

September 16, 2012

In Re: Marquerite Dutton

Docket Nos: 36REINPZZ2699, 36REINPZZ2700, 36REINPZZ2701,

STATEMENT OF RECORD:

1. Marguerite Dutton (hereafter "Petitioner") filed 3 Petitions for Appeal with the Tax Review Board on July 7, 2008 requesting abatement of interest and penalties accrued against delinquent Real Estate Taxes for properties she owned at 5601 Warrington Ave., 48 North 51st St., and 5518 Market St., all located in the city of Philadelphia.
2. A public hearing before a Tax Review Board Master was scheduled for each property for September 11, 2008. These matters were continued for 60 days at the hearing for Petitioner to provide documents regarding a bankruptcy settlement.
3. A public hearing before a Tax Review Board Master was scheduled for each property for December 4, 2008 and continued at Petitioner's request.
4. A public hearing before a Tax Review Board Master was scheduled for each property for July 27, 2009 and continued at Petitioner's request.
5. A public hearing before a Tax Review Board Master was scheduled for each property for November 29, 2009. Petitioner's request for a continuance of this hearing was denied. The public hearing was held and the decision of the Master, as ratified by the Tax Review Board, was to deny the petitions.
6. Petitioner requested and was granted a rehearing before the full Tax Review Board.
7. A public hearing before the Tax Review Board was scheduled for each property for April 7, 2011 and continued for an update on Petitioner's bankruptcy filing at the next listing.
8. A public hearing before the Tax Review Board was scheduled for each property for October 18, 2011 and continued for the parties to continue settlement discussions.
9. A public hearing before the Tax Review Board was scheduled for each property for March 20, 2012. The decision of the Tax Review Board was to deny the Petition due to Petitioner's failure to appear at the hearing.
10. Petitioner requested and was granted a rehearing.
11. A public hearing before the Tax Review Board was scheduled for each property for July 17, 2012. At the conclusion of the hearing, the tax review Board announced its decision to deny each of the petitions.
12. Petitioner has appealed to the Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner was represented at the Tax Review Board (TRB) hearings by her son, Kelly Dutton.
2. Petitioner's appeals were related to 3 properties she owns within the City of Philadelphia. She requested waiver of interest and penalties accrued against delinquent Real Estate taxes as follows:
 - a. TRB Docket No: 36REINPZZ2966: 5601 Warrington Avenue for the tax years 1991 through 2007, with principle due of \$9327.62, interest of \$10,765.04 and penalties of \$652.90 as of the final TRB hearing date, lien charges of \$330, and legal fees of \$1414.54 for a total due of \$22,490.10;
 - b. TRB Docket No: 36REINPZZ2700: 48 North 51st St. for the tax years 1981 through 2007, with principle due of \$13,213.22, interest of \$18381.07 and penalties of \$924.99 as of the final TRB hearing date, lien charges of \$430, and legal fees of \$1,229.08 for a total due of \$34,178.36; and
 - c. TRB Docket No: 36REINPZZ2701: 5518 MARKET St. for the tax years 1978 through 1985 and 1987 through 2007, with principle due of \$10,938.48, interest of \$14,921.17 and penalties of \$765.72 as of the final TRB hearing date, lien charges of \$443, and legal fees of \$955.97, for a total due of \$28,034.34.
3. Petitioner owns 3 other properties in Philadelphia, not under appeal in this matter, 2 of which also had delinquent Real Estate Tax balances.
4. As explained by her son, Petitioner was seeking relief from the interest and penalties at this time because she had a purchase offer of \$100,000 for one of the properties not under appeal and would use that money to pay off the balances on all the properties. His purpose in coming to the TRB was to try to get as much "knocked off of these three properties" as possible before paying them off. He came to see if he could "save some money on this interest, and the penalties, and legal fees...". See Notes of Testimony, July 17, 2012, Pages 8 and 10.
5. The properties at issue are commercial properties, a combination of store fronts and apartments.
6. There may have been tenants in some of the properties during some of the periods at issue.
7. The properties were conveyed to petitioner in 2001 from her son. At the time of conveyance there were delinquent Real Estate Taxes on all 3 properties.
8. Petitioner made no Real Estate Tax payments on any of the properties from the time of her purchase in 2001 to the time of the TRB hearing, more than a decade. Mr. Dutton testified that no payments were made because Petitioner disagreed with the City policy to pay off the earliest open balances first and to pro-rate payments among tax principle, interest and penalties.

CONCLUSIONS OF LAW:

The Philadelphia Code Chapter 19-1705(2) provides that "(u)pon the filing of any petition for the waiver of interest and penalties accruing upon any unpaid money or claim collectible by the Department of Revenue, for or on behalf of the City or the School District of Philadelphia, the

Tax Review Board may abate in whole or in part interest or penalties, or both, where in the opinion of the Board the petitioner acted in good faith, without negligence and no intent to defraud.”

The 3 properties under appeal have been owned by Petitioner for well over 10 years, and by her son before she took ownership in 2001. The delinquent taxes that are due go back more than 20 years for each property. Petitioner has made no payments throughout the many years she has been the property owner. By her son’s admission, the reason for the current TRB petition was that they have a buyer for a different property, also with tax delinquencies, and were looking to see how much they could save on what is owed before paying off the balances with the sales proceeds.

The taxpayer has not exhibited good faith towards the City in addressing the delinquent Real Estate Taxes in that she has never made a payment in any of the years that she has owned the properties. These are commercial properties, with at least some capability of producing income, and with some tenants from time to time through the years.

That the Petitioner has chosen now to come forward because she has a buyer for a separate property and would like to have the City help her by reducing these delinquencies so as to maximize her share of the sale price did not meet the standard used by the Tax Review Board for abating all or part of the accrued interest and penalties. The City is not a business partner waiting to share in the fortune or misfortune of property owners, particularly property owners with multiple properties and multiple delinquencies. Real Estate Taxes are assessed and due each and every year and are not contingent on the business arrangements of the property owners as they buy and sell properties.

Therefore, the decision of the TRB was to deny the petition.

Concurred:

T.David Williams, Esq., Chair

Joseph Ferla

Nancy Kammerdeiner

LaVon Wells-Chancy

George Mathew

