

2/12/2011

IN RE: James Swinton
DOCKET NO: 35WRMERZW8633

STATEMENT OF RECORD:

1. James Swinton (hereafter "Petitioner") filed a Petition for Appeal of a water/sewer bill for the property at 1721-23 Francis St. Philadelphia, Pa. The petition was filed with the Tax Review Board (hereafter "TRB") on August 10, 2009.
2. A public hearing was held before the TRB on February 2, 2010. At the conclusion of the hearing, the Board announced its decision to abate the penalties accrued against the delinquent bills contingent on a payment arrangement for the remaining balance within 60 days.
3. Petitioner filed an appeal to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner requested review of the Water Revenue bill for the property located at 1721-23 Francis St. Philadelphia, Pa. The period in question is from 2/15/05 through 8/17/09 with the principal amount due of \$13,059.10, penalties as of the TRB hearing of \$1,026.02, lien charges of \$100, for a total due of \$14,161.12.
2. Petitioner operated a business at this property through December 2005.
3. In December 2005, Petitioner contacted the Water Revenue Bureau and advised that the facility was closing.
4. In December 2005, Petitioner received a bill for approximately \$6300 that he assumed was the final amount owing for the water bill. He paid that amount in full, believing it to be the final bill that he would receive for this property.
5. Petitioner continued to receive bills for this property in 2006 and beyond. He and his attorney contacted city representatives and were unable to clarify why bills were being generated and what the bills represented.
6. Petitioner testified that the property was vacant for the entire period in question. However, the Water Revenue Bureau (WRB) had received actual usage readings from the water meter in the property from January through April 13, 2006, after which there was no recorded usage through August 12, 2009.
7. Petitioner testified that in September 2009, believing the water to be turned off from the City, he requested from the WRB the water be turned on.
8. The City records reflected the following:
 - a. A check received from Petitioner in May 2005 for approximately \$6000 was returned for insufficient funds. All charges originally credited for that check were debited and returned to Petitioner's account.
 - b. The check received from Petitioner in December 2005 for approximately \$6300 was applied to the account but was insufficient to cover all outstanding charges that remained after the May 2005 bounced check.
 - c. A balance of approximately \$6000 remained after the December 2005 payment of \$6300.

- d. The monthly bills for the period January through April 13, 2006 reflected actual usage amounts read from the meter.
 - e. The monthly bills for the period from April 14, 2006 through August 12, 2009 were for service charge only since no usage was reflected in the meter readings.
 - f. There was a record that the water had been shut off by the City in August 2006.
 - g. There was no record that the water service to the property was discontinued with a Discontinuance Permit from the Department of Licenses and Inspections.
9. Petitioner made no payments for the period in question.
 10. Petitioner testified that the property remains vacant even today, but when questioned as to water usage recorded beginning in October 2009 he stated that he is in the building daily, uses it for an office, and has someone in the building at night to watch the building.
 11. Petitioner admitted that a large usage reading in October 2009 was a result of having burst pipes during that month.

CONCLUSIONS OF LAW:

As the property owner, Petitioner is responsible for all water usage and water service charges. The usage charges are measured each month by the meter reading acquired by the WRB. The service charges are a fixed charge each month due and owing as long as the water service is available to the property, regardless of whether any water is actually used. Service charges can be suspended only with the issuance of a Discontinuance Permit by the Department of Licenses and Inspections. It is the property owner's responsibility to request this permit and pay the required fee.

Petitioner did not purchase a Discontinuance Permit and therefore the service charges assessed by the WRB from December 2005 to the present are correctly charged for the property.

Although Petitioner testified that the building was vacant after 2005, there were actual usage charges from the meter after that time in early 2006. There was no evidence that the meter was malfunctioning.

In addition, although Petitioner testified that the property remained vacant even as of the TRB hearing date, upon questioning, he stated that he does in fact use the building each day. He testified that he uses it as an office and has an overnight watchman in the building. He was also able to explain a particularly high usage reading for October 2009 as being the result of broken pipes.

It was clear that Petitioner is making use of the property and using water even though he may consider it to be "vacant" because it is not being used to capacity or for its original purpose as a shelter or residential facility.

However, Petitioner had made an earnest and good faith effort to understand and address the bill for all the years in question. Therefore, in accordance with The Philadelphia Code Chapter 19-1705 providing for abatement of interest and penalties, the TRB abated the penalties accrued against the delinquent charges.

Concurred:

Monique DeLapenha, Esq., Chair

T.David Williams, Esq.,

LaVon Wells-Chancy, CPA

Joseph Ferla