

14-11

6/16/2014

In Re: Frank Allen

Docket Nos: 14STMERZZ9709, 9710, 9711, 9712, 9713

Statement of Record:

1. Frank Allen (hereafter "Petitioner") filed 5 Petitions for Appeal with the Tax Review Board (TRB) on April 16, 2013 requesting review of City of Philadelphia assessments of the Refuse Collection Fee for the following 5 Philadelphia properties he owns:

778 North 25th St.; TRB Docket number ending 9713

1700 West Girard Ave. ; TRB Docket Number ending 9712

827 North 26th St. ; TRB Docket number ending 9711

821 North 26th St. ; TRB Docket Number ending 9710

1702 West Girard Ave.; TRB Docket Number ending 9709

2. A public hearing before a Tax Review Board Master was scheduled for August 9, 2013. At the conclusion of the hearing, the following decisions, as ratified by the TRB, were issued:
 - a. 778 North 25th St.: Abate penalty; must remit balance within 90 days of the revised bill for 2010 through 2012;
 - b. 1700 West Girard Ave.: Abate penalty; must remit balance within 75 days of the revised bill for 2010 through 2012;
 - c. 827 North 26th St.: Abate penalty; must remit balance within 60 days of the revised bill for 2010 through 2012;
 - d. 821 North 26th St.: Abate penalty; must remit balance within 60 days of the revised bill for 2010 through 2012;
 - e. 1702 West Girard Ave.: Abate penalty; must remit balance within 60 days of the revised bill for 2010 through 2012.
3. Petitioner requested and was granted a rehearing before the full TRB for all properties.
4. A public hearing was scheduled before the TRB for December 10, 2013 and continued at that time due to poor weather conditions that prevented all parties and TRB members from appearing for the hearing.
5. A public hearing was scheduled for February 20, 2014. At the conclusion of the hearing, the following decisions were announced:
 - a. 778 North 25th St: Charges are paid in full; Residual balance should be abated;

- b. 1700 West Girard Ave: Charges are paid in full; residual balances should be abated;
 - c. 827 North 26th St.: Abate penalty & 50% of interest; must remit payment within 30 days of the revised bill;
 - d. 821 North 26th St.: Abate penalty and 50% of the interest; must remit payment within 30 days of the revised bill;
 - e. 1702 West Girard Ave.: No action needed as charges are paid in full.
6. Petitioner filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Fact:

1. Petitioner is the owner of the 5 properties listed above, all located within the City of Philadelphia.
2. All properties are multi-family or commercial properties. Petitioner had property rental licenses as required by the City.
3. None of the properties are Petitioner's residence.
4. All properties were assessed by the City of Philadelphia for the "Refuse Collection Fee" that assesses an annual fee for, among other things, curbside trash and waste collection by the Philadelphia Streets Department.
5. At the time of the TRB hearing, the following amounts were put on the record by the City of Philadelphia as open and due for this fee for the years 2010 through 2012 for all properties:
 - a. 778 North 25th St.: all fees paid and nothing due; balance due for 2013 of \$19.26;
 - b. 1700 West Girard Ave.: all fees paid and nothing due for 2010 through 2012; balance for 2014 of \$36.41;
 - c. 827 North 26th St.: principal due of \$750, penalty of \$55.13, and interest of \$201, for a total due of \$1006.13;
 - d. 821 North 26th St.: principal due of \$750, penalty of \$60.75, and interest of \$201, for a total due of \$1011.75;
 - e. 1702 West Girard Ave.: all fees paid and nothing due, with a credit of \$22.80 for the 2012 assessment year which the city stated would be applied to the 2014 fee.
6. Petitioner testified that he made timely payments for 1700 West Girard Ave. and 778 North 25th St. for the assessed Refuse Collection Fee pursuant to the TRB Master's

decision of August 9, 2013. It was his position that the City did not post them to the account in a timely manner resulting in the residual balances for 2013 and 2014. The city representative could not confirm this but testified that the residual balances could have been the result of additional interest or penalty accruing while the payment sent by Petitioner was being applied to Petitioner's accounts.

7. Petitioner complained that his properties should receive the same governmental trash pick up services as neighboring residential properties without paying an extra fee for the trash pick up. Petitioner further stated his belief that the "ordinance violates state and federal law." See Notes of Testimony, 2-20-14, page 13. Petitioner did not provide any additional testimonial evidence or documentation to support his assertions. Or legal conclusions.

Conclusions of Law:

Petitioner owns several properties in the City of Philadelphia for which he received bills from the City of Philadelphia for the curbside waste collection fee authorized by The Philadelphia Code Chapter 10-717.1(2). This provision of the Code provides that "(t)here is hereby imposed on all owners of residential or commercial properties eligible for City curbside waste collection an annual fee of three hundred dollars (\$300) per property for neighborhood sanitation and cleaning services, including the collection of refuse, waste and recyclable materials and related cleaning services." There are certain enumerated exemptions to this provision as follows:

Exemptions: The following are exempt or partially exempt from the fee:

- (a) Collection from single-family dwellings;*
- (b) Collection from condominiums and cooperatives, as defined in subsection (1);*
- (c) Collection from a property in connection with which the property owner demonstrates, to the satisfaction of the Department, that it has in place one or more private waste hauling contracts that provide for collection of the refuse, waste and recyclable materials generated at the property;*
- (d) Collection from a duplex (two-family dwelling) in connection with which the property owner demonstrates, to the satisfaction of the Department, that the owner resides in one of the living units, provided that the exemption shall apply to fifty percent (50%) of the fee imposed pursuant to subsection (2).*

Petitioner's properties are rental properties with tenants from whom Petitioner, presumably, collects rental income. They are residential properties.

The fee under challenge is assessed on all properties in the City which are eligible to receive curbside waste pick up. The ordinance provides for certain exemptions from this fee. By way of example, an exemption is enumerated for single family residential property.

Petitioner's properties do not fall into any of the enumerated exemption categories. He did not dispute that under the Ordinance, his properties are subject to this fee.

Petitioner came before the TRB to challenge the validity of the Ordinance and the City's authority to enact an ordinance that assesses a fee on some properties, including the properties he owns, while exempting certain other properties.

Petitioner labels his properties as similarly situated to other residential real estate that is exempted from this fee and therefore argued that any different treatment by the City's fee structure should be found to be unconstitutional.

The city, for this fee, has distinguished between residential property used for commercial purposes, such as Petitioner's tenant occupied multi-family properties, and single family residential properties..

The Pa. Constitution provides in Article VIII Section 1 that "(a)ll taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws." In *Executive Life Ins. Co. v. Commonwealth*, 147 Pa. Commw. 105 (Pa. Commw. Ct. 1992), the court held that "the Uniformity Clause means that the classification by the legislative body must be reasonable and the tax must be applied with uniformity upon similar kinds of business or property and with substantial equality of the tax burden to all members of the same class."

Petitioner did not meet his burden of proof to provide the TRB with substantial evidence to establish that the ordinance should not be upheld or could not be applied to Petitioner's properties. He did not provide evidence to address the issues of whether the ordinance violates the Uniformity provision of the Pa. Constitution by impermissibly classifying categories of properties for purposes of this assessment, or that a fee of this nature fits into the category of "taxes" covered by the Uniformity Clause.

While Petitioner stated his general disagreement with the Ordinance and the City's decision to distinguish his properties from neighboring properties, he did not cite any legal authority to establish that the City's classifications were constitutionally defective or in any other way outside the scope of the City's authority to impose such a fee.

Concurred:

Nancy Kammerdeiner, Chair
Christian DiCicco, Esq.
Joseph Ferla
George Mathew