

April 9, 2003

IN RE: ENOCH JEROME
1423 WEST ERIE AVENUE
DOCKET NO: 35WRMERZY4367
35WRREFZZ9952

STATEMENT OF RECORD:

1. Enoch Jerome (hereafter "Petitioner") is the owner of the property at 1423 West Erie Avenue.
2. Petitioner has filed three (3) petitions with the Tax Review Board ("TRB") requesting alternately review and refund for various water/sewer bills connected to this property. Petitioner originally filed a petition for review on May 1, 1992 requesting review of the water/sewer bills for the period January 23, 1992 to April 13, 1992. Petitioner next filed a petition on November 29, 1993. On this petition he checked off that he was filing the petition as a petition for review, petition for refund and petition for waiver of interest and penalty. On this petition he requested action with regard to the water/sewer bill from 1986 to 1992 and a water service restoration fee of \$40 and a water meter test. Petitioner filed a Petition for Refund Appeal for the 1986 to 1993 water/sewer bills on June 25, 2002. Attached to this petition was a copy of the petition dated May 1, 1992 and documentation pertaining to that petition. This petition was returned to Petitioner as being filed untimely i.e. beyond 90 days from the date of the refund denial letter, the time limit set by The Philadelphia Code Chapter 19-1703. Petitioner also filed 27 pages of documents related to multiple properties including 1423 West Erie Ave on July 1, 2002. As part of this packet of materials, Petitioner asserted that the Tax Review Board had never provided a public hearing or in any way acted on the first petitions filed in 1992 and 1993 and therefore he was coming forward in 2002 to request that the Tax Review Board schedule a hearing.
3. The Tax Review Board held a public hearing on November 5, 2002 to hear Petitioner's claims. At the close of the hearing, the Board announced its decision to deny the petition as having been adjudicated at a previous Tax Review Board hearing on May 18, 1993.
4. Petitioner has appealed to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. At the 2002 TRB hearing, it was Petitioner's claim that no previous hearings had occurred regarding his water/sewer bill petitions for this property.
2. The TRB records for the years 1992 and 1993 were no longer available.

3. The Water Revenue Bureau (“Bureau”) representative testified as to the records of the Bureau. The Bureau’s documents indicated that a Tax Review Board hearing occurred May 18, 1993 at which Petitioner was present. The decision of the Board following that hearing was to deny the petition. The documentation provided was a public hearing letter from the TRB informing Petitioner of the date, time and place for the TRB hearing. It was addressed to Petitioner at the correct post office box number. Also provided was the account history prepared by the Bureau specifically for the 1983 hearing. This account history indicated the date of the hearing as May 18, 1993. It had an unsigned, handwritten notation stating that the taxpayer had appeared and the TRB had denied the petition. The Bureau’s computer records also indicated the Board’s decision as denied.

4. In response to questions by Chairman Saidel taken from the 27 page document provided by Petitioner, Petitioner listed nine other properties that he owns and for which he had also filed TRB petitions to challenge water/sewer bills.

5. The document provided by Petitioner contains a copy of an appeal petition filed by Petitioner for the property 1519 Swain St. In the body of the petition is an admission that Petitioner was in attendance at a Tax Review Board hearing on May 18, 1993.

CONCLUSIONS OF LAW:

The City of Philadelphia Finance Department record retention policy allows for the disposal of TRB hearing related files two (2) years after the close of the City Controller audit of the department for the hearing year. Therefore the TRB records for 1992 and 1993 had been disposed.

Due to the fact that the 1992 and 1993 TRB records for this case no longer existed and in an attempt to be fair to this petitioner, the Tax Review Board granted a hearing.

There was some confusion at the November 5, 2002 hearing as to which of the petitions was to be reviewed by the Board. The Board’s docket listed the petition filed on June 25, 2002 with the TRB docket number ending in 4367. Petitioner’s attorney, in his opening remarks, referred to the petition with the docket number ending in 9952, one of the other petitions filed by Petitioner for this property.

The Board decided that it would consolidate and review all matters petitioned for this property by Petitioner in an attempt to dispose of any outstanding issues, with the preliminary issue being whether the matters had been adjudicated previously by the TRB.

At the hearing, the TRB reviewed material attached to Petitioner’s various petitions, as well as testimony from the WRB representative as to information in their records.

Petitioner testified that he had not received any previous hearing with regard to this property. Petitioner also testified as to the perceived problems at the property with the water meter and with reconciling his payments for water bills.

The conclusion of the TRB was that Petitioner had been afforded a hearing on these matters on May 18, 1993. At that time the TRB had rendered a decision to deny the petition. In addition, by waiting 10 years to come forward to assert that he had not been afforded his right to a hearing, Petitioner had prejudiced the City in its ability to present its case because the time delay had resulted in the disposal of many of the records needed. Therefore the TRB gave considerable weight to the few records that were still available, both paper and computer.

Petitioner was not entitled to a second review of issues already decided at that TRB hearing.

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

Concurred:

Daniel Saidel, Esq., Chair

Derrick Johnson, Vice Chair

Joseph Ferla