

September 20, 2018

IN RE: Dupree, Eddie- 3726 North 13th Street

Docket No: 35WRMERZW3275

Statement of Record:

- 1) Eddie Dupree (hereafter "Petitioner") filed a Petition for Appeal with the Office of Administrative Review (OAR) on July 24, 2017. The petition requested a review of a bill charged to the petitioner's account for the property at 3726 North 13th Street, Philadelphia, Pa by the Water Revenue Bureau (WRB).
- 2) A public hearing was held on November 20, 2017 before a Hearing Master who recommended an "100% abatement of the penalty and lien charges".
- 3) On December 7, 2017, the Petitioner appealed the Master decision to the Tax Review Board (hereafter "TRB").
- 4) This case was then scheduled before the TRB on June 5, 2018. At the end of the public hearing, the TRB's determination abated "100% of the penalty and lien charge. Water bill usage for the period 3/23/13-6/20/17 based on OCCF/MO. Stormwater charges only". The TRB also gave the Petitioner 60 days to make payment arrangements.
- 5) The City of Philadelphia filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Fact:

- 1) Petitioner is currently the owner of the property at 3726 North 13th Street, Philadelphia, Pa.
- 2) Title to the property was transferred to the Petitioner on July 17, 2017. Prior to that date, this property was owned by his grandfather, who passed in 2009.
- 3) At issue is the billing period from March 23, 2013 to approximately June 20, 2017. At the time of the hearing the unpaid balance totaled \$6,222.09 (principal of \$4,288.14, penalties of \$1,843.95, and liens in the amount of \$90.00).
- 4) In May 2014, the WRB ordered the water to be shut-off at the property, noting "no restore" in the system. However, there was no lock or padlock installed on the meter to prevent access.
- 5) During the period in question, PWD never restored the water on the property however actual usage accrued during the period and no payments were ever made for that usage.
- 6) The property remained vacant since 2013 and continues to be vacant.
- 7) The petitioner had a new meter installed on August 8th, 2017 and since that date, no usage has accrued.

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. The Board found that the Petitioner carried his burden and adjusted the bill accordingly.

The Board found the Petitioner's testimony credible and persuasive, specifically that the Petitioner relied on the City's own directive to shut off the water and not restore it. Additionally, the Board also found credible Petitioner's assertion that since 2013, his neighbors had in fact been illegally using the water which caused the usage during a period of vacancy. The Board concluded that the City bears the responsibility in this matter; the City did not lock the meter and allowed continued usage to occur on the property despite the home remaining vacant and issuing a "no restore" order.

Lastly, under the Philadelphia Code 19-1702, the Board exercised their authority to abate penalties, wherein it determined the Petitioner acted in "good faith, without negligence and no intent to defraud".

Concurred:

Nancy Kammerdeiner, Chair

Joseph Ferla

Ryan Boyer