

December 27, 2017

IN RE: Moore, Anthony

Docket No: 35WRMERZW3997

Statement of Record:

- 1) Anthony Moore (hereafter "Petitioner") filed a Petition for Appeal with the Office of Administrative Review (OAR) on July 21, 2016. The petition requested a review of the decision of Water Revenue Bureau (WRB) to transfer the unpaid balance from a previous tenant to the petitioner's account for the property at 5446 N. 11th Street, Philadelphia, Pa.
- 2) A public hearing before the Tax Review Board Master was held on September 19, 2016. The Master abated seventy-five percent of the penalty and one hundred percent of the lien charge.
- 3) The Petitioner then requested an appeal before the full Tax Review Board which was scheduled for August 15, 2017. At the conclusion of the public hearing, the Tax Review Board announced its decision to abate one-half of the penalty and one-half of the lien charge.
- 4) Petitioner has filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Fact:

- 1) Petitioner is the owner of the property at 5446 N. 11th Street, Philadelphia, Pa.
- 2) The petitioner leased this property to Mr. Garfield Adams Jr. sometime in 2004. Mr. Adams contacted the Water Department and set up a "Tenant Water Customer" account on July 8, 2004. Mr. Adams was incarcerated sometime in 2004 and his girlfriend and family continued to reside in the property.
- 3) The "Tenant Water Customer" account was closed on December 31st, 2015 and the balance was transferred to the petitioner's account.
- 4) The Petitioner requested review of a WRB's determination to transfer the unpaid balance of Mr. Adams' account, for the billing period of July 2, 2009 to December 9, 2015, to his account. At the time of the hearing the unpaid balance totaled \$7,110.81 (principal of \$5,450.29, penalties of \$1,540.52, and liens of \$120.00). The charges are all based on actual usage.
- 5) As per the City representative, the bills during this period were mail to 5446 N. 11th Street, Philadelphia, Pa; the service address.
- 6) City notes that 18 arrear letters were sent to the petitioner from 2008 to 2010, however the City could not say for certain whether they were sent to the service address or the petitioner's own residential address.
- 7) During the billing period in question, no calls were made from the petitioner to the WRB to check on the balance of the water bill.

Conclusions of Law:

The Petitioner bears the burden of proof to establish by substantial evidence that the City's bill had been improperly assessed. *Ernest Renda Construction Co., Inc v. Commonwealth*, 94 Commonwealth Ct., 608,504 A2d 1349 (1986).

The City relied on the Philadelphia Water Department Regulations, Section 100.2(3), "owners, whether or not they are Customers or occupy the Service Location where Utility Service is being provided, remain responsible for paying water/sewer charges until the issuance of a discontinuance permit, and remain responsible for paying storm water charges at all times during ownership". As such, property owners remain responsible for unpaid bills left by the tenant.

The TRB determined that the petitioner failed to meet his burden by failing to present substantial evidence that the water bill should not be transferred to his account. The petitioner contested the transfer of his tenant's bill to his account by focusing on whether he was provided adequate notice of the delinquencies. However, the TRB held that the lack of notice did not absolve the petitioner of his responsibility for the assessed bill as property owner.

The Board, in reviewing the circumstances, did apply the standards set forth in The Philadelphia Code, Chapter 19-1705 for the abatement of penalties of "acting in good faith and without negligence and ... no intent to defraud". The TRB balanced the notice issue Petitioner raised with the fact that petitioner was aware that tenants remained on the property and water usage was still occurring; resulting in the abatement of one half of the penalties and liens.

Concurred:

Nancy Kammerdeiner, Chair

Joseph Ferla

Gaetano Piccirilli Esq.

George Matthew