

August 11, 2008

In Re: **Jeffrey Byard**
Docket No: **35WRMERZW9944**

Statement of Record:

1. Jeffrey Byard (hereafter "Petitioner") filed a Petition for Review with the Tax Review Board on August 8, 2007 requesting review of the water/sewer bill for the property at 1496 North 52nd St. Philadelphia, Pa. for the period 9-12-91 to 8-7-07.
2. A public hearing scheduled for November 29, 2007 was continued to provide the Petitioner additional time to gather documents and information.
3. A public hearing was held on March 25, 2008, following which the Tax Review Board announced its decision to reduce the water usage for the period of January 16, 2003 to August 13, 2007, to "0" cubic feet per month and to abate the penalty to lien charges for that period contingent on payment arrangements being made within 30 days of the date of the adjusted bill.
4. The City of Philadelphia has appealed to the Philadelphia Court of Common Pleas.

Findings of Fact:

1. Petitioner purchased the property at 1496 N. 52nd St. in 1995. At the time of purchase, the property had a tenant.
2. Petitioner admitted to making no payments during the period he has owned the property.
3. Most bills during the periods in question were estimated. There was a meter reading on January 16, 2003 covering a period of 146 months for usage going back to 1991. The next meter reading was in 2006.
4. Petitioner testified that the property was vacant at least since 2001 and that the water was turned off at that time, and remains turned off.
5. There was no record of a Discontinuance Permit being obtained by the Petitioner from the Department of Licenses and Inspections that would have resulted in the suspension of service charge for the property.
6. At the time the meter was read in 2003, a new meter was installed. According to

testimony at the hearing on November 29, 2007, it was determined in 2006, as a result of a meter reading, that the electronic reading device on this meter was faulty. The Water Revenue Bureau adjusted the account and rebilled the period from 2003 to 2006, reducing the bill from \$7095.47 to \$20.64, reflecting that no usage occurred during this time. This adjustment did not affect the period prior to 2003.

7. At the hearing on March 25, 2008, it appeared that the City's records no longer reflected an abatement of usage for the period from 2003 to 2007.
8. Petitioner made the claim that the meter replaced in 2003 was faulty as well, but produced no evidence to substantiate this claim.

Discussion:

This case had a public hearing on November 29, 2007. It was continued to a further hearing held on March 25, 2008. Based on new mayoral appointments to the Tax Review Board, there were 4 new board members at the March 29, 2007.

Information presented at the March 25, 2008 hearing, upon which the Board based its decision, was not completely consistent with the November 29, 2007 information. Their decision is based on the following information regarding the delinquent bill:

At the November 29, 2007 hearing: For the water revenue cycles 98-01 to 07-07, covering 12/16/97 to 7/23/07, principal due was \$9204.93 with penalties of \$5,540 and lien charges of \$160, for a total due of \$14,905.

At the March 25, 2008 hearing: For the water revenue cycles 98-01 to 07-08, covering 1/23/98 to 8/20/07, principle due was \$16,301.70, with penalties of \$4,391.57 and lien charges of \$180 for a total due of \$20,873.27.

There was no explanation as to the difference in the amounts due from the first hearing to the second hearing.

Conclusions of Law

Petitioner's brother purchased the property in 1995. The water meter in the property at the time of purchase was not read by the Water Revenue Bureau until 2003. Estimated bills were issued between 1995 and 2003. At that time, Petitioner was billed for water usage dating back to 1991, covering 146 months.

Petitioner became the property owner in 2006 or 2007. He could not testify as to the usage accrued prior to his brother's ownership. In addition, he testified that the property was occupied, possibly as recently as 2001. The water meter was replaced in 2003 and not read until 2006 when the Water Revenue Bureau determined that the electronic reading device was faulty and needed to be replaced.

Petitioner filed a petition for review with the Tax Review Board on August 8, 2007. The Tax Review Board allowed him to present his case but acted only on the billing received in 2007 that covered usage dating back to 2003.

Petitioner testified and the City's Water Bureau representative confirmed that there had been no usage in the property for several years, at least since the 2003 review and repair of the meter. The property was vacant during this time period so that usage should not have accrued on the bill. However, billings for service charges would have continued to accrue

Petitioner spoke to his many contacts with the Water Revenue Bureau in an attempt to deal with the water meter issues. He had been trying for several years to have the City correct and clarify the bill based on the property's vacancy. The Tax Review Board accepted his testimony that he had engaged in an ongoing effort to resolve the billing issues for this property. The Philadelphia Code Chapter 19-1705 provides that the Board has authority to abate interest and penalties where in its determination the petition has acted in "good faith, without negligence and no intent to defraud"

After reviewing the testimony, it was the Board's decision to reduce the usage portion of the bill to "0" cubic feet, leaving the service charge portion of the bill, and to abate penalties and lien charges for the period 1/16/03 through 8/16/07.

Concurred:

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