

October 27, 2015

IN RE: Russell P. Hughes Land Development, LLC

Docket Nos: 36REINPZY9465 -- 1737-55 Windrim Avenue

36REINPZY9466 -- 1599 Windrim Avenue

36REINPZY9464 – 1645 Belfield Avenue

Statement of Record:

- 1) Petitioner filed Petitions for Appeal with the Tax Review Board on March 17, 2014 requesting relief from interest & penalties accrued against delinquent Real Estate Taxes for 3 properties located in Philadelphia as follows:
  - a) 1645 Belfield Ave for the tax years 1994-2013, and assigned TRB Docket#: 36REINPZY9464;
  - b) 1735-55 Windrim Ave for the tax years 1997-2013 and assigned TRB Docket#: 36REINPZY9465;
  - c) 1599 Windrim Ave for the tax years 1991-2013 and assigned TRB Docket#: 36REINPZY9466
- 2) A TRB hearing for each of the three docket numbers was scheduled for May 30, 2014 and Petitioner's representative was notified by letters dated April 14, 2014. Petitioner's representative, William Charles Dixon, requested a continuance by letter dated May 22, 2014. This request was granted and Mr. Dixon was notified by letter dated May 23, 2014.
- 3) A TRB hearing for each of the 3 docket numbers was scheduled for July 21, 2014 and Petitioner's representative was notified by letters dated June 12, 2014. Petitioner's representative requested a continuance for all matters by letters dated July 14, 2014. This request was granted with the proviso that no further continuances would be granted. Petitioner's representative was so notified by letters dated July 14, 2014.
- 4) A TRB hearing for each of the 3 docket numbers was scheduled for September 15, 2014 and Petitioner's representative was notified by letters dated August 9, 2014. The following dispositions were rendered by the TRB Master and ratified by the TRB:

- a) Docket No: 36REINPZY9464: ½ interest & ½ penalty abated contingent on entering a payment arrangement in 30 days;
- b) Docket No: 36REINPZY9465: continued at the hearing for further information;
- c) Docket No: 36REINPZY9466: ½ interest & ½ penalty abated for the years 1991-1994 & 1996-2013 contingent on entering a payment arrangement in 30 days.

Decision letters, dated September 17, 2014, were mailed to Petitioner's representative.

- 5) On October 15, 2014, Petitioner appealed the decisions for Docket Nos: 36REINPZY9464 & 9466, requesting these matters be heard by the full TRB. These requests were granted.
- 6) A public hearing before a TRB Master was scheduled for Docket No: 36REINPZY9465 for November 21, 2014 and Petitioner's representative was notified by letter dated October 14, 2014. This docket number represented the case that had been continued from the hearing on September 15, 2014.  
Petitioner's representative requested a continuance of this matter by letter dated November 10, 2014. This request was granted with the proviso that no further continuances would be granted for this matter. Petitioner's representative was so notified by letter dated November 10, 2014.
- 7) For Docket No: 36REINPZY9465, a public hearing was again scheduled before the TRB Master for February 6, 2015 and Petitioner's representative was so notified by letter dated December 30, 2014. Petitioner's representative did not appear to present its case. The decision of the Master, as ratified by the TRB, was to deny the petition as Petitioner did not appear to present its case and a letter, dated February 18, 2015, with that decision was mailed to Petitioner's representative.  
Petitioner requested & was granted a hearing before the full TRB.
- 8) A public hearing was scheduled before the full TRB for all 3 cases for April 2, 2015. Petitioner's representative was so notified by letters for Docket Nos: 36REINPZY9464 & 9466, dated March 24, 2015, and for Docket No: 36REINPZY9465, dated March 9, 2015.  
All 3 matters were denied as Petitioner's representative failed to appear to present its case. Petitioner's representative was so notified by letters dated April 10, 2015.
- 9) By letter dated April 16, 2015, Petitioner's representative requested all 3 cases be rescheduled as he stated he did not receive the hearing notice mailed March 9, 2015,

was away at the time the March 24, 2015 notices would have been received in his office and regardless of when he received any of the notices would have required a continuance due to being out of town.

This rehearing request was reviewed by the TRB and denied. Petitioner was so notified by letter dated April 28, 2015.

- 10) Petitioner filed an appeal to the Court of Common Pleas and also requested a rehearing before the TRB.
- 11) Upon reconsideration, the TRB granted Petitioner's rehearing request and a public hearing was scheduled for August 4, 2015. Petitioner's representative was so notified of the new hearing date by letter dated June 18, 2015.
- 12) Petitioner failed to appear at the August 4, 2015 hearing and all 3 matters were denied by the TRB as Petitioner did not appear to present its case.

Discussion:

Petitioner filed Petitions for Appeal with the TRB requesting administrative review of his requests for waiver of interest & penalty accruals against delinquent Real Estate taxes for 3 properties owned by Petitioner.

Beginning with the May 30, 2014 hearing date, Petitioner was offered numerous hearing dates and opportunities to present its case for consideration by first a TRB Master & then the full TRB.

These cases were each scheduled no fewer than 5 times. Petitioner continually requested continuances or simply did not appear at the scheduled hearing and would then request a new hearing date.

On several occasions, when granting Petitioner's continuance request the TRB added that no further continuances would be granted, putting Petitioner on notice that at the scheduled hearing it was expected that a representative would appear to advance its case. Even after this notice, the TRB generously allowed additional continuances at Petitioner's request.

Finally, after the hearing of April 2, 2015, more than a year after the original petitions had been filed, after the matters had been placed on the docket multiple times, and after Petitioner had been granted

multiple courtesies for continuances and rehearings, the TRB determined that Petitioner had been provided sufficient opportunity to come to a hearing and present its case.

At any given time, hundreds of petitioners are waiting their turn to be listed for their TRB hearing. The TRB has a limited number of hearing slots available each week. Each time Petitioner chose to be unavailable either through a continuance request or simply not showing up for the hearing, other petitioners lost an opportunity to have their hearing because Petitioner had been scheduled for that hearing slot. Yet, on those multiple occasions, Petitioner did not avail itself of the hearing opportunity and wanted yet another listing.

The Tax Review Board has procedural regulations to govern its operation.

Article 13 states that “(t)he granting of continuances for cause shown shall be discretionary with the Board “

Article 15 of the Regulations addresses rehearing requests as follows:

The Board, in its discretion, may grant a rehearing if, within thirty (30) days after the mailing date of the notice of the decision, a party files a written request. The request for a rehearing should set forth new grounds or other appropriate reasons that a rehearing is warranted.

In this circumstance, Petitioner requested continuances & rehearings on multiple occasions and each time the Board honored his request, until August 4, 2015, the date when the Board decided it had provided sufficient opportunity and no further would be provided. The Board finds that it was most accommodating to this Petitioner for whom 3 separate cases were listed time and again at his request and for which he made himself available on only 1 occasion.

Petitioner, as the party bringing the appeal bears the burden of proof to establish that it meets the standard for waiver of interest & penalty set forth in The Philadelphia Code Chapter 19-1705. The Code provides authority to the TRB to “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.”

Article 11 of the TRB Regulations provides that after a hearing and decision of a TRB Master “any party shall have the right of a hearing de novo before the Board, if requested within thirty (30) days after the mailing date of the decision. Therefore, an appeal from the Master to the TRB results in a new hearing without reference to the findings or decision of the Master.

Petitioner requested such a rehearing after the Master hearing and decisions of September 15, 2014 for docket numbers 36REINPZY9464 and 9466. The result being that the decisions of the Master in these 2 cases were no longer binding on the parties and a de novo hearing before the TRB was scheduled.

Petitioner did not appear at either of the 2 scheduled hearing dates before the TRB and therefore did not provide the Board with any information to show that it had acted in a manner that met The Philadelphia Code standard for a waiver of interest and/or penalties.

Therefore, the decision of the TRB was to deny the petitions.

Concurred:

Nancy Kammerdeiner, Chair

Joseph Ferla

Kaitlin McKenzie-Fiumara, Esq.