

May 1, 2018

IN RE: Canty, Frank- 139 N. Gross Street

Docket No: 35WRMERZW3283

Statement of Record:

- 1) Frank Canty (hereafter "Petitioner") filed a Petition for Appeal with the Office of Administrative Review (OAR) on July 17, 2017. The petition requested a review of a bill charged to the petitioner's account for the property at 139 N. Gross Street, Philadelphia, Pa by the Water Revenue Bureau (WRB).
- 2) A public hearing before the Tax Review Board was held on October 31, 2017.
- 3) The Petitioner was represented by attorney, Troy Horton.
- 4) The Tax Review Board denied the petition.
- 5) Petitioner has filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Fact:

- 1) Petitioner is the owner of the property at 139 N. Gross Street, Philadelphia, Pa.
- 2) The Petitioner has been the owner of the residential duplex property at this location for approximately 25 years and tenants have continuously occupied the property throughout that period for several months at a time.
- 3) At issue is the billing period from February 25, 2013 to June 24, 2017. At the time of the hearing the unpaid balance totaled \$3,464.18 (principal of \$3,401.96, penalties of \$62.22, and no liens).
- 4) During the period in question, the Petitioner's property had access to water.
- 5) According to the City representative, the Petitioner's account was rebilled due to the discovery of a defective/frozen meter caused by a cracked screen by the Water Department on January 17th, 2017.
- 6) Bills previously issued from February 25, 2013 to January 19, 2017 did not charge for water usage as it could not register a reading due to the frozen meter. An estimate of 1,070 cubic feet was then used to calculate the usage for this period; this was based on an average of actual readings registered after the new meter was installed- January 3rd, 2017 to February 25, 2017.
- 7) The amount at issue also includes unpaid charges for usage after January 22, 2017; all actual readings.
- 8) The City attempt to visit the property on July 30, 2016, August 20, 2016, and notified the Petitioner by mail on November 24, 2016 to resolve the meter issue.

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). This evidence may be in the form of testimony, documentation, or other demonstrative evidence. Petitioner failed to meet this burden.

While the Petitioner asserted that he paid all bills and that the charges assessed must be in error, he failed to produce or assert that the City's assessment was improper.

In fact, the Petitioner's testimony supported the City's assertion that no usage charges were being assessed despite consistent water usage at the property. Petitioner testified to being charged the same amount on his bill, monthly and never questioning that amount despite the use of water by his tenants. Additionally, the City provided evidence regarding the cause of the inability to register usage. Pictures were shown at the hearing which were taken at the time the meter was replaced of both the defective meter and new installed meter. Further, the City presented evidence that they attempted to correct this issue by going to the property multiple times and sending a letter to the Petitioner.

The Tax Review Board found that the Petitioner failed to present any evidence or meet his burden that the City's assessment was improper or incorrect.

Therefore, the decision was to deny the petition.

Concurred:

Nancy Kammerdeiner, Chair

Joseph Ferla

Gaetano Piccirilli Esq.

George Matthew

Ryan Boyer