

15-11

May 7, 2015

IN RE: Jacob D. Kanofsky & Alvin S. Kanofsky
DOCKET NUMBER: 26NUMERZZ8117

The Tax Review Board Opinion dated October 27, 2011 with Findings of Fact and Conclusions of Law is hereby incorporated by reference.

STATEMENT OF RECORD:

1. The appeal of Jacob D. Kanofsky and Alvin S. Kanofsky was remanded to the Court of Common Pleas to remand to the Tax Review Board via the Commonwealth Court of Pennsylvania through its Opinion dated May 23, 2015. The Tax Review Board (TRB) was directed on remand to "review the record it created and render factual findings that are supported by substantial evidence in that record " for the purpose of rendering a decision as to what adjustment, if any , should be made to the principal amount of the bill under appeal.
2. On December 11, 2014, the TRB held a hearing that reviewed the procedural posture of the case and the Commonwealth Court decision directing the TRB to review the record created at its previous hearing on July 14, 2011. The TRB then took the matter under advisement to consider the sole issue on remand which was to determine the correct amount for any reduction in the principal amount of the bill as supported by substantial evidence in the record.
3. A public hearing was held by the TRB on March 24, 2015 for the purpose of announcing the following decision: Reduce the principal due to \$6970.30, recalculate lien charge, interest and administrative charge based on the reduced principal; abate 50% of recalculated lien charge and 50% of recalculated interest; Petitioner to arrange for installment payments within 30 days of the revised bill date.
4. Petitioner filed an appeal to the Court of Common Pleas.

FINDINGS OF FACT:

1. On remand from the Pennsylvania Commonwealth Court, the TRB reviewed the record created at the public hearing on July 14, 2011, including all documents submitted by both parties detailing the state of property and the City's work records.
2. Testimony and records provided by the City of clean and seal work totaling over \$25,000 in labor and material costs for the property at 1904 Conlyn St. Philadelphia, Pa. were inconsistent and unclear.
3. This property was a small rowhouse. Photographs provided by the City detailed the condition and contents of the property as being in violation of The Philadelphia Code requirements to maintain all properties in a clean and safe condition.

4. There was no dispute that the City provided clean and seal services to the property. However testimony by representatives of the City of Philadelphia Department of Licenses & Inspections (L&I) was inconsistent as to the number of days of work at the property. There was testimony that the work took place over several weeks. Yet, the L&I Worksheet and Bill introduced by the City listed 3 consecutive days of work.
5. The L&I representative at the TRB hearing testified that when on this type of work detail they work "4 people for labor and 1 driver". See N.T., page 21.
6. The worksheet listed 8 worker names, but then calculated 440 hours plus 10 hours more with no explanation on the worksheet or by testimony of how those hours were determined, despite questioning by the Board members.
7. The City's Worksheet and Bill listed 9 trucks and 9 drivers for a total of 202.5 hours. This could not be substantiated or supported based on 3 work days of activity with 8 workers. Based on the City's testimony of teams of 4 workers and 1 driver, 2 drivers would have been required for the work site. This was supported by the connotation on the Worksheet and Bill of a "second vehicle".
8. Based on the City's records and the testimony provided at the hearing, the TRB determined the following:
 - a. The property clean out occurred over 3 days of work, for 8 hours each day. The work took place January 11, 2010 through January 13, 2010.
 - b. The City provided the names of 8 workers at a cost of \$17.99 per hour for a total of 192 hours over 3 days at a cost of \$3454.08.
 - c. Two trucks were utilized for the 3 day work period at a cost of \$40 per hour for 3 days or 24 hours each at a cost of \$1,920.
 - d. Two truck drivers for the 3 day period at \$19.98 per hour at a cost of \$959.04.
 - e. The workers collected and disposed of 670 bags of trash for a cost of \$325.
 - f. Material costs were \$247.90 for bags and \$64.28 for lumber as provided on the City's bill and supported by photos of the house and the trash contents.Total cost for the above charges is \$6970.30.

CONCLUSIONS :

Based on the directions from the Pennsylvania Commonwealth Court on remand to the Tax Review Board for a finding of Petitioner's liability supported by substantial evidence in the record, the TRB reviewed all testimony and documentation submitted by the parties.

There was no dispute that the city had done some level of work to clean and seal the property.

Using the city's own records and the testimony of the parties, the TRB determined that the work performed at the property took place over 3 days.

While the Worksheet and Bill used varying numbers for how many workers participated, up to 20, there were only 8 specific employee names listed. When questioned by the TRB, L&I representatives did not adequately explain the total calculations on the worksheet and bill for the number of workers at the

15-11

May 7, 2015

IN RE: Jacob D. Kanofsky & Alvin S. Kanofsky
DOCKET NUMBER: 26NUMERZZ8117

The Tax Review Board Opinion dated October 27, 2011 with Findings of Fact and Conclusions of Law is hereby incorporated by reference.

STATEMENT OF RECORD:

1. The appeal of Jacob D. Kanofsky and Alvin S. Kanofsky was remanded to the Court of Common Pleas to remand to the Tax Review Board via the Commonwealth Court of Pennsylvania through its Opinion dated May 23, 2015. The Tax Review Board (TRB) was directed on remand to "review the record it created and render factual findings that are supported by substantial evidence in that record " for the purpose of rendering a decision as to what adjustment, if any , should be made to the principal amount of the bill under appeal.
2. On December 11, 2014, the TRB held a hearing that reviewed the procedural posture of the case and the Commonwealth Court decision directing the TRB to review the record created at its previous hearing on July 14, 2011. The TRB then took the matter under advisement to consider the sole issue on remand which was to determine the correct amount for any reduction in the principal amount of the bill as supported by substantial evidence in the record.
3. A public hearing was held by the TRB on March 24, 2015 for the purpose of announcing the following decision: Reduce the principal due to \$6970.30, recalculate lien charge, interest and administrative charge based on the reduced principal; abate 50% of recalculated lien charge and 50% of recalculated interest; Petitioner to arrange for installment payments within 30 days of the revised bill date.
4. Petitioner filed an appeal to the Court of Common Pleas.

FINDINGS OF FACT:

1. On remand from the Pennsylvania Commonwealth Court, the TRB reviewed the record created at the public hearing on July 14, 2011, including all documents submitted by both parties detailing the state of property and the City's work records.
2. Testimony and records provided by the City of clean and seal work totaling over \$25,000 in labor and material costs for the property at 1904 Conlyn St. Philadelphia, Pa. were inconsistent and unclear.
3. This property was a small rowhouse. Photographs provided by the City detailed the condition and contents of the property as being in violation of The Philadelphia Code requirements to maintain all properties in a clean and safe condition.

4. There was no dispute that the City provided clean and seal services to the property. However testimony by representatives of the City of Philadelphia Department of Licenses & Inspections (L&I) was inconsistent as to the number of days of work at the property. There was testimony that the work took place over several weeks. Yet, the L&I Worksheet and Bill introduced by the City listed 3 consecutive days of work.
5. The L&I representative at the TRB hearing testified that when on this type of work detail they work "4 people for labor and 1 driver". See N.T., page 21.
6. The worksheet listed 8 worker names, but then calculated 440 hours plus 10 hours more with no explanation on the worksheet or by testimony of how those hours were determined, despite questioning by the Board members.
7. The City's Worksheet and Bill listed 9 trucks and 9 drivers for a total of 202.5 hours. This could not be substantiated or supported based on 3 work days of activity with 8 workers. Based on the City's testimony of teams of 4 workers and 1 driver, 2 drivers would have been required for the work site. This was supported by the connotation on the Worksheet and Bill of a "second vehicle".
8. Based on the City's records and the testimony provided at the hearing, the TRB determined the following:
 - a. The property clean out occurred over 3 days of work, for 8 hours each day. The work took place January 11, 2010 through January 13, 2010.
 - b. The City provided the names of 8 workers at a cost of \$17.99 per hour for a total of 192 hours over 3 days at a cost of \$3454.08.
 - c. Two trucks were utilized for the 3 day work period at a cost of \$40 per hour for 3 days or 24 hours each at a cost of \$1,920.
 - d. Two truck drivers for the 3 day period at \$19.98 per hour at a cost of \$959.04.
 - e. The workers collected and disposed of 670 bags of trash for a cost of \$325.
 - f. Material costs were \$247.90 for bags and \$64.28 for lumber as provided on the City's bill and supported by photos of the house and the trash contents.Total cost for the above charges is \$6970.30.

CONCLUSIONS :

Based on the directions from the Pennsylvania Commonwealth Court on remand to the Tax Review Board for a finding of Petitioner's liability supported by substantial evidence in the record, the TRB reviewed all testimony and documentation submitted by the parties.

There was no dispute that the city had done some level of work to clean and seal the property.

Using the city's own records and the testimony of the parties, the TRB determined that the work performed at the property took place over 3 days.

While the Worksheet and Bill used varying numbers for how many workers participated, up to 20, there were only 8 specific employee names listed. When questioned by the TRB, L&I representatives did not adequately explain the total calculations on the worksheet and bill for the number of workers at the

property or the number of hours worked. For example, there were questions as to why the number of abatement workers listed was 20 when only 8 names were listed as working on the job; and why was there testimony that the work took place over several weeks when the worksheet and bill listed 3 specific and consecutive days.

The testimony of city representatives was inconsistent with the bill and the bill itself appeared to have internal inconsistencies.

The Board reconciled the conflicting information as follows using both the testimony and L&I's Worksheet and Bill.

The TRB determined that the correct number of workers on this abatement project was 8, as there were 8 specific names listed on the Worksheet and Bill. There was no evidence to show that any additional abatement workers were assigned

There was testimony that work teams of 4 laborers and 1 driver were assigned by L&I to abatement projects. The TRB concluded this team model would require 2 truck drivers for the 8 laborers. This was consistent with the worksheet designation of a "Second Vehicle". Therefore, the Board determined that Petitioner should be charged for 2 drivers and 2 trucks for the 3 day work period.

The TRB used the hourly rates provided by the city to calculate the costs for the workers, drivers and trucks. In addition, the TRB accepted the city's cost for supplies as being consistent with the description and photographs of the condition and contents of the property.

These findings when calculated with the city's costs for workers, drivers, trucks and supplies totaled \$6,970.30.

The decision of the TRB was to reduce the principal due to this \$6970.30 and direct L&I to recalculate all ancillary charges consistent with this reduced principal amount.

The Tax Review Board has the authority to abate interest and penalty when in the opinion of the Board "the petitioner acted in good faith, without negligence and no intent to defraud". The Philadelphia Code Chapter 19-1705(2).

As stated in the TRB Opinion of October 27, 2011, Petitioner and his brother did try to maintain the property. He testified that he did not recall receiving the Notice of Violation in this instance. There was evidence of past compliance to substantiate Petitioners' efforts to maintain the property.

Therefore, the TRB abated ½ of the interest charges and ½ of the lien charges accrued on the recalculated principal amount.

Concurred:
Nancy Kammerdeiner, Chair
Joseph Ferla
Christian DiCicco, Esq.
George Mathew, CPA

October 27, 2011

In Re: Jacob Kanofsky/Estate of Philip Kanofsky
Docket No: 26NUMERZZ8117

STATEMENT OF RECORD:

1. Jacob Kanofsky (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board on April 1, 2010 requesting review of a bill issued by the City of Philadelphia Department of Licenses and Inspections (L&I) for the property located at 1904 Conlyn St. Philadelphia, Pa.
2. A public hearing was scheduled for July 29, 2010 and continued at Petitioner's request.
3. A public hearing was scheduled for May 19, 2011 and continued at Petitioner's request.
4. A public hearing was held on July 14, 2011 following which the Tax Review Board announced its decision to reduce the principal due by 50% and abate 100% of the administrative costs, accrued interest and lien charges.
5. Petitioner appealed the Tax Review Board decision to the Philadelphia Court of Common Pleas.

STATEMENT OF FACTS:

1. Petitioner requested a review of a nuisance abatement bill issued by the City of Philadelphia Department of Licenses and Inspections (L&I) for cleaning and sealing the property at 1904 Conlyn St. Philadelphia, Pa. The costs associated with this bill were principal of \$20,882.99, administrative costs of \$4,385.43, interest accrued as of the TRB hearing date of \$2,147.78, and lien charges of \$1269.92, for a total due of \$28,686.12.
2. The property belonged to Petitioner's father who has been deceased since 1997. Since that time, Petitioner had assumed responsibility for taxes and maintenance of the property.
3. The property has been vacant since 1997.
4. Petitioner testified that he and his brother visited the property from time to time and took care of keeping the property clean.
5. The City of Philadelphia sent a Notice of Violation on December 31, 2009 declaring the property to be unsafe. The notice was sent to "Philip Kanofsky and Mollie" at Petitioners acknowledged mailing address.
6. The Violation Notice stated that the property was inspected and determined to be in violation of the noted sections of The Philadelphia Code and stated that failure to comply with the notice could result in the City proceeding to undertake the required repairs and billing the owner for costs incurred.
7. The violations cited in the notice were failure to obtain a license for a vacant property, unsecured openings accessible to trespass, and unsafe conditions in accordance with the Philadelphia Property Maintenance Code. See City Exhibit 5.
8. There was no Vacant Property License on file at L&I to direct the department to any other responsible party or mailing list. Petitioner admitted to not having this license.

9. Photos taken of the property's interior prior to the City's work and provided by the City showed piles of trash, books and household items throughout the rooms. See City Exhibit 7
10. Photos taken by the City after the clean and seal work showed the rooms and closets free of trash and debris. See City Exhibit 8.
11. Petitioner testified that he did not recall receiving this Notice of Violation. He stated that he had received other such notices in the past and had complied at those times. The Notice of Violation of December 31, 2009 did note that a violation related to "weeds or plant growth in excess of 10 inches" had a status of "complied" and was probably referring to a prior Notice of Violation issued on July 13, 2009. See City Exhibit 4.
12. Petitioner did not produce evidence to dispute the other violations. He questioned the large dollar amount of the bill for a property with one small house.
13. The City provided testimony by the L&I foreman for the work performed. He testified that the interior of the property was cleaned out due to the large amount of materials inside that created a fire hazard.
14. The TRB reviewed the Abatement of Nuisance Worksheet and Bill which indicated work dates of January 11, 12, and 13, 2010, and indicated that 9 trucks with 9 drivers spent 202.5 work hours, and 20 abatement workers provided 450 hours of laborer. See City of Philadelphia Exhibit 2.
15. The TRB questioned the computations on the bill as the calculations did not all seem consistent or easily understandable, particularly with regard to the actual number of workers and hours worked. There was a column noting 20 workers and a column noting 10 workers, with no clear explanation as to this discrepancy. There were only 8 worker's names listed on the work sheet but 20 workers noted when hours worked were calculated. There was no explanation provided as to how the workers were counted for the 3 different work days. Similarly, there were columns that noted 9 drivers and 9 trucks and then columns noting 4.5 drivers and 4.5 trucks. When the bill was calculated by multiplying the number of hours worked with the numbers of drivers and trucks, the higher numbers of 9 trucks and 9 drivers were used.

CONCLUSIONS OF LAW:

The Philadelphia Property Maintenance Code provides that "(a)ll vacant premises shall be maintained in a clean, safe, secure and sanitary condition as provided in this Chapter generally and in this Section specifically, so as not to become unsafe or otherwise adversely affect the public health or safety. **PM-306.1**

"The owner of any vacant building shall keep the interior and exterior of the premises free of garbage and rubbish. The owner of any vacant building shall keep all doors, windows and openings from the roof or other areas in good repair. Where such doors or windows or entrance to openings are readily accessible to trespassers, they shall be kept securely locked, fastened or otherwise secured..." **PM-306.2**

“If the owner does not comply with the order of the Department to correct the conditions prohibited by this Section, the Department is authorized to correct the conditions or demolish the building with its own forces or by contract and charge the costs thereof to the owner, and with the approval of the Law Department, collect the costs, including administrative costs, by lien, or otherwise.” **PM-306.6**

It was clear from the photographs provided by the City that Petitioner’s property was in violation of the requirement that vacant properties be kept in a cleaned and sealed condition.

The Violation Notice provided was mailed to Petitioner’s address with the violations listed and the requirement to repair and bring the building into compliance with the Philadelphia Property Maintenance Code. The Notice also stated that failure to comply would permit the City to take actions as necessary and bill the owner for all costs incurred.

Therefore the decision of the Tax Review Board was that Petitioner was responsible for costs incurred by the City.

Petitioner questioned the large dollar amount of the bill and scope of the work relative to the size of the property- a small house.

When reviewing the Abatement of Nuisance Worksheet and Bill, the TRB found it to be inconsistencies that the City did not explain. The initial testimony was the work took 2 to 3 weeks (Notes of Testimony, page 15) The document and subsequent testimony (N.T. page 23) clarified that the work only took 3 days. This subsequent testimony was those days were over 2 to 3 weeks, while the bill showed 3 days in a row.

The rows with the cost calculations had columns that, again, could not be adequately explained to the TRB. For example, why does one column note 20 workers, another column note 10 workers, and 8 names appear on the worker list?

The method of calculation was also confusing and unclear from both the worksheet and the explanation at the hearing.

The Tax Review Board has the authority to abate interest and penalty when in the opinion of the Board “where in the opinion of the Board the petitioner acted in good faith, without negligence and no intent to defraud”. The Philadelphia Code Chapter 19-1705(2).

Petitioner’s testimony was that he and his brother tried to keep the property maintained. In this particular instance he would have responded and complied but he did not recall receiving this specific Notice of Violation, although he had received others in the past. There was evidence of past compliance to substantiate that Petitioner made an effort to maintain the property.

However, the photographs provided by the City showed a substantial amount of combustible trash in the property prior to the City's intervention and clean up.

Therefore after evaluating both the testimony and documentation, the decision of the TRB was to abate 50% of the principle, abate 100% of the administrative charge, abate 100% of the interest, and abate 100% of the lien charges.

Concurred:

Nancy Kammerdeiner

Joseph Ferla

George Mathew