really no way for the Petitioner, the WRB or the TRB to be completely sure of the actual water usage for almost 13 years, the TRB determined the lower estimate of 4200 cubic feet per month was a more fair and accurate representative figure for calculating Petitioner's water usage.

The WRB's own "zero usage policy" also provided a significant reduction to Petitioner, and in a sense resulted in a shared burden between the City and the Petitioner for the failures of both parties to recognize the problem over such a long period of time.

The decision of the TRB provided substantial benefit to the Petitioner, resulting in an abatement of more than half of the bill in dispute.

The burden of proof in an administrative hearing, such as the TRB proceeding, is on the petitioning party to establish by substantial evidence that he is entitled to the relief sought. Commonwealth of PA, PA Game Commission v. Commonwealth of PA, Dept. of Environmental Resources, Ganzer, Sand & Gravel, Inc. and Hammermill Paper Co., 97 Pa. Cmwlth 78, 90, 509 A.2d 877,884 (1986) aff'd, 521 Pa. 121, 555 A.2d 812 (1989). Petitioner failed to provide evidence to prove that any further reduction or a full waiver of the bill was warranted. He did not provide testimony or documentation to establish that the bills he had paid from 2001 through 2013 included an amount for water usage and so the bill in question was a duplication nor did he provide evidence to establish an amount of usage other than the WRB water readings from November 2013 through January 2014 that should have been used to calculate the usage estimated for the 2001 through 2013 period.

Concurred:

Nancy Kammerdeiner, Chair

Joseph Ferla

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George Mathews

Martin Bednarek