

May 3, 2006

IN RE: **JOSEPH DE SIMONE**

DOCKET NOS: **26NUMERZZ9086; 26NUMERZZ9087; 26DEMERZZ9798;**
26NUMERZZ9088;26NUMERZZ989

STATEMENT OF RECORD:

1. Joseph DeSimone filed five (5) Petitions for review on September 2, 2004. Each pertained to a bill issued by the City of Philadelphia Department of Licenses and Inspections for work performed at the Department's expense at 1929 East Passyunk Avenue Philadelphia, Pa. in 2002.
2. A public hearing was held before the Tax Review Board on June 28, 2004 and the matter was taken under advisement.
3. A public hearing was held on October 4, 2005 for the purpose of rendering a decision for all five (5) petitions. The decision announced by the Tax Review Board at that hearing was that the petitions were denied.
4. Petitioner has appealed to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner was the owner of the property at 1929 East Passyunk Ave. Philadelphia, Pa. for all periods in question for purpose of this appeal.
2. Petitioner was incarcerated from 2001 to 2004.
3. Shortly after Petitioner's release from incarceration, Petitioner entered into an agreement to sell the property.
4. Petitioner learned through a title search that the City of Philadelphia Department of Licenses and Inspections (hereafter "L&I") had filed liens against the property for work done by or on behalf of L&I, including demolition of the property, in or about 2002.
5. Specifically, the following bills and amounts were reduced to liens:
 - a. TRB Docket No. 26NUMERZZ9088 for stucco work at a total cost of \$334.71.
 - b. TRB Docket No: 26NUMERZZ9086 for stucco work at a total cost of \$1869.40.
 - c. TRB Docket No. 26DEMERZZ9798 for demolition of an existing structure at a total cost of \$25,908.12.
 - d. TRB Docket No: 26NUMERZZ9087 for stucco work at a total cost of \$18,046.60.
 - e. TRB Docket No: 26NUMERZZ9089 for stucco work at a total cost of \$939.58.
6. The petitions filed before the Tax Review Board for review listed the above bills totaling \$47,098.42. Prior to the settlement for the sale of the property, Petitioner negotiated with the City of Philadelphia Law Department for a reduction in the amounts being sought by the City for the work performed at Petitioner's property at the City's expense.
7. The parties agreed to a figure of \$33,600. This amount was paid to the City at the time the property was sold.
8. Petitioner then filed the Tax Review Board Petitions for Review that were the subject of the hearing on June 28, 2005. Petitioner requested review of principal, interest and penalties for the bills that had been paid, at the agreed upon reduced amount, at the sale of the property.
9. Petitioner did not request a refund of the amount paid by filing a refund application to the City of Philadelphia Department of Revenue prior to the filing of the Tax Review Board petitions.
10. This property was demolished under L&I direction following the issuance of a Court Order of the Court of Common Pleas on January 5, 2001.
11. Mr. DeSimone acknowledged at the Tax Review Board hearing that prior to his incarceration he attended three (3) court hearings dealing with the property, that culminated in the issuance of the Order by the Court of Common Pleas allowing the City to proceed with the demolition.
12. Mr. DeSimone also acknowledged at the hearing that he was aware of the costs associated with the demolition and stucco work required.

CONCLUSIONS OF LAW:

At the Tax Review Board hearing the parties agreed that they were asking the Board to determine two preliminary questions that centered on whether the Board had jurisdiction to review the petitions as filed.

The first issue to be considered is whether the Tax Review Board could entertain a petition for refund where the petitioner had not first requested that refund from the City's Department of Revenue (hereafter "Revenue").

Petitioner came to the Tax Review Board seeking relief from or modification of an assessment already paid to Revenue.

The Philadelphia Code sets out the process by which a taxpayer may seek a refund. Chapter 19-1703(1)(d) provides that "every petition for refund of moneys collected by the Department (of Revenue) on or after January 1, 1980, for or on behalf of the City or the School District, including but not limited to any tax, water or sewer rent, license fee or other charge, and interest and penalties thereon, shall be filed with the Department within 3 years from the date of payment to the City or the School District of Philadelphia or the due date, whichever is later."

The Code goes on to state in Chapter 19-1703(7) that "(a)ny decision of the Department denying a refund in whole or in part may be appealed to the Tax Review Board by the petitioner within 90 days after the mailing of notice of such decision to the petitioner by the Department."

In addition, The Philadelphia Code Chapter 19-1702 governing Petitions for Review before the Tax Review Board provides that such petitions shall be for "review of any decision or determination relating to the liability of any person for any unpaid money or claim collectible by the Department of Revenue, for or on behalf of the City or the School District of Philadelphia..." (emphasis added).

At the hearing before the Tax Review Board, Petitioner admitted to having paid the bills in question pursuant to a negotiated reduction of the amount due.

Petitioner did not file a petition for refund with Revenue as directed by The Philadelphia Code Chapter 19-703(1)(d).

Petitioner filed Petitions for Review with the Tax Review Board as though the amounts at issue were still due and owing, which was not the case.

It was the decision of the Tax Review Board that to reach the Board so that it could exercise jurisdiction over these matters, Petitioner was required to first request a refund from Revenue of the monies paid. If that refund request was denied, Petitioner would have had the opportunity to appeal that refund denial to the Board within 90 days. At that juncture, the matter would have come under the jurisdiction of the Tax Review Board.

The second issue that the Board considered was the timeliness of the filing of these petitions were they to be accepted as Petitions for Review.

The Philadelphia Code Chapter 19-1702 requires that "(e)very petition for review of any decision or determination relating to the liability of any person...shall be filed with the Tax Review Board within 60 days after the mailing of such decision or determination to the petitioner."

Petitioner was seeking a review of bills issued in 2002 and 2003. His Tax Review Board Petitions for Review were filed September 2, 2004.

Petitioner stated that he was incarcerated when the bills were issued.

However he also stated that he had notice of the bid price and various stucco prices that L&I had for the demolition and stucco work to be done at the property. This demolition was pursuant to a Court Order that was

issued following hearings in the Court of Common Pleas that were attended by Petitioner. His own testimony acknowledged that he knew of L&I's actions to demolish the property and that there were costs and bills attached to this work.

Petitioner chose to pursue these challenges at the time that he was going to sell the property and realized that some of the proceeds would be turned over to the City to satisfy the liens for these outstanding bills.

His petition was filed well beyond the 60 day window granted by The Philadelphia Code.

Therefore the Tax Review Board decision was that these petitions were outside the Board's jurisdiction due to the untimeliness of their filing.

Concurred:

Derrick Johnson, Chair
Una Vee Bruce
Wade Stevens