

**November 27, 2018**

**IN RE: Bey-El, Karen**

**Property: 2030 N. 29<sup>th</sup> Street**

**Docket No: 28WAMERZZ8395**

**Statement of Record:**

- 1) Karen Bey-El (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board (TRB) on December 30, 2017. The petition requested a review of a bill charged to the petitioner's account for the property at 2030 N. 29<sup>th</sup> Street, Philadelphia, Pa by the Water Department.
- 2) A public hearing was held on March 12, 2018 before a Tax Review Board Hearing Master who reduced the bill to \$9,612.00 and ordered the Petitioner to make payments arrangements within 30 days.
- 3) On April 5, 2018, the Petitioner appealed the Hearing Master decision to the Tax Review Board (hereafter "TRB").
- 4) This case was then scheduled before the TRB on July 10, 2018 for a public hearing. After hearing evidence, the TRB denied the petition.
- 5) Petitioner filed an appeal to the Philadelphia Court of Common Pleas.

**Findings of Fact:**

- 1) Petitioner and her husband, Mr. Thomas Donnerson El, are the owners of the property at 2030 N. 29<sup>th</sup> Street, Philadelphia, Pa.
- 2) At issue is the Homeowner's Emergency Loan Program Agreement, (hereafter "Help Loan") entered into by the Petitioner's husband and the City of Philadelphia's Water Department on October 23, 2018 and the enforcement of the contract against the Petitioners.
- 3) The initial principal of the loan was \$9,843 and current balance was \$9,799.12. However, the City admitted "an error in the math on the City's part that we adjusted unilaterally to make it \$9,842. The initial amount signed for was \$9,612... it should have been reduced to \$9,612". (Hearing Transcript; pg. 4; Lns. 1-15). Therefore, the amount at issue is \$9,612. No penalties or liens have accrued on this bill.
- 4) Petitioner and her husband, Mr. Bey -El testified to continued issues with "backups of sewage and water into our basement and draining into the backyard...we finally went and applied for the help loan because we figured that would help address these recurring problems". (Hearing Transcript; pg. 5; Lns. 17-22).
- 5) On October 16, 2017, a City of Philadelphia Water Department contractor assess the property and set the initial cost of repair at \$2,477 as noted in the Help Loan program agreement signed by Mr. Thomas El. Both the City and the Petitioner testified this was the estimate for the replacement of the curb trap. (Hearing Transcript; pg. 7; Ln.16 and pg. 13; Ln. 22).
- 6) Mr. Ronald White, City of Philadelphia Plumbing Inspector, testified that on October 23, 2017, he was called to inspect the property and noted, "the trap was a terracotta pipe. The reason the homeowner was having problems was the lateral was back pitched (slanted towards the house as opposed to away from it)". (Hearing Transcript; pg. 14; Lns. 4-10).

- 7) Mr. White also noted that replacement of the entire curb trap and lateral was required as it could not be done section by section. Mr. White explained, "You have to replace the whole thing. If the plumbers put in the cast iron trap and left the lateral back-pitched, they would still have problems". (Hearing Transcript; pg. 14; Lns. 7-10).
- 8) Mr. White further testified that he attempted to explain this to the Petitioner and her husband and eventually received approval from Mr. El by signature.
- 9) The Petitioner and Mr. El denied Mr. White's account and asserted that neither Mr. White or the contracted plumber notified them of the additional repairs or changes to the initial estimate. Mr. El testified that "at the time that I signed the change order form it was because my wife refused to after Mr. White refused to explain why the change [was] necessary. He refused to answer her. He then came to me and handed me the document to sign". (Hearing Transcript; pg. 19; Lns. 11-16).
- 10) Mr. El also testified, "I want to reiterate when the ground was opened up he's saying the terracotta lateral was back-pitched. We didn't back-pitch it". (Hearing Transcript; pg. 20; Lns. 6-9). The Petitioner and Mr. El assert that the City should take some responsibility for the lateral being back pitched.
- 11) The TRB denied the petition.

#### 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's Help Loan agreement should not be enforced as they never agreed to the additional repairs and charges, they are not responsible for the lateral being defective and the City should bear the responsibility, and the City knew or should have known about the lateral defect.

In regard to the first argument, the Board found that the Petitioner's husband signed the HELP loan agreement change order, dated October 23, 2017, understanding that the additional charges were necessary due to the lateral defect. This was supported by his testimony wherein he reiterated the explanation Mr. White testified to giving to the couple while the "ground was open". Further, the contract signed on October 16, 2017 noted that amount assessed, \$2,477 was the "initial estimate for the repair work and Section 10 of the contract noted, "the Total Cost of the Repair Work may be more or less than the Initial Estimate. If PWD determines that the Total Cost of the Repair Work is more or less than the Initial Estimate, Homeowner must authorize that the Repair Work be completed for the Total Cost by signing a Change Order". The second document, signed and dated by Mr. El on October 23, 2017, indicated it was change order (change order box with an x) and an additional amount of \$7,365. There was no indication that Mr. El was coerced or failed to understand what he was signing at the time the change order was signed.

To the second point, the testimony of Mr. White and Mr. El supported the defective nature of the curb trap and lateral, and the need to repair both in order to resolve the Petitioner's continued issues with

backups of sewage and water. Under First Class Cities Act, Title 53, Section 14794<sup>1</sup> states property owners are responsible for maintaining all connections from their homes to the main. In fact, Mr. El testified that the reason they sought the HELP Loan was “help address these recurring problems”, understanding the fact they were responsible for all repairs needed the curb trap and the laterals. Therefore, the Petitioner’s argument that the City should share responsibility is incorrect as the lateral and curb trap remain their sole responsibility.

Lastly, the Petitioner failed to present any evidence that the City knew or should have known that there was an issue with the laterals or curb traps at the time the water pipes were being installed, negating their last argument.

As the Petitioners failed to meet their burden that the Help Loan being enforced by the City was improper or incorrect, the Tax Review Board decision to not disturb the principal amount was appropriate.

Concurred:

Nancy Kammerdeiner, Chair

Joseph Ferla

Gaetano Piccirilli

---

<sup>1</sup> § 14794. Drains, Etc., to be Adequate; Change Prohibited Without Assent of Board of Health or Department of Public Health

It shall be the duty of every person constructing or owning any drain, soil-pipe, passage or connection, between a sewer and any ground, building, erection, or place of business, and in like manner the duty of the owners of all grounds, buildings, erections, and of all parties interested therein or thereat, to cause and require that such drain, soil-pipe, passage, or connection shall be adequate for its purpose, and shall at all times allow to pass freely all material that enters or should enter the same...

*Credits 1911, June 7, P.L. 680, § 6. 53 P.S. § 14794, PA ST 53 P.S. § 14794 Current through 2018 Regular Session*