

DECEMBER 3, 2012

In Re: Clara Fertner and Estate of Olga Kaminski

Docket Nos:26LIMERZZ9596; 26LIMERZZ9597; 26LIMERZZ9598

STATEMENT OF RECORD:

1. On July 29, 2010, Clara Fertner, both individually and as Administrator for the Estate of Olga Kaminski, filed Petitions for Appeal with the Tax Review Board (TRB) requesting review of 3 bills issued by the City of Philadelphia Department of Licenses & Inspections (L&I) for work performed at the property located at 2810 South Alder St. Philadelphia, Pa
2. A public hearing before the Tax Review Board was scheduled for September 15, 2011 and continued at that time to provide the parties with 30 days to discuss a settlement.
3. A public hearing was scheduled for October 13, 2011 and continued at Petitioner's request.
4. A public hearing before the Tax Review Board was held on November 10, 2011 and the matter was then taken under advisement for the parties to provide additional documentation.
5. A public hearing was held by the Tax Review Board on August 2, 2012 at which time the Board announced the following decisions:
 - a. Docket no:26LIMERZZ9596 corresponding to L&I invoice #5157395- Reduce principal by 50%, must arrange installment agreement within 30 days of the date of the revised bill;
 - b. Docket no:26LIMERZZ9597 corresponding to L&I Invoice #0155076- Abate interest, penalty and administrative charge, must remit payment within 30 days of the date of the revised bill; and
 - c. Docket no:26LIMERZZ9598 corresponding to L&I invoice #0155078- Reduce principal to the \$20,875.00 amount of the actual invoice from Bio-Clean of New Jersey, reduce administrative charge, lien charge and interest amount to correspond with the principal reduction, and must arrange installment payments within 30 days of the date of the revised bill.
6. Petitioner filed timely appeals to the Philadelphia Court of Common Pleas

FINDINGS OF FACTS:

1. Petitioner appealed the following 3 separate bills issued by L&I for work done to clean and seal the property at 2810 South Alder St. Philadelphia, Pa.:
 - a. Invoice 05157395 in the principal amount of \$8,988.66, with administrative charges of \$1887.62, interest as of the TRB hearing date of \$978.84, and lien charges of \$550.31 for a total due of \$12,405.43, for the cost of the hazardous waste removal by an outside contractor hired by the city;
 - b. Invoice 015076 in the principal amount of \$125, with an administrative charge of \$26.25, interest as of the TRB hearing date of \$13.61, a lien charge of \$14.06, for a total due of \$178.92; and
 - c. Invoice 0155078 with a principal amount due of \$27,018.39, an administrative charge of \$2,942.30, interest as of the TRB hearing date of \$2,942.30, a lien charge of \$1,641.1, for a total due of \$37,275.67, for the removal of hazardous waste by a private contractor hired by the city.
2. The City of Philadelphia issued a Violation Notice for the property at 2810 Alder St. Philadelphia, Pa. on April 21, 2008 citing multiple violations and designating the premises as “unsafe and dangerous to human life and/or the public welfare, constituting an emergency to be corrected immediately.” The cited violations included windows in need of repair throughout the property, leaving the building accessible to trespass, and a roof drain in need of repair. This Notice also stated that inspectors had not been able to gain entrance to the property. The City of Philadelphia issued a second Violation Notice on April 29, 2012 citing non-compliance for the same violations cited in the notice issued on April 21, 2008. City Exhibit 7.
3. These 2 Violation Notices were mailed to the property and addressed to Joseph Kaminskie and Rose Kaminskie, the record owners of the property, and the deceased parents of Clara Fertner and Olga Kaminski, deceased, Petitioners in this matter.
4. Petitioner testified that she was unaware of these Violation Notices. The property had belonged to her parents and at the time that the violations were issued her sister, Olga Kaminski, lived in the property. She spoke to her sister regularly and visited from time to time.
5. Petitioner testified that the property was open to trespassers from both windows and doors that were not secure even when her sister lived there. She also testified that her sister had a number of cats that she fed and housed.
6. Olga Kaminski died on February 14, 2010.
7. On April 14 and 15, 2010, L&I workers gained entrance to the house and took photos of its condition prior to beginning their clean up activity. See City Exhibit 2. These photos showed the condition of the house exterior to be open to trespassers and the interior to be in disarray with trash and debris throughout.
8. Testimony by Casey Mitchell, an employee of the L&I Clean and Seal Unit, established that on the first day that the city attempted to clean the property, they cleared away debris

and trash from the first floor, including open cat food cans throughout the kitchen. On day 2, they continued their clean up and entered the second floor where they observed that there was significant animal, human and medical waste along with trash and at least one animal carcass. At that time, the clean up was halted, a supervisor was consulted and it was determined that an outside company specializing in removal of hazardous materials would be brought into the property to complete the job of cleaning the property.

9. Petitioner testified that she entered the property after her sister's death and agreed that it was in disarray with trash, including open cat food tins, strewn about. She also testified that the property was open and often had trespassers, even when her sister was alive. Petitioner testified that she herself would gain entry by just pushing on the door because "it was all broken up." Notes of testimony, Page 26. The city representative showed Petitioner what were identified as photographs of the property both before and after the city's clean up and she acknowledged that she could identify some as the property showing its condition. Although she continued to assert that the condition was not as bad as the city representatives stated, she acknowledged the property was a mess and that there were cats in and out and cat food put out for them. Notes of testimony, Page 25.
10. Petitioner did not dispute that the city had caused the property to be cleaned out but disputed the reasonableness of the bills issued for the work done.
11. Petitioner brought as a witness, Jane Marone, a neighbor and the realtor helping her to find a buyer for the property. Ms. Marone testified that she entered the house after Ms. Kaminski's death and before the city ordered clean out. She testified that the property was filled with trash, insects, and acknowledged that she had seen at least one animal carcass when she had toured the property. Her concern was that she had a potential buyer who had agreed to purchase the property for \$40,000 in its then current state but that sale could not be completed due to the high cost of the city's liens for the cleanup.
12. Petitioner also provided an estimate from a private contractor for cleaning out the property at a cost of \$5400. Frank Armantani of S&S Contracting testified that he had not personally been inside the property prior to the clean out. He was in the property in August 2010, after the clean out, and reviewed some photos taken of the interior before the city's clean out.
13. Sylvia Roundtree, manager of the L&I Clean and Seal Unit testified that employees of her unit were sent to the property on April 14 and 15, 2010 as a result of Petitioner's failure to correct the violations cited in the Notice of Violation dated April 29, 2010 which, among other things, deemed the property open and vacant, as well as in need of having trash and debris removed. City Clean and Seal Unit employees were able to remove debris and trash from the first floor and yard and sealed the openings, including the door with sheet metal until a contractor specializing in removal of hazardous materials could arrive to complete the second floor clean up of human and animal waste. The city introduced as Exhibit 6, the L&I Abatement of Nuisance Worksheet and Bill that totaled \$10,876.28 which included a \$1,887.62 administrative charge added by the

city to what was claimed as the actual cost for a one day clean out for this 1200 square foot house. According to this worksheet, the city employed 21 workers who put in 221 work hours (10.5 hours each over the 2 days), 7 truck drivers with 7 trucks for 77 work hours and hauled away 2.5 tons of material, all before the hazardous waste contractor started on the 2nd floor of the house over the 2 days.

14. Casey Mitchell, an L&I Clean and Seal Unit employee, who was on site during the clean up on April 14 and 15, 2010 testified that the workers stopped their cleanup activities on day 2 when they reached the second floor of the property and found “the abundance of feces...on the floor, and throughout the clothes and trash that was on the floor.” Notes of Testimony, Page 72. He described a scene with human and animal feces, bottles of urine and trash. They did complete the cleanup of the first floor which included, an indoor porch, living room, dining room, kitchen and back yard.
15. The city also provided testimony by Andrew Yurchuck of the company Bio Clean of New Jersey, who was a subcontractor hired by the city’s primary contractor, Clean Venture, to provide a biohazard assessment of the property on April 26, 2010. Mr. Yurchuck testified that he entered the property and observed human feces, urine, animal remains in various states of decomposition, rodent and bug infestations, mold, large amounts of trash and opened cans of cat food, and severe odors. All of this was throughout the house.
16. On May 18, 2010, Mr. Yurchuck and his associates were hired by Clean Venture and were on site at the property performing the clean up on May 17, 18 and 19, 2010. He testified that when he arrived, there were no windows and the window openings were uncovered. The door was wide open. His personnel completed clean up of the first floor and then removed the debris from the second floor and left the property in broom clean condition as shown in petitioner’s Exhibit B.
17. Mr. Yurchuck’s workers received specialized training and hepatitis vaccinations before going to these work sites and were outfitted with appropriate protection such as respirators, boots, gloves and biohazard suits as required by OSHA for this type of clean up activity.
His final bill to Clean Venture was \$20,875. Clean venture billed the city \$27,018.40. There was no evidence presented to establish any work performed by Clean Venture to account for the additional \$6143.40.
18. Mr. Yurchuck also provided photos that he took at the site. The photo identified as P52170236, taken on the second floor of the house showed an animal carcass measured at approximately 2 feet by 1 foot. The photo identified as P5170223 also showed skeletal remains of an unknown animal. The photo identified as P5170231 showed the bathroom of the house with what Mr. Yurchuck identified as dried animal fecal matter about 3 inches deep and empty cat food cans strewn about the area. The photo identified as P5170232 showed about a foot and a half of debris on the floor and urine residue on the

window ledges. Photos labeled 5170216 and 5170217 showed rooms in the property after his team had completed the cleanout.

19. There were bags and boxes filled with trash and personal belongings. There were bottles of varying sizes filled with urine. There were drug syringes that were put into protective biohazard containers.
20. Bio Clean of New Jersey provided a timesheet for billing that documented 103 work hours to complete the cleanup of this property, broken down as 19.5 supervisor hours and 83.5 technician hours billed at hourly rates of \$140 for supervisors, \$135 for chemical technicians and \$11 for a technician. There was no overtime billed by Bio Clean. The invoice was submitted to Clean Venture which then billed the city for the services provided by Bio Clean.

CONCLUSIONS OF LAW:

Property owners in Philadelphia are responsible for maintaining the interiors and exteriors of their properties in safe and sanitary condition to protect both residents and neighbors.

The Philadelphia Property Maintenance Code (PM) sets forth these responsibilities and provides, in part, that “(t)he owner of any vacant building shall keep the interior and exterior of the premises free of garbage and rubbish. The owner of any vacant building shall keep all doors, windows and openings from the roof or other areas in good repair, and shall ensure that the roof is intact and allows for proper stormwater drainage. Where such doors or windows or entrance to openings are readily accessible to trespassers, they shall be kept securely locked, fastened or otherwise secured. The owner shall take any other measures prescribed by the Department to prevent unauthorized entry to the premises by closing all openings with materials approved by the Department. A vacant building, which is not secured against entry shall be deemed unsafe...”. §PM-306.2.

Although the property had not been vacant for a long period prior to the City’s 2010 inspection, Petitioner acknowledged in her testimony that even when her sister was living in the property the windows and doors were not secured and that trespassing humans and cats were frequent visitors. Her realtor, Mrs. Marone, who was also a neighbor on Alder St., testified that she sometimes took it upon herself to have some of the openings sealed as it was a hazard to the neighbors, including herself and her children.

In addition, the Philadelphia Property Maintenance Code states that “the interior of every structure shall be free from any accumulation of rubbish or garbage... and (e)very occupant of a structure shall dispose of all rubbish and garbage in a clean and sanitary manner by placing such material in approved containers.” §PM-303.2 & 303.3. “All structures shall be maintained free of infestation by insects, rodents, vermin or other pests.” § PM-303.4.

Petitioner and Mrs. Marrone both acknowledged in their testimony that the property was strewn with trash, debris, animal droppings and remains, and that they knew this to be the case even before Olga Kaminski's death in 2010, even though they didn't think it was so bad or in the words of Mrs. Marrone "had seen worse". Notes of Testimony, Page 33.

Following an inspection and a finding that the building was in violation of the above Property Maintenance Code provisions, a written Notice of Violation was sent to the last known owners of the property, the deceased parents of Petitioner with an order to comply with the Property Maintenance Code requirements. The notice was sent to the address in the City's records, that of the property itself. While, Petitioner Clara Fertner may not have resided in the property, her sister resided there until her death and Ms. Fertner testified that upon her sister's death she regularly collected the mail. Notes of Testimony, Page 17.

When a reinspection determined that the property remained in an unsafe and hazardous condition, in accordance with §PM-306.6, L&I acted "to correct the conditions... with its own forces or by contract and charge the costs thereof to the owner, and with the approval of the Law Department, collect the costs, including administrative costs, by lien, or otherwise."

Petitioner's primary complaint was the high amount of the City's bills for the cleanup of the house, both that of the Clean and Seal Unit and that of the biohazard contractor. Petitioner provided estimates from private companies that were far less than the city's charges. In weighing these comparisons, the TRB took into account that Petitioner's estimates were issued without a thorough inspection of the condition of the property and volume of the trash, debris and waste material to be disposed of in the property. There was no testimony that these estimates included proper disposal of the human, animal and medical waste that was abundant in the property.

Petitioner had ample opportunity through the years to maintain the exterior and interior of the property. She visited regularly and she acknowledged that she was well aware of the rundown and trash strewn conditions and that the doors and windows were not sealed properly.

After reviewing and weighing the evidence presented, the TRB made the following adjustments to the bills presented to Petitioners for, what the TRB determined to be, a significant cleanout and sealing of their property.

As to L&I invoice #5157395 for the L&I Clean and Seal Unit cleanup of the first floor of the property, the decision of the TRB was to reduce the bill by 50%. In reviewing the bill, it was the finding of the TRB that while there had been a significant trash and debris disposed of, there was insufficient evidence to support a bill that cited 21 workers putting in 221 work hours over 2 days along with 7 trucks and 7 truck drivers to clear the first floor of a Philadelphia row home whose entire square footage over 3 floors was 1220 square feet.

As to L&I invoice #0155076 for a technical supervisor for the emergency clean up, the decision of the TRB was to abate the administrative charge, interest and penalty as there was no testimony to support any activity on behalf of the City for this bill to justify additional charges to the principal amount of \$125.

As to L&I invoice #0155078 for the biohazard cleanup performed by the outside contractor, Bio Clean of New Jersey, the decision of the TRB was to reduce the principal due by \$6143.40 and to direct that the administrative charge, interest, penalties and any other charges be reduced proportionally. It was the finding of the Board that there was no evidence presented to show any work or services were performed that would support adding this amount to the bill supplied by Bio Clean and then sent to the City by Clean Venture, the prime contractor. However, there was substantial evidence to support the hiring of Bio Clean's specialty team to dispose of the significant amounts of human, animal, and medical waste. Notwithstanding the opinions of Petitioner's witnesses and evidence regarding the state of the property and their cost estimates for cleaning it, the City amply supported its decision that the clean up and waste disposal services required by this property went beyond simply putting it all in trash bags and tossing it out with the regular trash. In addition, Petitioner had failed to act over many years to correct this situation and maintain the property in an acceptable condition for both her sister and the neighbors. Therefore the additional costs were a necessary part of the City's actions in this situation.

Concurred:

T.David Williams, Esq., Chair
Joseph Ferla
Nancy Kammerdeiner
George Mathew, CPA