

June 2, 2008

IN RE: **NEW COURTLAND INC. GERMANTOWN HOME**
DOCKET NO: **35WRMERZW9736**

STATEMENT OF RECORD:

1. New Courtland Inc. Germantown Home (hereafter "Petitioner") filed an appeal of a water /sewer bill on November 6, 2007 for the property at 6950 Germantown Ave. for the period October 7, 2004 through July 26, 2007.
2. A public hearing was held before the Tax Review Board on January 17, 2008 following which the Board announced its decision to abate the penalty accrued against the account.
3. Petitioner has appealed to the Philadelphia Court of Common Pleas.

STATEMENT OF FACTS:

1. The water/sewer bill in question had a principal amount of \$41,353.74, and penalty accrued as of the hearing date of \$2,381.33 for a total due of \$43,735.07.
2. The meter reading of July 26, 2007 covered a period of 33 months of water usage during which Petitioner had been receiving estimated bills that did not accurately reflect the usage at the property.
3. On July 26, 2007, the Water Revenue Bureau obtained an actual reading and sent a bill to Petitioner covering the 33 month period. That is the bill being challenged by Petitioner.
4. The property consists of a large campus with 9 buildings. The property is serviced by a 3 inch meter that is located outside in a pit. It is affected by weather and may from time to time flood due to inclement weather conditions. This situation makes it difficult to obtain readings as the meter may not be functioning from time to time.
5. Petitioner was represented by Todd Gross, director and manager of public services for the property manager of the Germantown Home. Mr. Gross testified that since receiving the bill in question, they had been trying for months to communicate with the City's Water Department and Water Revenue Bureau to determine the validity of the high bill and the usage reading. They had cooperated with the Water Revenue Bureau in attempting to have the meter read to verify the usage. He testified to the difficulty they found in setting up appointments for meter readings only to have no one show up.
6. The City's representative, Altermise Holmes, testified that due to the difficulties with meters located outside, the Department may be unable to obtain regular readings and does rely on estimates for billing purposes. She also testified that when a bill is based on an estimated reading, that is noted on the bill with a request for the customer to call the department to rectify the situation.

CONCLUSIONS OF LAW:

As the moving party, the burden of proof is on Petitioner to establish to the Tax Review Board that the meter readings for water usage are incorrect. The burden falls on the taxpayer to prove that the tax has been improperly assessed. *Ernest Renda Construction Co., Inc. v. Commonwealth*, 94 Pa. Commonwealth Ct., 608, 504 A.2d 1349 (1986). While both Petitioner and the City representative could agree that meter readings were few and far between, there was no evidence presented to establish that the actual readings were incorrect.

The bill received by Petitioner for the July 26, 2007 was so high because of both the monthly service charge for the large 3 inch meter and the accumulation of 33 months of excess usage above and beyond any estimated charges that Petitioner may have paid.

The Tax Review Board found that Petitioner did meet the standards set forth in The Philadelphia Code Chapter 19-1705 for the abatement of penalties by acting in “good faith and without negligence and ... no intent to defraud.” Petitioner did establish that when confronted with his high bill, they acted promptly to contact the City and cooperated in efforts to determine if the reading was correct and to have the meter read.

Therefore it was the decision of the Tax Review Board to abate the accrued penalties with 60 days from the date of the adjusted bill by the Water Revenue Bureau within which to make payment arrangements.

Concurred:

Derrick Johnson, Chair
Una Vee Bruce
Joseph Ferla