May 10, 2012
In Re: Kfir Binnfeld
Docket No: 35WRMERZW7190

Statement of Record:

1. Kfir Binnfeld (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board (TRB) on June 15, 2011 requesting review of the water/sewer bill for the property at 1435 South Etting St. Philadelphia, Pa.
2. A public hearing before a TRB Master was scheduled for November 8, 2011. Following this hearing, the decision of the Master, as ratified by the TRB, was to deny the petition.
3. Petitioner requested and was granted a hearing before the full TRB.
4. A public hearing before the full TRB was held on February 7, 2012. At the conclusion of this hearing, the Board announced its decision to grant the petition. The Board directed the Water Revenue Bureau (WRB) to reinstate the $11,664.60 credit to Petitioner's account that was erroneously issued as a refund to Countrywide on April 25, 2011 and abate penalties.
5. The City of Philadelphia WRB filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Fact:

1. Petitioner requested a review of the water/sewer bill for the property located at 1435 South Etting St. Philadelphia, Pa. for the period October 27, 2008 through June 1, 2011. The principal amount billed for this period was $4,308.41, with penalties as of the TRB hearing date of $24.46, and no other charges, for a total due of $4,332.87.
2. Petitioner purchased the property on Etting St. in 2008 through a Sheriff's sale. The date of the Sale was July 8, 2008.
3. At the time of purchase, Petitioner had a title search performed and found no issues related to the WRB bill or title that would have alerted him to any remaining future refunds, contingencies or interests from prior owners or mortgagees for the water bill.
4. Petitioner then went ahead, completed the purchase and renovated the building.
5. Once the building was occupied later in 2008, Petitioner received the first water/sewer bill from the WRB. It showed a large credit of approximately $11,000.
6. After receiving this bill showing a credit on the water account, Petitioner returned to the Sheriff's Department to question the credit. He was told that this was not unheard of, that some properties, even when sold at a Sheriff's sale, could have a credit and the new owner would get the benefit of that credit. He was told that the property was purchased as-is, with whatever credits or delinquencies might exist.
7. The bills that followed showed the monthly amount due deducted from the credit and told Petitioner to pay $0. There was no option to pay the current monthly bill presented to Petitioner and there was nothing to indicate that this credit might be provisional, subject to any claims.

8. City records showed that the credit on the water/sewer account that was showing on Petitioner's bills arose because the WRB received 2 payments for the account's delinquency. A payment of $11,664.60 was received from Countrywide (sic) on July 3, 2008, presumably a mortgage holder. Their relationship to the property was never fully explained to the TRB. This payment was made prior to Petitioner's purchase of the property and would have been credited to the account at the time of sale. A second payment to the WRB in the amount of $11,503.44 was made on November 17, 2008 from the Sheriff as a result of the sale to and payment by the Petitioner.
9. After petitioner's purchase of the property was completed, Bank of America Tax Services Corporation requested a refund of the $11,664.50 using the same account number as provided to Petitioner on his bills for this property. The refund was approved and issued to them on April 25, 2011.
10. Petitioner was never informed or notified of any refund request or claim against the account of the property he now owned.
11. Following the issuance of the refund to Bank of America Tax Services Corporation, Petitioner received a WRB bill showing that there was a delinquent bill in the amount that was equivalent to the bills accrued since he took ownership in 2008. This was the total for the monthly bills which the WRB had been deducting each month against the credit amount.
12. Petitioner received no notification from WRB to explain why the remaining credit had been removed or why there was now a large delinquency on the account.

Conclusions of Law:

It was the finding of the TRB that the WRB had erroneously issued a refund of monies from an account for a property owned by Petitioner with no notice to Petitioner either before or after the refund was issued. There was no evidence provided by the City representatives to establish why Bank of America Tax Services Corporation had an interest in the property or was entitled to a refund of monies paid prior to Petitioner's taking ownership through the Sheriff's sale process.

Clearly, had Petitioner taken ownership with an amount owing on the account, the City would have required Petitioner to take responsibility for the delinquency or face a shut off of the water to the property.

It was the finding of the TRB that having assumed ownership through a fully completed Sheriff's sale process, performed due diligence with a subsequent title search for any liens or assessed delinquencies, then gone on to receive monthly billings for almost 3 years that showed a credit against which the WRB assumed responsibility for automatically deducting the monthly amounts owed without ever notifying Petitioner of any other option or of any possible contingency or claim against this credit by another party, Petitioner was entitled to rely in good faith on the WRB billings as conclusive proof that such a credit existed for this account to which he was entitled the benefit as the property owner. He cannot be held responsible for any WRB error which may have

occurred in refunding to an unrelated third party monies from Petitioner's property account.

Petitioner clearly acted in good faith and relied upon the City's representations as to this water/sewer bill. His bills used the account credit and gave him no choice or option. He was never notified that anyone had come forward seeking a refund from what was then his account. Again, he was not notified or given any due process opportunity before over $11,000 was taken from his account and refunded to an unrelated third party.

The City is estopped from asserting their right to demand payment of this delinquency when by their own conduct over 3 years they acted in a manner that caused Petitioner to rely on the bills sent to him that clearly stated a credit existed on the account that he was entitled to use and on the City's own actions that credited his monthly water bills against this credit and then assigned a $0 amount due each month. The very definition of the doctrine of estoppel is that "a party who takes a position that the other party relies and acts upon should not be permitted to take a contrary position in litigation to the detriment of the other party who acted in good-faith reliance on the earlier position." *28 Am.Jur 2d Estoppel and Waiver §2.*

Concurred:

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