

November 22, 2010

In Re: Bernard Murphy
Docket No: 26DEMZZ9559

Statement of Record:

1. Bernard Murphy (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board on April 9, 2009 for review of a bill for the cost of demolition work authorized by the Department of Licenses and Inspections (L&I) for the property at 7129 Boyer St. Philadelphia, Pa. The principal due was \$34,997, with an administrative charge of \$7,349.37, interest as of the Tax Review Board hearing date of January 21, 2010 of \$2,329.03, and a lien charge of \$2,132.81, for a total due of \$46,808.21.
2. The petition was returned to petitioner by letter dated April 13, 2009 as being filed beyond the 60 day jurisdictional requirement set forth in The Philadelphia Code Chapter 19-1702, with information as to how to request nunc pro tunc consideration from the Tax review Board.
3. On May 27, 2009, the petition was accepted by the Tax Review Board as a nunc pro tunc appeal.
4. A public hearing was held on October 8, 2009 before the Tax Review Board hearing and continued for additional proceedings at a later date.
5. The public hearing before the Tax Review Board resumed on January 21, 2010. At the conclusion of the hearing, the Board announced its decision to deny the petition.
6. Petitioner filed an appeal with the Philadelphia Court of Common Pleas.

Findings of Fact:

1. Petitioner acquired the property at 7129 Boyer St. Philadelphia, Pa. on November 12, 1980.
2. In March 2007, an inspection by the Department of Licenses and Inspections (L&I) determined that the property was in a dangerous condition due to a partial collapse of the front porch. A Violation Notice, dated March 27, 2007, was sent to Petitioner at the property to inform him that L&I had inspected the property and found it to be unsafe under The Philadelphia Property Maintenance Code §PM-307. The Violation Notice stated that the front porch "floor/ceiling assembly" and roof had partially collapsed and was in danger of further collapse, and that the side wall of the house was partially collapsed. The notice further stated that these conditions had to be repaired or the structure demolished. See City Exhibit 5.
3. On March 27, 2007, the doors to the property were posted by L&I with an orange sign that said, among other things, "Danger, Keep Out". See City Exhibit 1.
4. Petitioner acknowledged that the City Exhibit photos were an accurate depiction of the property's state of disrepair. He also acknowledged that he saw the orange danger signs posted by L&I on the property at that time.
5. Petitioner and his wife continued to go in and out of the property after the L&I inspection and posting.
6. Following the March 2007 inspection, Petitioner spoke with the L&I Chief of Emergency Services, Scott Mulderig, about his intention to repair the property.
7. Because the Murphys stated to Inspector Mulderig that they were going to address the problems with the property, L&I gave the Petitioner some time to correct the violations cited.
8. L&I returned to the property in May 2007 and determined that the required repairs had not been made. Due to the imminent danger of an additional collapse of the front porch, an emergency curbside bid was held, a contractor chosen and work begun on the same day to remove the front porch structure.
9. Inspector Mulderig testified that he was present for the curbside bid and helped to put up the yellow caution tape to secure the work site for the contractor. He also testified to knocking on the doors of both the subject property and the adjoining property, 7131 Boyer St. to let anyone present in those properties know that a city authorized crew would be working at 7129 Boyer St. that day. He recalled speaking to the neighbor at the 7131 property and that no one responded to the knocking at the 7129 property.

10. Bill Pecarsky, President of Gamma Wrecking Company, which won the curbside bid and demolished the porch, testified that the removal of the front porch was done by hand so as to not damage the adjoining property, and all material was taken away. There were no acetylene torches or heavy equipment used in the demolition process.
11. Petitioner and his wife both testified that prior to the May 2007 demolition by Gamma Wrecking, a small fire occurred when city workers used a torch to cut the large beam supporting the partially collapsed porch. They presented no evidence to support this testimony of a fire between March and May of 2007. There were no fire department or police reports of any fire at that time and no records of any city activity at the property. They could not identify the person or persons who may have been at the property and did not provide any evidence to support their statements that any such persons were connected to the city or to L&I.
12. L&I returned to inspect the property again in October 2007 and took additional photos to document the buildings disrepair. The photos show the outside walls with loose and missing bricks, and blue tarp draped down the side of the house.
13. Mr. and Mrs. Murphy provided conflicting testimony as to whether and when they occupied the property during this time but acknowledged that the property was in need of serious repairs and that they had not been able to make those repairs.
14. In 2008, Petitioner was still working on repairing the property.
15. On June 12, 2008, there was a fire at the property which caused significant damage to the property.
16. An affidavit introduced by the City, sworn to by Edward L. Manko, Assistant Fire Marshall for the City of Philadelphia, stated his findings as the investigator of the origin and cause of the fire that occurred on June 12, 2008 at 7129 Boyer St. As a result of his personal investigation, Fire Marshall Manko determined that “the fire was caused by unattended, lit candles in the second floor middle room, that came in contact with bedding materials, causing heavy damage to the room of origin, extending up the pipe chases into the roof...and damaging the roof areas of both it and the adjacent property at 7131 Boyer St.”
17. Petitioner admitted to having a tenant in the room designated as the point of the fire’s origin, and that the tenant did use candles.
18. The property was inspected by L&I on June 13, 2008, at which time the property was declared “Imminently Dangerous” as defined by the Philadelphia Property Maintenance Code §PM-308. The Violation Notice sent to Petitioner following this inspection required that Petitioner immediately demolish or repair the premises.
The violations listed were: fire damage and imminent collapse of the “floor/ceiling assembly” between floors, partial collapse of certain walls, and partial collapse of the main roof. . City Exhibits 3 and 8.
19. The testimony of Petitioner and his wife was that they were aware throughout the 2007 and 2008 time period that the building was in a partial state of collapse with crumbling walls and exposed beams holding up various parts of the building.
20. Petitioner testified that he still believed that he could repair any damage to the property but was unable to get very far in his efforts.
21. On July 30, 2008, a Violation Notice was sent to Petitioner at the property and the property was again posted with the violation and dangerous condition information.
22. A curbside bid for demolition of the property was held by L&I on July 30, 2008. When the demolition was completed a bill for the costs was generated and sent to Petitioner.

Discussion:

The Philadelphia Property Maintenance Code PM-301.2 requires property owners to “maintain the structures and exterior property in compliance with these requirements, except as otherwise provided. All premises, whether occupied or vacant, shall be maintained in such repair and in such safe and sanitary condition that no physical damage shall be caused to any adjoining premises.”

The Property Maintenance Code specifically lists the following requirements:

PM-302.2 Sanitation: All exterior property and premises, including porches, patios and decks, shall be maintained in a clean, safe and sanitary condition...

PM-304.1 General: The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare. All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.

PM-304.3 Walls: All exterior walls shall be free from holes, breaks, loose or rotting materials; and maintained weatherproof and properly surface coated or pointed where required to prevent deterioration.

Testimony by both Mr. and Mrs. Murphy clearly demonstrated that they were well aware of the buildings state of disrepair. They did not dispute any of the photo exhibits presented by the city that showed the hazardous conditions and partial collapse of the porch and the outside walls, all violations of the Philadelphia Property Maintenance Code as cited above. They provided no evidence to show that they had done any actual repairs or maintenance to the property, despite their admissions that they were aware of the property's hazardous state, aware of the violations, and aware, partially due to long conversations with Inspector Mulderig, of what repairs were required and how to proceed with at least some of them.

Their testimony as to the chronology of events, the number of fires at the property, who was living in the property and when, was disjointed, jumbled and confused.

There was no evidence that anyone connected to the city did any work on the property prior to the May 2007 porch demolition, and no evidence that any city related worker had created any fire condition. There was only one fire report and that was for the June 12, 2008 fire. The investigation for that report determined that the fire started in the second floor middle room as a result of unattended candles. Petitioners agreed that was the most likely cause of the fire.

While L&I could have moved in to demolish the property well before July 2008, they, instead, gave Petitioner every opportunity to salvage the building. It was only after a fire that caused extensive damage that L&I acted to demolish the property. By that time, not only was the property a hazard due to a possible complete collapse on itself, it was also a hazard to adjoining properties, both from a collapse and from the possibility of the spread of a fire to those properties.

Petitioner had ample notice from L&I that action was required on his part. Notices were mailed, the building was posted, and he was in personal contact with Inspector Mulderig.

Therefore, the decision of the Tax Review Board was to deny the petition for abatement of the bill generated from the demolition activity that L&I had to take to secure the property location.

Concurred:

Monique DeLapenha, Esq., Chair

T. David Williams, Esq.

Joseph Ferla

LaVon Wells-Chancy, CPA