

October 25, 2018

IN RE: Williams, Valery; 710 South Smedley Street

Docket No: 28WAMERZZ9224

Statement of Record:

- 1) Valery Williams (hereafter "Petitioner") filed a Petition for Appeal with the Office of Administrative Review (OAR) on November 14, 2016. The petition requested a review of a bill charged to the petitioner's account for the property at 710 South Smedley Street, Philadelphia, Pa by the Water Department.
- 2) A public hearing was held on January 23, 2017 before a Hearing Master who continued the case for additional information regarding the work done by the Water Department. The case was then scheduled for June 23, 2017. The Hearing Master reduced the bill to \$483.86 and ordered the Petitioner to make payments arrangements within 30 days.
- 3) On July 25, 2017, the Petitioner appealed the Master decision to the Tax Review Board (hereafter "TRB").
- 4) This case was then scheduled before the TRB on February 13, 2018 for a public hearing. The TRB's determination was to reduce the bill to \$440.00 and gave the Petitioner 60 days to make payment arrangements.
- 5) Petitioner filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Fact:

- 1) Petitioner is the owner of the property at 710 Street, Philadelphia, Pa.
- 2) At issue are three separate Water repair charges, totaling \$653.86:
 - a. The Water Department charged \$288.86 on December 24, 2009 for the installation of a new curb box.
 - b. The Water Department charged \$195.00 on August 8, 2010 for a missing meter.
 - c. The Water Department charged \$170.00 on June 25, 2012 for a damaged meter/ damaged ERT, the electronic device which sits on top of the meter and transmits the readings to the Water Department.
- 3) No penalties or liens have accrued on these repair charges.
- 4) In regard to the missing charge on August 8, 2010, the Petitioner admitted to disposing of it. She explained, "They had to change my meter because it was broke... the meter he had didn't fit or something was wrong with it. He came back two days later. Well, the old meter was off. It was broke. I threw it in the trash." (Hearing Transcript; Pgs. 6-7; Lns. 18-1). The Petitioner also agreed to pay for this item noting, "That's the only thing that I will pay for is the broken meter. I mean, the broken one I didn't turn in." (Hearing Transcript; Pg. 7; Lns. 15-16).
- 5) Additionally, the City conceded to removing the \$170.00 charge from June 25, 2012 for a damaged meter/ERT. Mr. Kevin Birriel, the City's attorney, explained, "Just the City for the 170 charge, I'm not contesting that. I am fine with that being—if that is granted again, that was an acceptable outcome from the Master level hearing". (Hearing Transcript; Pg.9; Lns.17-21).

- 6) Leaving in dispute, only the charges stemming from the December 24, 2009 installation of a new curb box. The City amended the amount due from \$288.86 to \$245.00 as \$40.00 labor fee should not have been assessed. (Hearing Transcript; Pg.10; Lns.14-21).
- 7) Records submitted by the Water Department indicate on 12/26/09, "excavated shut curb stop off installed new curb stop box". (Notice of Plumbing Defect Water Supply System, Jan. 4, 2010).

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.

The Petitioner asserts that the Water Department dug into her street and not her sidewalk, to turn off the water to her property; however, this argument does not remove the Petitioner's obligation to pay the bill for replacement of the curb box as an installation of a new curb box is the responsibility of the customer and not the Water Department. The Notice of Plumbing Defect Water Supply System put forth by both the City and Petitioner, noted the curb box was "not accessible," causing the City to dig to replace it. In fact, the Petitioner's evidence and testimony corroborates the City's assertion that the inability to find the curb box led to the subsequent dig. The City had to install a new curb stop and the installation is the customer's responsibility and not the Water Departments.

As the Petitioner failed to present any evidence or meet her burden that the City's assessment was improper or incorrect, the Tax Review Board decision to not disturb the principal amount was appropriate.

Concurred:

Nancy Kammerdeiner, Chair

Joseph Ferla

Ryan Boyer