

January 28, 2016

In Re: Fisher's Crossing Realty L.P.

Docket#: 35WRMERZW5723

Statement of Record:

- 1) Fisher's Crossing Realty L.P. (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board (TRB) on February 21, 2014 requesting a review of a Water Revenue Bureau bill for the property at 4901-37 Stenton Ave., Philadelphia, Pa.
- 2) A public hearing was held before the TRB on March 26, 2015 following which the matter was taken under advisement.
- 3) On September 8, 2015, the Board announced the following decision:
Abate 100% of penalties; Meter #0755129: Water usage adjusted for the period 7/26/2013 -8/19/2013 based on 16,760 cubic feet of water usage; Water usage adjusted for the period 8/19/2013 -8/23/2013 based on 5120 cubic feet
- 4) Petitioner filed an appeal to the Court of Common Pleas.

Finding of Fact:

- 1) Petitioner requested review of the Water Revenue Bureau (WRB) bill for the period March 1, 2010 to January 31, 2014 for the property located at 4901-37 Stenton Ave. Philadelphia, Pa. The principal amount due was \$616,146.78, with penalties as of the TRB hearing date of \$29,078.22, for a total due of \$645,225.00.
- 2) The Fishers Crossing property is a 218 unit apartment complex purchased by the Petitioner in 2005.
- 3) During the time period in question, approximately 177 apartment units were available to be occupied. These occupied units are primarily 1 bedroom and efficiency apartments. Vacancy rates during the period in question ranged from 21.6% to 28.9%.
- 4) On October 19, 2005, PWD removed a conventional meter and installed the first meter with an electronic transmitter (ERT).
- 5) The Philadelphia Water Department (PWD) returned to the property on February 24, 2010 to replace the register and the ERT.
- 6) Beginning with the February 2010 equipment change, there were various errors and malfunctions on the part of the PWD equipment and then changes to that equipment as the PWD attempted to correct the meter problems, some of which the Petitioner was alerted to and some of which Petitioner was not made aware of at the time of the occurrence.

- 7) From the time of purchase through August 2013, Petitioner paid the water/sewer bills as received. Bills averaged \$3500 monthly during the years following Petitioner's purchase of the property in 2005.
- 8) The August 30, 2013 WRB bill was \$421,157.56.
- 9) Upon receipt of the large bill in August 2013, Petitioner began contacting the WRB for information and assistance.
- 10) Petitioner also hired plumbers to look for leaks and found none in or around the facility.
- 11) At the TRB hearing, WRB provided an account history for the property showing the meter readings for the period. This account history showed actual monthly meter readings for most of the period under appeal.
- 12) The PWD asserted as follows:
 - a) For the period February 24, 2010 to August 19, 2013, the meter was programmed incorrectly so that the readings had the decimal point in the wrong place. This decimal point error resulted in Petitioner receiving bills significantly lower than the actual usage. For example, usage of 1500 cubic feet would have registered and been billed as 150 cubic feet. The Account History provided by WRB showed monthly usage readings ranging from 121,000 to 283,000 cubic feet per month.
 - b) WRB accounting supervisor, Mike Lorella, testified that in August 2013 the PWD was on site to change the meter's electronic transmitter (ERT). At that time, an actual meter reading was obtained by PWD personnel. Upon review of this reading taken on site, WRB determined that the monthly readings for the prior 2 ½ years had been recorded improperly and had caused Petitioner to be billed for less than the property's actual water usage.

The decision by WRB to use the reading but move the decimal point created a reading 10 times higher than the readings that had been transmitted for the previous 2 ½ years.
 - c) Following Petitioner's complaint, the water meter was replaced on August 19, 2013. This new meter remained in place until August 26, 2014. Actual readings for water usage were recorded for each month. This meter was then removed, tested for accuracy and found to be accurately registering the property's water usage. During this period of time, Petitioner's monthly reported usage ranged from 96,000 to 249,000 cubic feet per month
 - d) The new meter installed on August 26, 2014 turned out to be mis-programmed by the manufacturer and again, readings did not correctly report actual usage because of a misplaced decimal point, according to the City representative. This meter was replaced December 23, 2014.

- e) City records also refer to a water leak. The records do not indicate a time period or location of any leak, or how it was resolved. The conclusion of a leak was based on PWD personnel observation of the meter in place on October 17, 2013, as continually running, not an actual observation of a water leak. PWD personnel did not notify Petitioner that they believed there was a leak.
 - f) The large bill under appeal is the result of recalculation of usage by WRB by moving the decimal point from the actual meter readings to correct what the PWD said were the errors in decimal point placements by the meter equipment.
- 13) Dawn Allen, Petitioner's on-site manager during all relevant time periods, testified that there had been no major plumbing issues at the property. Individual unit leaks were repaired when reported or discovered.
- 14) During the period when the large bill was first received and was being questioned by Petitioner, Petitioner engaged several different plumbers to go through the property, including the individual apartment units, garage areas & underground pipe areas. In addition, Petitioner hired a leak detection company to investigate potential underground leakage. No leaks were found.
- 15) Ms. Allen testified that in her personal, on-site experience, the property did not have any major plumbing issues. Minor issues such as dripping faucets were handled by the building maintenance staff.
- 16) The bills received and paid by Petitioner during the period under appeal stated they were for actual, not estimated, water usage.

Conclusions:

Through a series of errors and malfunctioning equipment, PWD and WRB claim a determination that for multiple years it billed less water usage than actually occurred at the property. However, the account history provided by the WRB which documented all meter readings and activity did not show any abnormally high monthly spikes after the malfunctioning equipment was replaced by PWD. This account history did not substantiate the testimony that the actual water usage registered on the meter was 10 times higher than the electronic transmissions of usage that were the bases for all of Petitioner's original bills through all of the years in question.

The TRB reviewed the actual bills received by Petitioner. The bill dated August 30, 2013 listed the current usage charges as \$418,963.08. This bill also showed that all prior amounts due had been paid. The Board determined that a clerical or computer error had occurred that caused the WRB to add a decimal place to the July 26, 2013 meter reading so that when compared to the prior actual reading, it created an artificial jump in the water usage. Using the meter reading on August 19, 2013 that had 1 digit more than the prior reading, the WRB added significant extra usage to the next bill issued on this account.

Specifically, the data reviewed was as follows:

Date	Actual Meter reading	Per Month Usage Calculation
12/24/12	7304	
1/25/13	7601	297
7/26/13	9317	286
8/19/13	94846	85,529

According to the WRB's own account history, at no time after replacing a meter or ERT, did an actual monthly reading jump to 10 times the amount of cubic feet recorded for any prior or subsequent months.

The WRB added an extra decimal place to the meter counter on August 19, 2013, taking the usage from what should have been 948,460 to 9,484,600 cubic feet. The TRB concluded that the meter reading and the usage recorded on the Account History as 94846 on August 19, 2013 was a clerical error, either by human or computer.

Usage did vary overtime and there was no way to differentiate which variance in usage might have been from a change in tenants and occupancy or from a leak. If there was a water leaking point, the actual readings captured it as part of Petitioner's regular bills.

Petitioner responded and cooperated at all times. If PWD equipment was malfunctioning at any time, Petitioner could not have known. Nor could Petitioner identify or verify a misplaced decimal point in the meter programming.

There was testimony that a leak somewhere was assumed by PWD but no evidence of where or when. Petitioners provided rebuttal evidence of various plumbers.

In addition, a non-specific report of a leak with no evidence other than the meter is moving, is not sufficient to establish an actual leak and a conclusion that actual water usage was 10 times what the meter reading was showing. In an apartment complex with 177 units, it is not inconceivable that there is always someone using water in one or more of the units.

Therefore, the TRB rejected the WRB position that the meter reading should be increased by moving the decimal point, and that Petitioner should be held liable for the corresponding increase in usage without further evidence that there actually was the increased water usage.

In addition, the TRB abated all accrued penalties as Petitioner met the standard of The Philadelphia Code §19-705 which provides that “the Tax Review Board may abate in whole or in part interest or penalties, or both, where in the opinion of the Board the petitioner acted in good faith, without negligence and no intent to defraud.”

Concurred:

Nancy Kammerdeiner, Chair

Joseph Ferla

George Mathew, CPA

Kaitlin McKenzie-Fiumara, Esq.