

June 30, 2008

In Re: **John Staples and Jeffrey Staples**

Docket No: **35WRMERZX1474**

Statement of Record:

1. John and Jeffrey Staples (hereafter "Petitioners") filed an appeal with the Tax Review Board for the property at 147 Manheim St. Philadelphia, Pa. requesting a review of the water/sewer bills for the period May 2, 1989 through October 3, 2005.
2. A public hearing was held before the Tax Review Board on January 22, 2008 following which the Board announced its decision to abate the penalties accrued against the water/sewer bill for the period July 8, 2003 through October 18, 2005.
3. Petitioner has appealed to the Court of Common Pleas.

Findings of Fact:

1. Petitioners purchased the property at 147 Manheim St. on September 29, 2005. At the closing, a bill in the amount of \$633 for outstanding water/sewer charges to the City of Philadelphia was presented. This bill was based on estimated usage and was not the result of an actual meter reading.
2. Petitioners sold the property on July 24, 2006.
3. During the time of their ownership, the property was under going renovations and water was not used.
4. Petitioners insisted that there was no meter at the property at the time of purchase.
5. Water Revenue Bureau records and testimony provided by the Water Revenue Bureau representative, Ms. Altermise Holmes, established the following:
 - a. a Philadelphia Water Department representative entered the property on October 3, 2005, took a final reading from the existing meter and replaced that meter with a new meter;
 - b. the meter reading taken on October 3, 2005 covered usage for a period of 197 months, or over 16 years. The last actual meter reading that the Bureau could provide was taken May 2, 1989 when that meter was installed and a reading of "000,000" was recorded;
 - c. all actual readings taken on the meter installed on October 3, 2005 registered "0" usage for the term of Petitioner's ownership period, consistent with Petitioners' position that no water had been used during their ownership period.
6. All bills received by Petitioners clearly stated they were estimated.
7. Petitioners were experienced in the real estate business and had purchased Philadelphia properties on previous occasions.

Conclusions of Law:

1. At the start of the Tax Review Board hearing, the City representative raised an objection based on jurisdiction, taking the position that the Petition for Review had been filed beyond the 60 day requirement of The Philadelphia Code Chapter 19-1702. The petition was filed with the Tax Review Board on or about February 7, 2006. Attached to the appeal was a bill dated January 25, 2006. The City representative did not

testify to or present documentation that any earlier bill had been provided to Petitioners. Therefore it was the decision of the Tax Review Board that the petition was filed in a timely manner and the hearing could proceed.

2. Petitioners bear the burden of proof to establish by substantial evidence that the bill they are questioning is inaccurate or incorrect. *City of Philadelphia v. Litvin*, 235 A.2d 157 (Pa. Super 1967). Petitioners in this case did not meet their burden of proof. The City's records persuaded the Board the root of the problem was the long time period between actual meter readings needed to establish the true water usage for the property and the estimated bills that were necessary in the absence of a meter reading.
3. Petitioners were on notice both before and after their purchase that the bills were being estimated for water usage. As experienced purchasers of real estate in Philadelphia, they knew or should have known that they did not have a bill that provided an actual and final amount due as of the purchase date, and that it was their responsibility to contact the Philadelphia Water Revenue Bureau to finalize the bill with actual, not estimated readings.
4. The account history provided to the Petitioners and the Tax Review Board at the hearing showed that for the period of Petitioners' ownership, the water usage attributed to the property was "0", which corresponded to Petitioners' position that water was not used at the property during their ownership period.

The meter reading taken on October 3, 2005 covered 197 months therefore going back well before Petitioners' ownership. Petitioner had no control and no knowledge of the water usage that would have or could have occurred at the property prior to their purchase and therefore could not dispute its accuracy.

5. Pursuant to The Philadelphia Code Chapter 19-1705, the Tax Review Board abated the penalties accrued against the delinquent bill based on a finding that petitioners had acted in good faith and without negligence or intent to defraud. As new purchasers they had acted promptly to address the delinquent bill upon receiving notice.

Concurred:

Derrick Johnson, Chair

Una Vee Bruce

Joseph Ferla