

March 3, 2015

In Re: Boris Shvets

Docket No: 35WRMERZW6085

STATEMENT OF RECORD:

1. Boris Shvets (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board (TRB) on August 15, 2013 requesting review of a Water Revenue bill for the property located at 1441 Hellerman St. Philadelphia, Pa.
2. A public hearing before a TRB Hearing Master was scheduled for April 1, 2014. The decision of the Master, as ratified by the TRB, was to adjust the water usage for the billing period 8/26/2010 through 9/18/2012 based on usage of 2000 cubic feet per month with payment arrangements to be made within 30 days of the date of the adjusted bill.
3. Petitioner requested and was granted a rehearing before the full TRB.
4. A public hearing was scheduled for November 13, 2014 before the full TRB. At the conclusion of the hearing, the Board announced its decision to uphold the conclusion of the Hearing Master to adjust the adjust the water usage for the billing period 8/26/2010 through 9/18/2012 based on usage of 2000 cubic feet per month; but with payment arrangements to be made within 60 days of the date of the adjusted bill.
5. Petitioner filed an appeal to the Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner filed a Petition for Appeal requesting a review of the water/sewer bill for the property at 1441 Hellerman St. Philadelphia, Pa. for the periods 12/29/2009 to 6/25/2010 and 8/26/2010 to 9/18/2012.
2. Petitioner was the owner of the property located at 1441 Hellerman St. Philadelphia, Pa. for all periods in question.
3. During the 24¾ month period from 8/26/2010 through 9/18/2010, the meter was not registering water usage for the property. Petitioner paid the bills as he received them with service and storm water charges and without any charges for water usage.
4. Petitioner testified that there were tenants in the property during the time period under appeal.
5. According to Philadelphia Water Department records, the meter repair occurred on 9/18/2012 and actual meter readings for water usage began to be captured on a monthly basis from that time.

6. These actual meter readings fluctuated greatly from month to month.
7. To determine an estimate for the period when the meter was not registering, the Water Revenue Bureau used an average of the actual readings for the period of September 2012 through November 2012. This average of 3201 cubic feet per month was then applied to the entire period of 8/26/2010 through 9/18/2012 and was the subject of Petitioner's appeal.
8. Petitioner believed the estimated usage was too high when applied for the almost 2 year time period as he had varying numbers of tenants during that time.
9. The adjustment from the TRB Master resulted in a reduction in the bill because it reduced the average usage per month calculation to 2000 cubic feet, determined by looking at a longer period of time than the 3 month Water Revenue Bureau average to determine a more accurate estimate of how water was being used at the property.
10. Petitioner agreed with the TRB Hearing Master's original decision to use 2000 cubic feet as the estimated monthly usage but appealed to the full Board as he did not believe that his bill reflected this decision. However, at the time Petitioner filed his appeal to the full TRB he had not yet received the adjusted bill showing how the decision was being applied.
11. As explained by the Water Revenue Bureau (WRB) representatives, using the TRB Master's decision of 2000 cubic feet per month, the WRB applied its own "zero usage policy" for situations such as this, resulting in a calculation based on 2000 cubic feet per month for the most current 12 months of the period in question and then ½ of that monthly usage, 1000 cubic feet per month, for the remaining 12 months. Therefore, the bill would be calculated at 2000 cubic feet per month for the period September 2011 through September 2012 and at 1000 cubic feet per month for the period August 2010 through August 2011.
12. Petitioner testified that he believed the meter to have been broken in some way for a longer period of time than covered in the Board's review, but the city's records showed actual meter readings through 2009 and up to 8/26/2010. There was no evidence that a prior period had a broken or non-registering water meter.

#### CONCLUSIONS OF LAW:

Petitioner was requesting review and adjustment of a billing based on estimated usage that arose as a result of a defective water meter.

To determine a reasonable estimate, supported by substantial evidence, the TRB reviewed the account history provided by the WRB that included the actual usage of water for 2012 and 2013, the years subsequent to the time period during which the meter was not registering water usage.

Petitioner did testify that the property was tenant occupied for most months, with some months that may have been vacant, and continued to be tenant occupied after the repairs.

Therefore, the TRB reviewed the account history of actual usage and roughly averaged it to determine a fair and reasonable usage amount for the period when the meter was not registering actual usage.

There was no dispute that water was used during that time period and used by a varying number of tenants. The actual usage in the 6 months following the meter repair fluctuated quite a bit, from a low of 100 cubic feet in June 2013 to a high of 4505 cubic feet for September 2012. It was the determination of the Board that by roughly averaging the 6 month period, as the TRB Hearing Master had done, the 2000 cubic feet per month decision would, in a smoothed out fashion, take into account the months when usage would have been very high and the months where usage would have been very low.

In addition, the application of the WRB zero usage policy would provide a further reduction in the billing for that period where there was no actual reading for water usage but not due to any wrongdoing by the petitioner.

Concurred:

Nancy Kammerdeiner, Chair

Christian DiCicco, Esq.

Joseph Ferla

George Mathew

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Exhibit A

1. Copy of Tax Review Board Petition for Appeal filed August 15, 2013.
2. Copy of Tax review Board acknowledgement letter dated August 19, 2013.
3. Copy of Tax Review Board letter scheduling a public hearing, dated February 12, 2014.
4. Copy of Tax Review Board decision letter, dated April 7, 2014.
5. Copy of Tax Review Board letter granting Petitioner's rehearing request, dated June 5, 2014.
6. Copy of Tax Review Board letter scheduling a public hearing, dated September 5, 2014.
7. Copy of Tax Review Board letter continuing the scheduled public hearing, dated October 7, 2014.
8. Copy of Tax Review Board letter scheduling a public hearing, dated October 14, 2014.
9. Copy of Water Revenue Bureau Account History document.
10. Copy of Tax Review Board decision letter, dated November 21, 2014.
11. Copy November 13, 2014 public hearing Notes of Testimony.
12. Copy of Tax Review Board Opinion, dated March 3, 2015.