

February 10, 2017

In Re: James & Charlotte Brown

Docket Nos: 28SWMERZZ9964 & 35WRMERZW4525

Statement of Record:

- 1) James and Charlotte Brown (hereafter "Petitioner") filed 2 Petitions for Appeal with the Tax Review Board (TRB) on September 20, 2015 requesting review of the Water/Sewer and Storm water bill for the property located at 4206 Parkside Ave. Philadelphia, PA.

The Petition assigned TRB Docket No: 28SWMERZZ9964 questioned delinquent storm water charges.

The Petition assigned TRB Docket No: 35WRMERZW4525 requested review of delinquent water usage charges.

- 2) A public hearing before the TRB was scheduled for February 16, 2016 for Docket Number 28SWMERZZ9964 and continued at that time to be consolidated with Docket Number 35WRMERZW4525.
- 3) A public hearing before the TRB was scheduled for January 5, 2016 and continued at that time for the parties to enter into settlement discussions and for the WRB to adjust the bill under appeal pursuant to the City's 15 year write off policy.
- 4) A public hearing before the TRB was scheduled for June 28, 2016. At the conclusion of this hearing, the Board announced its decision to direct the WRB to adjust the water usage billing for the period 3/6/10 through 11/2/11 based on 0 cubic feet of usage per month and abate 100% of the penalty, with 30 days from the date of the adjusted bill to enter into payment arrangements. This decision was applicable to both Docket Numbers.
- 5) The City of Philadelphia Water Revenue Bureau (WRB) requested a rehearing. This request was denied by the TRB by letter dated August 12, 2016.
- 6) The City of Philadelphia filed an appeal to the Court of Common Pleas.

Findings of Fact:

- 1) Petitioners questioned the water/sewer/stormwater bill for the property located at 4206 Parkside Ave. Philadelphia, PA. for the period January 1, 2000 to September 22, 2015. The principal due was \$39,120.52, with penalty due as of the TRB hearing date of \$26,027.95, and lien charges of \$280.00 for a total due of \$65,428.46. These amounts reflected a write off of any charges more than 15 years old, as per WRB policies. The bill in question covered service charges, storm water charges, and water usage charges for the property.

- 2) Mr. German Yakubov appeared before the TRB to testify. He has been a co-owner of the property since 2015.
- 3) The appeal encompassed both 4204 Parkside Ave. and 4206 Parkside Ave. Each property consists of 6 apartment units. These adjoining properties shared 1 water service and 1 meter. Therefore, the bill in question, while labeled for 4206 Parkside also covered water service and water usage for 4204. For the period up through 2010, the bill also included storm water charges. Beginning in 2011, when the City began to separately list storm water charges billed with Water Revenue bills, a separate storm water account and bill for 4204 Parkside Ave was created. This was not in front of the TRB.
- 4) The properties had been vacant since sometime in 2009 when the pipes and the water meter were stolen. The bills were then estimated by the WRB until November 2, 2011 when a new meter was installed.
- 5) Prior to 2010, the combined building, with its 12 units, had tenants. Mr. Yakubov could not testify to the number of tenants or water usage. The owners had the appropriate rental license for years prior to 2010 and then did not renew the license when the property became vacant.
- 6) Mr. Yakubov acknowledged responsibility for the billings due prior to his ownership. He was looking for an explanation and assurance that the bill was accurate.
- 7) Mr. Yakubov was aware of WRB delinquencies at the time the property was purchased in 2015.
- 8) WRB records indicated that the water was shut off by the department from 10/6/2010 through 7/8/2010.
- 9) The WRB account history information for 11/2/2011 is the WRB estimated usage for a 20 month period. There were no actual meter readings as there was no water meter in the property for those 20 months.
- 10) WRB records show a new meter installed on 11/2/2011.

Conclusions of Law:

It is clearly established law that water/ sewer bills are in rem claims that remain attached to a property despite an ownership change. These charges "are imposed against the property, not the owner. Consequently, they remained with the property even after a sale. By placing a lien on the property, a municipality was able to extend its claim to subsequent purchasers." *Bobby McArthur v. Tax Review Board*, 16 Phila. 329; 1987 Phila Cty Reporter. LEXIS 38.

Petitioners acknowledged their responsibility for the outstanding delinquencies but were at the TRB seeking assurances that the bill they were being asked to pay was an accurate bill.

In reviewing the testimony and the Water Revenue Bureau account history, the TRB determined that the estimated usage on the bill in question for 4206 Parkside Ave. did not accurately reflect that the property was not occupied during the period 3-16-10 to 11-2-11.

The TRB accepted Petitioner's testimony that during the years in question pipes and the meter were missing, having been stolen at some point, and there was no water used in the property as the property was vacant.

This was confirmed for large portion of those 20 months by the WRB records showing the water was shut off by the City and therefore there could not have been water usage. When a new meter was

installed on November 2, 2011, the WRB billed Petitioner for the entire 20 month period with an estimated usage charge without accounting for even their own, confirmed, shut off period.

Therefore, the decision of the TRB was to direct the WRB to remove the usage charges for the period 3/6/10 to 11/2/2011. There was sufficient evidence to establish that the properties were vacant, the meter and pipes were missing, and the city itself had turned off the water for some of that time.

Water service and stormwater charges were still assessable for all periods. Petitioner did not put forth any evidence to establish that these charges should not have been applied to the properties or had been applied or calculated incorrectly.

Consideration of water usage and the charges for usage are separate and distinct from the availability of service to the properties as the basis for the service charge and the stormwater runoff costs and calculations for the stormwater charge. While Petitioners met their burden of proof to establish that an adjustment to the usage charge was warranted, they did not provide evidence to warrant an adjustment to the other charges.

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