

March 13, 2015

IN RE: BARRY SANDROW

DOCKER NUMBER: 35WRMERZW6298

Statement of Record:

1. Barry Sandrow (hereafter "Petitioner") filed a Petition for Appeal of a Water Revenue bill with the Tax Review Board (TRB) on April 29, 2013.
2. A public hearing before a TRB Master was scheduled for October 7, 2013. The matter was continued on October 1, 2013.
3. A public hearing before the TRB was scheduled for November 14, 2013.
4. A public hearing was held before the TRB on February 25, 2014. At the conclusion, the matter was taken under advisement and the record held open for 30 days to allow each party the opportunity to submit additional documentation.
5. A public hearing was held February 25, 2014 at which time the TRB announced its decision that Water Revenue Bureau (WRB) bills for the period 8/1/08 to 9/4/12 should be adjusted as 7% of gross income as provided in tax returns and other documents presented by Petitioner. To the extent the recalculated amount is less than the \$188,215.03 paid by Petitioner, the Petitioner should receive a refund.
6. The City of Philadelphia Water Revenue Bureau filed an appeal with the Court of Common Pleas.

Findings of Fact:

1. This commercial property at 1500 -30 E Erie Avenue, Philadelphia, Pa was owned by Petitioner Barry Sandrow during all periods in question.
2. The property consists of separate units with separate business entities. Each unit is separately metered for water usage so that each tenant pays specifically for its own water usage.
3. The current appeal is for one separately metered unit that houses a laundromat.
4. At the TRB hearing, the Petitioner-landlord and the tenant-owner of the laundromat appeared to testify and present evidence as to the circumstances surrounding the disputed bill.
5. For the laundromat unit, the Petitioner-landlord received regular bills for an account ending in #003. These bills were paid by the tenant.
6. The tenant, Super Clean Laundry, took over occupancy of the laundromat unit in 2008.
7. Petitioner testified that the bill in question first became known to him in February 2013 when he applied for financing for the building. A title search determined a Water Revenue Bureau (WRB) lien in the amount of \$188,215.03.
8. In order to proceed with the financing, Petitioner paid the full principal amount and requested an informal review by WRB to dispute the bill. Petitioner provided documentation to show multiple response letters from the WRB delaying this review.

9. It was while waiting for the informal WRB appeal that Petitioner was informed that the outstanding lien that he paid was for an account ending in #004 that he had been unaware existed and for which the WRB had never sent a bill.
10. After waiting several months for the informal WRB review, Petitioner filed the current TRB appeal.
11. For the years in question, Petitioner had regularly received and paid a WRB bill for an #003 account that serviced the unit. During this time, he believed it covered all water service to the laundromat.
12. WRB representatives acknowledged that Petitioner had never received a billing for the #004 account that was the subject of the lien paid by Petitioner.
13. This unbilled account was "discovered" by the WRB when Water Department employees were at the property to repair a leak.
14. At the time that the WRB discovered this unbilled account, they added estimated usage for the prior 4 year period. This estimated usage was based on actual usage readings taken subsequent to the finding of the account and service.
15. Testimony by the WRB representative was that this account was considered a "surcharge" account, specific to laundromats, to account for expected high water usage.
16. The current tenants, who were present for the appeal hearing, took occupancy of the laundromat in 2008 and shortly thereafter found themselves in competition with a new laundromat one block away. This second laundromat had an immediate and detrimental impact on their business.
17. These tenants worked from 2008 to 2012 to recover and grow the business into the level it was at when the WRB came in and started reading the meter for usage on the #004 account at issue in this appeal.
18. Estimating usage for the period from 2008 to 2012 based on 2012 usage did not accurately reflect the business fluctuations during the period from 2008 to 2012. Business was not level for all 4 years covered by the bill in dispute.
19. Petitioner and the tenant provided documentation to establish the industry standard and their own experience with other laundromats they own regarding expected water usage as a percentage of gross receipts. They established that approximately 7% of gross receipts was their general experience for water usage in their laundromats.
20. The City offered the position that Petitioner appeal should not be considered because the payment for this bill had been made pursuant to an agreement with the WRB and therefore any appeal rights had been forfeited. In return, the WRB had waived \$10,500.57 in accrued penalties.
21. The WRB representatives did not produce any paperwork to show a formal agreement with Petitioner or other records, paper or electronic, to show that Petitioner had waived his appeal rights.
22. The WRB's only evidence as to any agreement with Petitioner was in the form of notes entered into its database around the time of Petitioner's payment of \$188,215.03. The employee who entered these notes was not present at the TRB hearing. These notes indicated that Petitioner had willingly paid the bill. There was no mention of his appeal rights or any conditions related to the right to file an appeal.
23. Petitioner insisted he paid under protest and stated so at the time payment was made.

24. Payment was made February 6, 2013 and on February 20, 2013 Petitioner filed a request with WRB for an informal review hearing to dispute the bill.
25. The WRB position as to the billing was that the usage billed on the #004 meter was actual usage that registered on this meter but was never billed and, therefore, was due. However, Petitioner produced a 2013 letter from the WRB stating that the billing had been overestimated but without any explanation or adjustment.

Conclusions of Law:

The TRB's initial determination was that the WRB did not provide sufficient evidence, either by testimony or documentation to establish that Petitioner had waived his right to appeal the bill at the time of payment in February 2013. There was no written agreement presented with Petitioner's signature nor sufficient testimony offered that provided proof of such an agreement with a waiver of appeal rights. The Board considers a waiver of appeal rights to be a significant matter and a smattering of notes in a computer system to be insufficient proof of such a waiver.

Petitioner testified that the payment was made under protest and that within 3 weeks he had filed the first appeal to the WRB for a review of the bill and an opportunity to dispute it. There was a demonstrated and documented series of actions that showed clearly that Petitioner had not agreed to any type of agreement to waive his appeal rights. He paid in full as a requirement of a private financing deal for the building.

As to the bill itself, WRB acknowledged that this meter was not read for actual usage during the 10 years it had been in place, including the 4 years in question for this appeal and no bill was sent to Petitioner to alert him to the existence of this account.

Petitioner presented testimony and documentation to establish that the business had fluctuated and had a downturn as a result of nearby competition. In addition, Petitioner provided evidence to establish the general industry standards as well as a history of its own experience with regard to water usage that showed a general standard of water usage cost to be approximately 7% of gross receipts for this type of business.

Petitioner had been receiving a water bill from the #003 account and had no reason to suspect it did not cover all water charges. When confronted with the second account, Petitioner agreed to pay this second surcharge account, not only going forward, but for prior years as well, even though they had never been given notification that this surcharge account was in existence. All they asked was that the amount billed on the #004 account reflect water usage that was reasonable for their actual business conditions for those 4 prior years.

The TRB reviewed the laundromat tax returns, comparisons with water usage for other laundromats and the testimony of its owners to reach the conclusion that the usage on the #004 bill should be adjusted for the period 8/1/08 to 9/4/12; and the adjustment should be based more closely on an estimate of the actual usage by the laundromat as ascertained by

reviewing the fluctuating gross receipts of the business during those years. Clearly if there was less business, there was less water usage.

Therefore, the decision of the Board was that Petitioner had met his burden of proof with substantial evidence to establish that the bill in question did not accurately reflect the water usage of the property for the 4 year billing period and provided a significant amount of material to allow the TRB to determine a reasonable calculation for water usage.

The WRB position of taking a 10 year meter reading and only billing for 4 years under the premise that water usage should be assumed to have been consistent over that 10 year period had no basis or supporting evidence.

Therefore, the decision of the Tax Review Board was that Water Revenue Bureau (WRB) bills for the period 8/1/08 to 9/4/12 should be adjusted as 7% of gross income as provided in tax returns and other documents presented by Petitioner. To the extent the recalculated amount is less than the \$188, 215.03 paid by Petitioner, the Petitioner should receive a refund.

Concurred:

Nancy Kammerdeiner, Chair

Joseph Ferla

George Mathew

Christian DiCicco, Esq.

