

August 31, 2016

In Re: Rodney & Monique Wright

Docket#: 35WRMERZW4876

Statement of Record:

- 1) Rodney & Monique Wright (hereafter "Petitioners") filed a Petition for Appeal with the Tax Review Board (TRB) on April 1, 2015 to request review of a water/sewer bill for the property at 5643 Marvine St. Philadelphia, PA.
- 2) A public hearing was scheduled for July 17, 2015 before a TRB Hearing Master. The decision of the Master, as ratified by the TRB, was to abate 100% of the penalty and lien charges, contingent on entering into a payment arrangement for the remaining balance within 30 days of the adjusted bill.
- 3) Petitioners requested and were granted a rehearing before the full TRB.
- 4) A public hearing before the TRB was scheduled for December 1, 2015 and continued at that time.
- 5) A public hearing before the TRB was scheduled for January 5, 2016. At the conclusion of the hearing, the TRB announced its decision to abate 100% of the penalty and lien charges contingent or entering into a payment arrangement for the balance within 60 days of the adjusted bill date.
- 6) Petitioners filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Fact:

- 1) Petitioners requested review of a Water Revenue Bureau (WRB) water/sewer bill for the property at 5643 Marvine St. Philadelphia PA for the period January 9, 2013 to March 11, 2014. The principal amount was \$1576.17, with accrued penalty of \$114.23 and a \$10 lien charge, for a total due of \$1700.40.
- 2) Petitioners owned the property during the period under appeal.
- 3) The property was tenant occupied during the period under appeal. At some point in 2013, water/sewer bills became delinquent.
- 4) On May 20, 2013, Philadelphia Water Department (PWD) personnel went to the property and turned off the water service because of the financial delinquency.
- 5) Following the PWD shut off, the WRB received an automatic meter reading showing water usage. Petitioners were billed for the period with the usage.
- 6) In August 2013, PWD personnel again went to the property, found that water service had been restored by unknown persons, and turned off the water service.
- 7) In September 6, 2013, water usage was reported to the WRB and Petitioners received a bill with that usage.
- 8) On September 6, 2013, PWD personnel again went to the property, again found that the water service had been restored by unauthorized personnel, and again turned off the water service. They placed a lock at the curb so service could not be restored by unauthorized personnel.
- 9) Water usage was again recorded after the September 6, 2013 shut off and Petitioners were billed for the service and usage.

- 10) PWD personnel went to the property in November 2013 to, again, turn off the water service to the property. At that time, they reported that there was no lock at the curb. The lock placed at the curb stop on September 6, 2013 had not been removed by PWD personnel but was missing from the property. A new lock was installed to attempt maintain the shut off.
- 11) Additional water usage was recorded after November 2013 and Petitioners were billed.
- 12) In April 2014, PWD personnel went to the property to shut off the water service, once again. The lock placed in November was not there and the water service was on at that time.
- 13) The bill under appeal was based on actual meter readings from the property's water meter.
- 14) Petitioners testified they contacted the PWD or WRB multiple times throughout the time period, both to request the water be shut off and for confirmation that the water was off or would be shut off again.
- 15) They received all of the bills as issued and could see when usage was registering even though they requested shut off of the service several times and were told each time PWD went to the property that the water was shut off.
- 16) Eventually the tenants causing this delinquency were evicted.

Conclusions of Law:

Petitioners, as the property owners, bear the ultimate responsibility for Water Revenue Bureau bills for water/sewer service to the property. It is clearly established law that water/ sewer bills are in rem claims that remain attached to a property. *Bobby McArthur v. Tax Review Board*, 16 Phila. 329; 1987 Phila Cty Reporter. LEXIS 38.

Petitioners requested shut off of water service and the PWD complied, on multiple occasions. The fact was that the tenants or some other party also unauthorized to do so restored the water service each time and continued to use water. PWD records indicated that the repeated restoration of water service was not by PWD personnel.

Petitioner's position was that he was told on several occasions that PWD went to the property to shut off the water, yet he continued to receive bills incorrectly. While PWD personnel did visit the property multiple times to turn off the water, unknown and unauthorized people, presumably the tenants, restored the water each time and therefor usage continued to register as water was being used at the property.

Petitioners acknowledged difficulties with the tenants who were eventually evicted.

PWD has limited means to prevent an illegal restoration of water service where a tenant or other unauthorized user illegally restores service. In this circumstance, PWD returned to the property on multiple occasions to inspect and turn off the water. On two occasions they actually put a lock at the curb stop to prevent the water from being turned on, only to return some weeks later to find the lock gone and the water service illegally restored.

The Philadelphia Code Chapter 19-1705(2) provides authority to the TRB "to abate in whole or in part interest or penalties, or both, where in the opinion of the Board the Petitioner acted in good faith, without negligence and no intent to defraud." The responsibility to provide evidence that this standard was met lies with the Petitioner.

In this circumstance, Petitioners acted to address the delinquency by contacting PWD while dealing with their tenants. They did not ignore the unpaid bills. However, the bills under appeal reflected actual water service available to the property and usage.

Therefore, the TRB abated the penalties & ancillary lien charge.

Concurred:

Nancy Kammerdeiner, Chair

Joseph Ferla

Geroge Mathew, CPA

Kaitlin McKenzie-Fiumara, Esq.

Martin Bednarek