

August 15, 2016

In Re: MBB Realty LP

Docket No: 35WRMERZW5098

Statement of Record:

1. MBB Realty LP (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board (TRB) on November 12, 2014 requesting review of a City of Philadelphia water/sewer bill for the property located at 8914-54 Frankford Ave. Philadelphia, Pa
2. A public hearing before the TRB was scheduled for April 16, 2015. At the conclusion of the hearing, the Board announced its decision to reduce the water usage for the period July 19, 2004 through September 17, 2013 based on 3500 cubic feet per month, abate 100% of the accrued penalty and provide 30 days from the date of the adjusted bill to arrange installments for the remaining balance.
3. Petitioner requested and was granted a rehearing by the TRB.
4. A public hearing before the TRB was scheduled for October 6, 2015. At the conclusion of the hearing, the matter was taken under advisement for the parties to attempt to reconcile the account and resolve the matter. No resolution was forthcoming.
5. A public hearing was scheduled for January 19, 2016 following which the matter was taken under advisement for deliberation by the TRB.
6. A public hearing with the TRB was scheduled for April 12, 2016 for the issuance of the decision of the Board. The decision announced at that time was to abate 50% of all charges on the appealed bill as the City admitted no bills were sent during the period in question because of a mismatched meter number.
7. The City of Philadelphia Water Revenue Bureau (WRB) appealed to the Court of Common Pleas.

Findings of Fact:

1. Petitioner filed an appeal for review of the water/sewer bill for the property at 8914-54 Frankford Ave. Philadelphia, Pa. covering the period from July 19, 2004 to September 17, 2013. The principal balance was \$138,239.64, with penalties accrued as of the TRB hearing on April 16, 2015 of \$6,912.28, for a total due of \$145,142.92.
2. Petitioner owned the property for all time periods under appeal.
3. The property is a shopping center, tenant occupied. There was one large supermarket and a few small storefronts.
4. Petitioner believed the large supermarket that had vacated the property and filed for bankruptcy as of the TRB hearing, was paying the bill as per the leasing arrangement.
5. During the years from July 2004 to September 2013, the Water Revenue Bureau failed to send any bills for water service, stormwater management and water usage for this property. Due to a clerical error when the meter was installed, the WRB did not have a record of it for that property.

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4. Petitioner believed the large supermarket that had vacated the property and filed for bankruptcy as of the TRB hearing, was paying the bill as per the leasing arrangement.
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6. The WRB admitted that it failed to send any bills for the entire 9 year period and when this was discovered by the department, in 2013, the bill under appeal covering the entire period was sent to Petitioner.
7. Because the WRB was not showing any unpaid bills during the years under appeal, Petitioner, as the landlord, was never notified of any tenant delinquency and therefore had no reason to believe the tenant was not paying the bill.
8. According to the WRB, the meter in the property had been functioning but was not reporting readings to the Water Department or WRB. It appeared from the WRB representative that the WRB was unaware that the meter existed and so there was no account for this property. The bill under appeal was based on an actual reading from the meter taken on September 17, 2013.
9. Once the problem was uncovered by the WRB in 2013, Petitioner started to receive regular bills and was paying them regularly.
10. Following the initial hearing on April 16, 2015, the TRB announced its decision to abate 100% of the penalty and reduce the monthly usage to 3500 cubic feet per month, approximately half of the usage billed for the period in question.
11. Upon receipt of the adjusted TRB bill, Petitioner requested a rehearing. The basis of the request was their belief that the adjusted bill did not provide the expected relief and was a request for the Board to review the adjusted bill. This rehearing request was granted.
12. At the hearing on January 19, 2016, the matter was revisited and the bill breakdown explained further. The TRB initial decision to abate approximately ½ of the usage provided small relief to the taxpayer because \$102,633.79 was for service charge and \$2457.13 was the stormwater charge. The original usage amount was \$33,148.72. Therefore, the initial TRB decision that resulted in abatement of 1/2 of the usage left a remainder of 121,665.28 to be paid by Petitioner.

Conclusions of Law:

The cause of the delinquency that was the subject of this appeal was solely due to errors on the part of the City of Philadelphia Water Revenue Bureau and Water Department. This was admitted by the City's representatives who acknowledged that when the water meter for the property was installed, the account was not properly set up and therefore no activity was recorded and no water bills were sent to Petitioner for the entire 9 year period. For the City to discover its error after 9 years and simply send a bill to Petitioner for over \$130,000 with no acknowledgement of any responsibility on their part or steps to work with the customer to come up with a reasonable solution is a disservice to the customer.

The petitioner in this case is a small business owner with a strip mall housing one large tenant and several small store front tenants. At the end of the 9 year billing period, the supermarket was in bankruptcy and unable to pay its share, and to back bill any remaining small tenants for 9 years of water service would run the risk of putting them out of business as well. Therefore, after all of this time has passed, the entire responsibility falls unfairly on the property owner.

He had no reason to believe that his tenant was not paying the water bill as agreed to as he did not receive the notice that WRB is required to send when a tenant-customer becomes delinquent. This

again was solely due to the errors within the WRB that resulted in the account not being properly set up for the meter at this property.

It was the finding of the TRB that this was a situation requiring an equitable and fair resolution. While it may have been that Petitioner's property had water service and usage for the 9 year period, it was also true that the City made the error that created the entire problem and then dropped it on Petitioner with no assistance or acceptance of any responsibility. All action and information was in the sole control of the City departments and not available to Petitioner.

Therefore, it was the decision of the TRB to abate $\frac{1}{2}$ of all charges on the bill with both parties sharing the burden equally.

Concurred:

Nancy Kammerdeiner, Chair

Joseph Ferla

Kaitlin McKenzie-Fiumara, Esq.

George Mathew

Martin Bednarek