

May 31, 2013

In Re: Malcolm Tinsley

Docket No: 35WRMERZW8184

STATEMENT OF RECORD:

1. Malcolm Tinsley (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board (TRB) on December 28, 2009 requesting review of a water/sewer bill for the property at 1317 North Myrtlewood St. Philadelphia, Pa.
2. A public hearing before the Tax Review Board was scheduled for June 2, 2011 and continued at Petitioner's request.
3. A public hearing before the Tax Review Board was scheduled for January 12, 2012 and continued at Petitioner's request.
4. A public hearing was scheduled before the Tax Review Board for March 29, 2012 and continued at that time for the parties to have an opportunity to reach a settlement.
5. A public hearing was scheduled before the Tax Review Board for June 2, 2012 and continued at Petitioner's request
6. A public hearing before the Tax Review Board was scheduled for July 19, 2012 and continued administratively.
7. A public hearing was scheduled for August 7, 2012 at which time the matter was denied by the Tax Review Board as Petitioner failed to appear to present his case.
8. A rehearing was requested by Petitioner's attorney and this request was granted.
9. A public hearing was held before the Tax Review Board on November 20, 2012. At the conclusion of the hearing, the Board announced its decision to abate 50% of the accrued penalty contingent on payment arrangements being entered into within 90 days.
10. Petitioner filed an appeal to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner filed an appeal for review of delinquent water/sewer bills for the property at 1317 North Myrtlewood St. Philadelphia, Pa.
2. There was confusion at the hearing before the TRB as to what periods were under appeal. The City of Philadelphia representatives provided information as to a delinquency on this account for the period 1/19/1996 through 2/10/1998 with principle due of \$9,083.33, penalties as of the November 20, 2012 hearing date of \$9,378.90, and lien charges of \$130, with a total due of \$18,592.23.
3. Petitioner was questioning a bill he received totaling \$24,806.36 which covered 1992 through 2010, according to Petitioner's attorney.
4. It was determined that there were no bills issued or due from 2/10/1998 through 11/22/2010 so it was agreed to focus on the 1996 to 1998 delinquency.

5. The Water Revenue Bureau stopped billing the property in 1998.
6. Petitioner became the owner of the property on January 3, 2005.
7. All bills in question were for periods prior to Petitioner's ownership and were due and owing at the time of Petitioner's purchase with liens placed for the unpaid bills.
8. This property was purchased by Petitioner as one of several properties bought as a group purchase.
9. A title search at the time of purchase would have disclosed the outstanding water bills.
10. Petitioner did not address the delinquencies until the filing of the TRB petition.
11. At the time of the hearing, the property had been tenanted occupied since at least early 2012. A new water meter had been installed in February 2012 and waters usage was being detected and billed.
12. Petitioner testified that the property was being used as part of an effort to provide transitional housing to people in need.

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. 2d 157, Pa. Super 1967. As the petitioning party, Petitioner bears the burden of proof and responsibility to provide evidence to establish that the assessment is in error and that the bill in question should be reduced or adjusted.

Petitioner did not provide any evidence to dispute the accuracy of the bill.

Petitioner's attorney acknowledged that a title search at the time of purchase would have disclosed the delinquency.

Petitioner and his attorney asked for the TRB to provide some kind of equitable decision that would acknowledge Petitioner's current use of the property and provide him the relief he was seeking, However, Petitioner did not provide any information as to this use other than some limited testimony.

Petitioner's argument to the Board was to consider that he was now using the property for a good purpose and therefore the bills should be reduced or forgiven. Petitioner's attorney added that the city should make an allowance because the property was no longer vacant and "blight on the community". See Notes of Testimony, page 15. And in addition, the result of a TRB decision to hold Petitioner responsible for these delinquencies could result in the City having to take back the property through a Sheriff's Sale which would cause the community to suffer further.

The TRB considered that Petitioner appeared to be a sophisticated buyer as he had been purchasing several properties for a commercial purpose and was represented by counsel.

The Philadelphia Code Chapter 19-1702(1) provides that (e)very petition 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, 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 Tax Review Board within 60 days after the mailing of a notice of such decision or determination to the petitioner.

Petitioner waited several years before addressing the delinquent bill with a TRB petition. The petition filing was beyond the 60 day jurisdictional limit set by The Philadelphia Code Chapter 19-1702(1) for petitions for review.

Therefore, the TRB limited its decision to the accrued penalties and abated 50% of those penalties with 90 days to arrange a payment agreement with the Water Revenue Bureau.

Concurred:

Nancy Kammerdeiner, Chair

Joseph Ferla

Christian DiCicco, Esq.

George Mathew, CPA