

August 13, 2002

IN RE: ELAYNE RUTBERG

DOCKET NOS: 26DEMERZZ9887 & 26NUMERZZ9626

STATEMENT OF RECORD:

1. Elayne Rutberg filed a petitions for review with the Tax Review Board to request review of a billing generated by actions of the Philadelphia Department of Licenses and Inspections (hereafter "L&I") with regard to the demolition of the properties at 1805-07 Ridge Ave. Philadelphia, Pa. The appeal petition for the bill related to the demolition was filed on March 15, 2001.
2. This matter was heard before a Tax Review Board Master on June 1, 2001. The Master's decision was to grant the petition. The Department of Licenses and Inspections appealed this decision to the Tax Review Board.
3. Petitioner filed a petition for review of a bill generated by work authorized by L&I for the stucco of common walls exposed by the demolition of 1805-07 Ridge Ave.
4. The two petitions were consolidated and a hearing de novo was held before the Tax Review Board on February 26, 2002. The Petitioner's principal liability for the demolition was \$10,141.50 with an administrative charge of \$2,129.72, interest of \$184.05 and a lien charge of \$629.06. The principal liability for the stucco of common walls was \$4,473.20, with an administrative charge of \$939.37, interest of \$270.60 and a lien charge of \$286.12. Following the hearing the Board announced its decision to abate the administrative charges.
5. Petitioner filed an appeal to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner purchased the properties at 1805-07 Ridge Avenue Philadelphia, Pa. with her deceased husband, Edwin (Irv) Rutberg. After his death she became the sole owner. Petitioner was represented at the hearing by her son, Erik Rutberg, who testified that he manages the properties.
2. Mr. Rutberg testified that his family's business where he works to this day is located directly across the street from 1805-07 Ridge Ave. Theses were among several properties in the surrounding vicinity owned by his parents. While these properties had remained vacant and in need of rehabilitation, the other properties were tenant occupied.
3. The properties had been purchased by the Rutbergs with the intent to renovate them at such time as the block on which they were located became a more viable location. This renovation never occurred and the properties remained vacant for at least 8 years prior to their demolition by a City contractor.
4. On June 12, 1998, Irv Rutberg received a violation notice from the department of Licenses and Inspections (L&I) stating that upon inspection the buildings had been found to be in violation of the Philadelphia Property Maintenance Code Section 307 due to being open to public access, with excess trash and debris that created a fire hazard. This notice directed that the properties be made safe or demolished. Petitioner cleaned out the buildings and boarded them up.

The buildings were posted with a fluorescent poster that designated the buildings as unsafe and dangerous. This poster stated that it was a final notice and that the City could demolish the buildings if corrective measures were not taken.

5. On June 27, 1999, an inspection by L&I determined that the buildings were again found to be unsafe and in violation of the Philadelphia Property Maintenance Code.
6. In August 1999, Erik Rutberg saw a work crew beginning to demolish the properties. He questioned them, determined that they had been engaged by the City and requested that they stop work, which they did. This left the buildings open and partially demolished. He did not get the name of the individual or company on the site.
7. Mr. Rutberg contacted his attorney, Erwin Miller, who wrote a letter dated September 27, 1999 to the City of Philadelphia Risk Management Claims Unit stating that Petitioner was holding the City responsible for the damage done to the properties by the partial demolition.
8. Petitioner received a violation notice, dated October 26, 1999 referencing the inspection made on June 27, 1999 that determined again that the properties were unsafe and in violation of the Philadelphia Property Maintenance Code Section 306. Petitioner was directed to repair or demolish the buildings. The notice stated that failure to comply could result in the City coming forward to repair or demolish, as it deemed necessary, and billing the owner for all costs incurred. This notice also directed Petitioner to obtain the required vacant property license.
9. Mr. Miller received a reply to his letter of September 27, 1999 on February 25, 2000. This letter, from Jay Dempsey of the City's Risk Management Division Claims Unit, referenced the property damage claim in Mr. Miller's letter and stated that after completing his investigation of the matter, it was Mr. Dempsey's determination that L&I followed "proper procedures with regard to notification ...thereby constituting due process..." and that Petitioner's claim was denied.
10. Petitioner received a letter dated October 9, 2000 from Daniel Quinn, Chief of Contractual Services for L&I designating the premises imminently dangerous as defined by the Philadelphia Property Maintenance Code Section 308 and directing that the buildings be repaired or demolished immediately. This notice also informed Petitioner that failure to act to correct the violations either through repair or demolition and stucco of any exposed party walls would result in demolition of the premises by the City with any costs incurred being billed to the owner. Mr. Miller responded to this letter on October 25, 2000 with a letter of his own in which he reiterated the chronology of events and Petitioner's position that it was the City's actions that caused the properties to become imminently dangerous. In his letter, Mr. Miller also stated that the City should proceed with completing the demolition to ensure the public safety.
11. Mr. Rutberg admitted to receiving the violation notices and acknowledged that while they specifically directed that the owner clean and seal the property, the notices also stated that failure to comply could result in the demolition of the premises at the direction of the City. Petitioner did not deny that the properties were open to the public and filled with debris nor appeal the violation designations, but rather attempted to comply by cleaning and sealing the property.

12. Following the partial demolition in 1999, Erik Rutberg walked through what remained of the buildings, determined that they were not in danger of falling, and at some point had the remaining structure boarded up and secured. He did not engage the professional services of an architect or contractor to inspect the building but based his determination on his own observations. Mr. Rutberg did not attempt to have the buildings repaired because in his estimation, although the property was not a danger, the damage was so extensive as to make the property no longer viable for renovation.
13. On or about February 6, 2001, the City contractor demolished the premises.
14. Petitioner did not file suit for damages against the City because the value of the vacant lot was about the same as the value of the lot with the building on it, in Petitioner's opinion.

CONCLUSIONS OF LAW:

The Philadelphia Property Maintenance Code (hereafter "Section PM"), part of Title 4 of The Philadelphia Code, provides the statutory responsibilities of property owner in Philadelphia. The Code requires property owners to maintain their properties in a safe condition.

Section PM-307.1 defines an "unsafe structure" as, among other things, "(a) vacant building that is not secured against entry"...or a structure that constitutes a fire hazard. "All unsafe structures shall be taken down and removed or made safe and secure as the code official deems necessary and as provided for in this section."

Section PM-307.4 requires that written notice of the unsafe condition be served on the owner, agent or person in control of the premises. This notice shall describe the unsafe condition and specify the required repair to make the building safe or require the unsafe structure to be demolished. The City fulfilled this requirement by sending at least two notices to Petitioner and her deceased husband. Erik Rutberg admitted at the hearing to having received both the June 12, 1998 notice and October 26, 1999 notice from L&I, each of which informed Petitioner of the violations at the properties which made it unsafe and which required Petitioner to repair or demolish the premises.

Petitioner was first notified June 12, 1998 that the properties were in violation of The Philadelphia Code, that action was required on the part of Petitioner, and that absent that action, the City could step in and demolish the properties. Section PM-307.6 provides the City with the authority to make its own repairs or contract with others to repair or demolish a property left in an unsafe condition .

The City's first action was not until more than a year had passed, giving Petitioner ample opportunity to correct the cited violations. Mr. Rutberg testified that he worked across the street from the premises and could see the properties from where he worked. Therefore, the open and hazardous condition of the premises should have been readily apparent in 1998, 1999 and 2000 to Mr. Rutberg and his mother.

Following the City's partial demolition of the premises in the summer of 1999, Petitioner took no responsibility for the properties other than to board them up and turn away. She

did not fix them up, did not knock them down, and did not pursue any action with or against the City.

Petitioner received another notice on October 26, 1999, again informing Petitioner that these premises had been inspected on June 27, 1999 by L&I and determined to be unsafe. Petitioner was again directed to repair or demolish. Again, Petitioner did not act.

When finally issued the October 9, 2000 notice that the properties were imminently dangerous as defined in Section PM-308, Petitioner's response, through her attorney, was to tell the City representative that if the City believed the buildings to be unsafe then go ahead and demolish them. And that's what happened. On or about February 6, 2001, the City contractor demolished the properties and then stuccoed the remaining common walls on or about May 1, 2001.

If Petitioner believed that the buildings were not in danger of imminent collapse, she had the responsibility to so notify the City and take the necessary steps to either convince L&I that the premises were safe or bring the properties into compliance with the Philadelphia Property Maintenance Code. Mr. Rutberg did not deny that the properties were open and unsafe when the first notice in June of 1998 was received and his attorney did not deny that the premises were imminently dangerous when so notified in October 2000.

All notices sent by the City contained the information that failure to comply with the order to secure the properties could result in action being taken by the City to repair or demolish the premises with its own resources and to then seek reimbursement by the property owner for all costs incurred.

Petitioner continually failed to maintain the premises in a safe and Code compliant condition, despite notices by the City and despite being in close enough proximity to the premises on a daily basis to be able to see its deteriorating condition.

Concurred:

Daniel Saidel, Chairman

Derrick Johnson, Vice Chairman

Joseph Ferla