April 18, 2013

In Re: Betty Ricks

Docket No. 35WRMERZW6918

Statement of Record:

1. Betty Ricks (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board (TRB) on February 29, 2012 requesting review of a Water Revenue Bureau (WRB) bill for the property at 1206 Mt. Vernon St. Philadelphia, Pa.
2. A public hearing before a TRB Hearing Master was scheduled for October 19, 2012. The decision of the Master, as ratified by the TRB, was to deny the petition. Petitioner requested and was granted a rehearing before the full TRB.
3. A public hearing was scheduled for February 12, 2013. At the conclusion of this hearing, the TRB announced its decision to abate the accrued penalty and lien charges on the account contingent on Petitioner entering into a payment agreement for the balance within 60 days of the adjusted bill.
   Petitioner was represented by her son, Sporty Smith, at both hearings.
4. An appeal was filed to the Philadelphia Court of Common Pleas by Petitioner's son who captioned the filing as *Smith, Sporty v. Tax Review Board.*

Findings of Fact:

1. Petitioner owned and resided in the property at 1206 Mt. Vernon St. Philadelphia, Pa. for all periods in question.
2. The bill in question was for the period April 16, 1993 through January 2000. The principal amount due for that period was $1,589.52, with penalties of $104.19 and lien charges of $70 for a total of $1,733.71.
3. As per the Water Revenue Bureau (WRB) policy to write off accounts receivable that are beyond 15 years old, this account had received 2 write offs totaling $1,036.61 prior to the TRB hearing. Therefore, the outstanding balance for the appealed time period was $697.10 as of the TRB hearing date.
4. This balance accrued due to Petitioner's participation in the WRB Water Revenue Assistance Program (WRAP). WRB customers who qualify for this low income program are permitted to pay a monthly amount toward their water bill that is generally lower than the actual billed amount. The remainder, unpaid portion of the bill is set aside in the WRB billing system until such time as the customer no longer qualifies for the program or the property changes ownership. At that time, the unpaid amount becomes due and is added to the current bill received by the property owner.

5. WRB database records indicated that Petitioner had applied for the WRAP in 1995, 1996 and 2000. There were no paper applications or other documents due to the age of the records. The WRAP application information showed some rental income for some of the years. The WRB no longer retained these files, the most recent of which would have been 13 years old.
6. Petitioner's son, Sporty Smith, representing her at the TRB hearing, objected to the introduction of the WRB computer system information as to any WRAP application by his mother.
7. Petitioner testified that she did not recall filling out an application for the WRAP or entering the program.

8. The WRB representative provided the TRB and Petitioner with an account history showing the property usage for the period in question through to the present, along with the WRAP account monies still due for the period under appeal. Petitioner's son stated that he also believed that the usage amounts were incorrect and that it was the responsibility of the WRB to prove the water was used. See Notes of Testimony, Page 24.
9. Mr. Smith testified that this property was a single family dwelling although city records listed it as having apartments. When questioned, Mr. Smith admitted the property was a duplex but now in such bad condition that no one could live in the second floor apartment. Petitioner was living in the first floor apartment during the periods in question.

Conclusions of Law:

The burden of proof rests with the party who files the petition before an administrative board such as the Tax Review Board. City of Philadelphia v. Litvin, 235 A. 25 157, Pa. Super 1967.

Petitioner failed to meet her burden of proof to establish that the billing being questioned was incorrectly billed to her account or a result of inaccurate meter readings.

The WRB representative provided information from the city's billing system to show that on 3 occasions Petitioner had applied for and been accepted into the City's WRAP program. This resulted in the accrual of unpaid water/sewer bills deferred as a result of Petitioner's participation in this program.

Petitioner's son, as her representative, while asserting that the billing was incorrect and disputing his mother's participation in the program, failed to provide any evidence to support this position other than the brief testimony of Petitioner that she did not apply for assistance from the WRB.

Mr. Smith challenged the WRB representative as to the accuracy of the water meter and of the data entered in the computer system, but failed to provide any evidence to support his bare claim of inaccuracy or error. Petitioner did not testify as to her water usage.

The TRB adheres to the Local Agency Law procedure set forth in 2 Pa C.S. §554 and as such is not strictly bound to follow the rules of evidence, including hearsay rules. As such the TRB accepted the city's computer records as a business record meeting the usual requirements for an exception to the

hearsay rules, including being kept in the normal course of business activity, and made at or near the time of the event , notwithstanding that the city representatives may not have presented a complete foundation for its admittance.

Petitioner's son asked many questions about both TRB and WRB process and procedure, and made many statements questioning the truth of the City's information. However, he did not provide any basis or support for his challenge to the water/sewer bills on this property.

In fact, the WRB had already provided relief for a large portion of the bill because of its policy to write off receiveables older than 15 years. The original receivable had been reduced by 60% as a result of this policy.

However, the TRB recognized that the WRAP may be confusing to participants. Many fail to realize that the additional water/sewer charges beyond the reduced amount they are required to pay are not forgiven but rather are set aside for repayment in the future.

Therefore, the decision of the TRB was to abate the penalty and lien charges contingent on entering into a payment agreement for the balance within 60 days of the date of the adjusted bill from the WRB.

Concurred:
Nancy Kammerdeiner, Chair
Christian DiCisso, Esq.
Milton Oates, CPA