

December 24, 2015

In Re: Barry Mamadou

Filed with the Tax Review Board	Docket. No.	Property
December 1, 2014	14STMERZZ8873	3234 Allegheny Avenue
November 24, 2014	14STINPZZ9756	3025 North 22nd Street
December 1, 2014	14STMERZZ8874	2030 Tioga Street
December 1, 2014	14STMERZZ8875	2957 North 22nd Street
November 24, 2014	14STINPZZ9754	1318 West Nedro Avenue
December 1, 2014	14STINPZZ9757	2049 Tioga Street
November 24, 2014	14STINPZZ9755	3627 Germantown Avenue

Statement of Record:

- 1) Barry Mamadou (hereafter "Petitioner") filed Petitions for Appeal with the Tax Review Board (TRB) requesting review of Refuse Collection fees and/or accrued interest and penalties for the following Philadelphia properties as listed above. The docket numbers with the "MER" designation reflect requests for review of principal. The docket numbers with the "INP" reflect requests for interest and penalty consideration only.
- 2) A public hearing before a TRB Master was scheduled for March 27, 2015 for all petitions. At the conclusion of the hearing, the decision of the Master, as ratified by the TRB, was to deny the petitions.
- 3) Petitioner requested and was granted a rehearing before the TRB.
- 4) A public hearing before the TRB was scheduled for August 13, 2015 for all petitions. At the conclusion of the hearing, the TRB announced its decision to abate 100% of the penalty contingent on payment within 30 days of receiving the adjusted bills.
- 5) Petitioner filed an appeal to the Court of Common Pleas.

Findings of Fact:

- 1) Petitioner owned all of the properties during the periods under appeal.
- 2) All petitions related to amounts due pursuant to the City of Philadelphia's annual fee for refuse collection assessed under The Philadelphia Code Chapter 10-717.1.
- 3) The amounts due for each property at the time of the TRB hearing were as follows:
 - a) 3234 West Allegheny Ave.-for the years 2010-2015, principal balance of \$1650, interest of \$460.50 & penalty of \$782.64 for the total due of \$2893.14.
 - b) 3627 Germantown Ave.-for the years 2010-2015, principal balance of \$1650, interest of \$460.50 & penalty of \$782.64, for the total due of \$2893.14.
 - c) 2049 Tioga Street-for the years 2010-2015, principal balance of \$1650, interest of \$460.50 & penalty of \$782.64 for the total due of \$2893.14.

- d) 1318 West Nedro Ave.-for the years 2010-2015, principal balance of \$1650, interest of \$388.50 & penalty of \$672.38, for the total due of \$2710.88
 - e) 2957 North 22nd Street-for the years 2010-2015, principal balance of \$1650, interest of \$388.50 & penalty of \$672.38 for the total due of \$2710.88.
 - f) 2030 West Tioga Street-for the years 2010-2014, principal balance of \$1350, interest of \$448.50 & penalty of \$763.14, for the total due of \$2561.64.
 - g) 3025 North 22nd Street-for the years 2010-2015, principal balance of \$1650, interest of \$460.50 & penalty of \$782.64, for the total due of \$2893.14.
- 4) At some point during this period, Petitioner became incarcerated. He alternately stated 2010 and then 2012. At that time, he made arrangements for a third party to act on his behalf to take care of the properties. This person failed to do so. When Petitioner was released from incarceration he found that the properties were delinquent for various taxes and fees. They were being readied for Sheriff's Sale by the City's Law Department.
 - 5) Petitioner was able to have the Sheriff's Sales for these properties stayed by entering into agreements for outstanding balances due for Real Estate taxes and business taxes.
 - 6) Petitioner gave conflicting testimony as to the rental status of the property. At least some of the properties had tenants between 2010 and 2015, and rent was being collected.
 - 7) Petitioner stated that some of the properties had been vacant for all or a substantial portion of the years 2010 – 2015 but produced no evidence to substantiate his testimony, by way of substantive testimony or any documentation.
 - 8) The City representative testified that Petitioner had been in contact with the Revenue Department through the years, but was not compliant with the City's requirements for rental licenses, because of the numerous taxes, water bills & fees owed to the City.
 - 9) Petitioner testified to his many efforts to deal with the multiple delinquencies associated with each property by contacting the Revenue Department and collection agencies charged with collecting the delinquencies owed to the City and entering into various payment agreements since his release from prison.

Conclusions of Law:

Petitioner requested waiver of all refuse collection charges associated with 3234 Allegheny Ave. and 2957 North 22nd St., and waiver of interest and penalties associated with the refuse collection fee delinquencies for the remaining properties.

The burden of proof in an administrative hearing rests with the petitioning party. Commonwealth of PA, PA Game Commission v. Commonwealth of PA, Dept of Environmental Resources, Ganzer, Sand & Gravel, inc. and Hammermill Paper Co., 97 Pa. Cmwlth. 78, 90, 509 A.2d 877,884 (1986) aff'd 521 Pa. 121, 555 A.2d 812 (1989). Petitioner carried the burden of proof to provide substantial evidence to establish that one or more of the properties qualified for an exemption from this fee.

Petitioner did not provide any substantive testimony or documentation to establish that any of his properties qualified for any of enumerated exemptions to the refuse collection fee listed in The Philadelphia Code Chapter 10-717.1. By way of example, a vacant property may be exempted from this

fee if a property owner has been issued a Vacant Property License by the Department of Licenses & Inspections. Petitioner did not provide any such licenses to the TRB to establish periods of vacancy at the properties.

Therefore, the TRB did not reduce or eliminate any of the accrued principal amounts for these properties.

The Philadelphia Code 19-1702(5) provides that“(t)he filing of a Petition for Review shall be deemed to include therein, whether or not specifically stated, a request for the waiver of interest and penalties. The Board shall rule upon the waiver of interest and penalties in conjunction with its ruling upon the Petition for Review.”

The Philadelphia Code Chapter 19-1705(2) specifically addresses interest and penalty waivers and states in part 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.”

Petitioner testified to his recent multiple efforts to address the many delinquencies associated with these properties for which he owes the City of Philadelphia a significant amount.

While he testified that these delinquencies accrued during a period of incarceration when his agent failed to follow through on his promise to manage these properties and pay the bills from the City, Petitioner alternately testified that he entered incarceration in 2010 or 2012. These specific refuse collection fee delinquencies date back to 2010. He did not provide information or explanation as to any pre-incarceration period when these delinquencies started to accrue.

Since his release from incarceration, Petitioner has made attempts to address the liabilities, including the fees under appeal in this matter. City representatives confirmed that he had active payment agreements for various real estate and business taxes.

Therefore the decision of the TRB was to abate 100% of the accrued penalty. The City does not offer payment agreements for this fee, therefore the TRB decision was contingent on full payments within 30 days of the revised bill.

Concurred:

Nancy Kammerdeiner, Chair

Joseph Ferla

George Mathews