

August 30, 2018

IN RE: Wilson, Joey

Docket No: 26CSMERZZ8887

Statement of Record:

- 1) Joey Wilson (hereafter "Petitioner") filed a Petition for Appeal with the Office of Administrative Review (OAR) on April 26, 2017. The petition requested a review of charges for work performed by the Department of License and Inspection ("L&I") at the property located at 2810 N. Marvine St., Philadelphia, Pa.
- 2) A public hearing before the Tax Review Board Master was held on September 22, 2017. The Master adjusted the bill and issued a decision to "Abate interest. Abate Administrative Charge. Must arrange installments with the Revenue Dept. within 30 days of the new bill date."
- 3) The Petitioner then requested a re-hearing before the full Tax Review Board which was granted and scheduled for April 12, 2018. At the conclusion of the public hearing, the Tax Review Board granted the petition.
- 4) The City has filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Fact:

- 1) The Petitioner became the owner of the property on 2810 N Marvine Street, Philadelphia, Pa in November 2010. The property's previous owner is the Petitioner's sister, Delores Wilson.
- 2) The Petitioner was seeking a reduction of a November 24, 2000 bill stemming from Department of License and Inspection performing clean and seal work. The total amount due is \$5,885.73, which includes labor \$2,309.05, administrative charge of \$484.90, lien of \$146.18 and interest of \$2,945.59.
- 3) The Petitioner testified that in 2000, his sister owned and lived in that property and that were "five people at least, living in the house," (Notes of Testimony, p. 8, l. 14-15). Additionally, Petitioner noted that he frequently visited the home as he lived close by.
- 4) Petitioner explained when he purchased the home in 2010, there were other liens including real estate and water that he had knowledge of and paid. However, in the 8 years he has owned the home, he had never received any bills or notifications about the outstanding bill until 2017 when he received notice from the collection agency.
- 5) The Petitioner also testified he was "one hundred percent sure that my sister was living there at the time. It's no way they could have did work there. They had to have mixed the houses up. The house next door in 2812 had been vacant for at least 30 years. Somewhere something got mixed up." (Notes of Testimony, p. 11, l. 17-22).
- 6) The City concedes that it has no factual evidence to prove this work was done at this property as "it's past the record retention period as required by the City of Philadelphia." (Notes of Testimony, p. 17, l. 1-2).

Conclusions of Law:

The Philadelphia Code Chapter 19-1702(1) requires that petitions for review be filed with the Tax Review Board no later than sixty (60) days from the date of the bill being questioned. However, the Board can consider accepting a petition outside of the prescribed time frame on a nunc pro-tunc basis. The Board's nunc pro tunc's policy reviews the appeals of petitioners who can demonstrate that the untimely filing was due to circumstances beyond their control, not a result of any negligence, where any delay was corrected as quickly as possible and there such delay has not prejudiced the ability of the City to present and defend its assessment of the bill.

The Petitioner submitted his petition on April 26, 2017 and attached the bill he had received on March 9, 2017, which he testified was his first notice of the outstanding bill due. The initial acceptance of his petition by the Tax Review Board was based on the information submitted, however at the hearing the Board considered the City's position in regard to timeliness of the Petitioner's appeal.

The City's brief, dated April 12, 2018, asserts that the "petitioner did not own the property until November 13, 2010, so he could have done a property search at that time and discover bills/liens at that time. Also, the City of Philadelphia, Appellee, is prejudice by the delay because the date of work has long since past (over 16 years ago) and the record retention period has run." (City Brief, p. 2). The City's argument rested on the elapse time since the work was performed, created a prejudice to the City as no records were available to present during the hearing and all they could present was a legal argument.

While the City's arguments regarding prejudice is compelling, the Board found the Petitioner's testimony credible and persuasive, specifically that that he nor his sister were ever notified about this outstanding assessment on the property, either at the time of clean and seal or at the time he purchased the property. The Board also finds credible that the Petitioner's first notice of the outstanding amount was from the City's collection agency and he filed at the Tax Review Board shortly after receiving that noticed indicating that the late filing was not a result of any negligence on the part of the Petitioner.

Further, the Board assigns significant weight to the Petitioner's assertion that the clean and seal could not have been performed due to his familiarity with the property in that members of his family lived in the home during this period of time, he visited the home frequently, he lived close by, and that he knew it had always been occupied. The Board's decision also took into account Petitioner's testimony that the property next door remained vacant for many years and a clean and seal on that property more than likely occurred on that property.

After reviewing the evidence and testimony, the Tax Review Board's determination to accept the Petitioner's nunc pro tunc appeal and decision to grant the petition should stand.

Concurred:

Nancy Kammerdeiner, Chair

Gaetano Piccirilli Esq.

Ryan Boyer