

April 20, 2010

IN RE: Napoleon Vaughn
DOCKET NO: 35WRMERZW9282

STATEMENT OF RECORD:

1. Napoleon Vaughn (hereafter "Petitioner") filed a Petition or Appeal with the Tax Review Board on August 10, 2008 for review of water/sewer charges for the property at 6101 Delancey St. Philadelphia, Pa.
2. A public hearing before a Tax Review Board Master was held on August 7, 2009. The decision of the Master, as ratified by the Tax Review Board, was to deny the petition.
3. Petitioner requested and was granted a rehearing before the Tax Review Board.
4. A public hearing before the tax review Board was held on January 26, 2010. At the close of the hearing, the Board announced its decision to abate the principal, penalty and lien charges.
5. The City of Philadelphia has appealed to the Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner requested a review and abatement of the water revenue charges for the property at 6101 Delancey St. Philadelphia, Pa. for the period 11/7/97 through 8/12/08 with a principal amount due of \$4706.73, penalties as of the TRB hearing date of \$1813.51, and lien charges of \$230.00, for a total due of \$6,750.24.
2. Petitioner originally purchased this property through his corporation, Urban Market Developers, Inc. (URB), on August 19, 1996. It was purchased as an investment property at a City of Philadelphia Sheriff's Sale.
3. On or about October 6, 1997, without Petitioner's consent or knowledge, the property was fraudulently transferred from URB to a third party. Petitioner learned of the fraudulent transfer when he attempted to pay the 1997 Real Estate taxes and was told that the property was no longer listed as belonging to URB.
4. Following the fraudulent deed transfer, Petitioner and URB lost any control over the property, the water usage, and the water billing. Petitioner testified that upon learning of the fraudulent transfer he sought help from the Philadelphia Police Department, Philadelphia Records Department, Philadelphia Law Department, Department of Licenses and Inspections and the Sheriff's office.
5. Petitioner was not able to get any help from these City departments to reclaim the property. He was told that since he was not the owner of the property he did not have standing with regard to any of the billings or activity surrounding the property. His claim that it had been stolen from him through a fraudulent deed was not addressed.
6. He approached several private attorneys, none of whom would take the case for him.
7. Petitioner testified that after the fraudulent deed transfer the property was used by an unknown third party.
8. The City representative stated that the Water Revenue Bureau records indicated that after the deed was transferred in 1997 from URB, bills were mailed to the property. Bills were not sent to Petitioner because the City's records indicated that neither he nor URB owned the property.
9. It was not until 2006 that Petitioner was able to find a lawyer, whom he paid over \$5000, who would agree to assist him in trying to regain title to the property. In 2007, the deed was transferred into his name as an individual.
10. After Petitioner regained title to the property, the water/sewer account, including the bills for the years 1997 through 2008 were put into his name by the Water Revenue Bureau.

DISCUSSION:

Petitioner established to the Tax Review Board that during the years in question Petitioner was not the owner of the property, either directly or indirectly through his corporation, URB.

The property was stolen from Petitioner through a fraudulent conveyance. Petitioner spent several years and thousands of dollars to regain ownership of the property. He approached numerous city agencies and departments and none could assist him. He approached several attorneys and had great difficulty finding a lawyer who would agree to take him on as a client for the purpose of regaining the property.

While it is the case, that the water/sewer charges assessed by the city are attached to the property by municipal lien and remain with the property when ownership is transferred, (McArthur v. Tax Review Board, 16 Phila 329; 1987 Phila. Cty Rptr. LEXIS 38) this situation presented itself differently from most. It was the finding of the TRB that the property was stolen from Petitioner and the water was stolen as well. Petitioner's attempts to alert the city, report the theft, and to regain possession of the property were rebuffed. It was only his persistence over several years that resulted in the reversal of the fraudulent conveyance.

In addition, while the city's position is that the water/sewer bill is property based, it is their practice to hold a subsequent owner responsible by adding the delinquency of a prior owner to the new owner's account and by including such a delinquency as a reason to shut off the water to the property if the subsequent new owner does not pay the delinquency. While there may be valid reasons for this under most situations, in this situation, Petitioner was illegally shut out of his own property with no standing or recourse with regard to the water usage or the water bill.

Therefore the decision of the Tax Review Board was to abate the principal, penalty and lien charges.

Concurred:

Monique DeLapenha, Esq., Chair

T. David William, Esq.

LaVon Wells-Chancy, CPA

Joseph Ferla