

REPLY EXCEPTIONS TO PWD REPLY EXCEPTIONS REPORT

WATER RATE BOARD PROCEEDINGS - 2021

SUBMITTED BY MICHAEL SKIENDZIELEWSKI, MAY 28, 2021

The following reply exceptions are filed in response to PWD's reply exceptions to my Exceptions submitted on May 25, 2021

The Hearing Officer properly found that “[t]he Rate Board does not have the authority to investigate, administer or enforce public integrity laws or ethical codes.

This request was never made during these proceedings and the public record reflects that fact.

Yet, Mr. Skiendzielewski attempted (yet again) to re-litigate the issue before the Rate Board.

There is no evidence on the public records of these proceedings presented by PWD that this petitioner was relitigating the issue.

(ii) disputes related to his obligation to fully pay the loan he received through the HELP loan program.

WRB counsel, DANIEL CANTU-HERTZLER had an obligation to ensure that petitioners at the Tax Review Board were notified of their second appeal under Article 15 of the Tax Review Board regulations, but his professional negligence deprived a great many petitioners of their right to a second appeal. Mr. Hertzler further added that there would be no efforts to remedy this unfair, detrimental effect on petitioners.

The Board should be aware that PWD customers are responsible for repairing the pipes and fixtures that carry water from the City's water mains to their home and that carry wastewater from their home to the City's wastewater main in the street. PWD's HELP loan funding offers zero-interest loans for repairs to customer-owned water service lines and customer-owned sewer lines. Customers have 60 83 months to pay off the loan, which remains interest-free unless they fail to make payments on time.

Yes, PWD customers are responsible for the long laterals in the street to the main sewer. However, WRB counsel, DANIEL CANTU-HERTZLER also has a responsibility to act judiciously and appropriately with PWD and its consumers' funds. Since state law dictates that the city and PWD is not liable for the customer's damages to long laterals, Mr. Hertzler is not permitted, unless reasonable and legitimate reasons support it or PWD policy or procedures permit it, to pay off, using PWD funds to pay off \$5500 of a customer's PWD HELP loan. Arbitrary and undocumented professional conduct of this financial nature, outside of the purview of the Tax Review Board, the city agency charged with hearing and resolving water disputes, is simply unacceptable and reckless.

In exceptions, Mr. Skiendzielewski challenges the Hearing Officer's denial of his requested recusal of counsel to the Rate Board. As explained herein, the Hearing Officer properly denied the request for recusal of counsel.

Ji Jun, Esquire Frank Paiva, Esquire Brooke Darlington, Esquire Danielle Lavery Esquire Philadelphia Law Department 1515 Arch Street, 17th Floor Philadelphia, PA 19102

Andre C. Dasent, Esquire Centre Square – East Tower 1500 Market Street, 12th Floor Philadelphia, Pennsylvania 19102

Carl R. Shultz, Esquire Eckert Seamans Cherin & Mellott, LLC 213 Market Street, 8th Floor Harrisburg, PA 17101

That this cadre of PWD / City of Philadelphia attorneys would author and submit this particular statement is indicative of the need for the fulfillment of my request for recusal.

he claimed that the Board “has a basic and primary professional responsibility to ensure and safeguard the processes, reports and deliberations that occur and are produced from such deleterious effects such as conflicts of interest, unprofessional conduct, unethical decision making, etc. as evidenced on the record by counsel to the [Water Rate Board].

With the documentation supporting my allegations re WRB counsel already submitted on the record and momentarily to be presented once again, I believe that many reasonable people, attorneys and non-attorneys, would agree with the statement that the WRB should safeguard the process and decision-making from any unethical and problematic influences.

In an attempt to support his claim, Mr. Skiendzielewski attached to his request a May 18, 2017 letter from this counsel. Despite Mr. Skiendzielewski's contention, which is unfounded, the May 18, 2017 letter does not support his position. In fact, the letter supports denial of his request for recusal.

Another example of PWD counsel in the art of "conflation."

As presented on the public record not only in my recusal motion but also in the exceptions filing, the document from WRB counsel was included and presented, despite the inferences and conclusions of the Hearing Officer and now PWD counsel, to reflect the sheer ridiculousness and nerve of a professional attorney to investigate an allegation of misconduct made against him and then offer the investigation as the final document and statement in response to the allegations. Not only is such an endeavor and product nowhere to be found in any legitimate and serious professional circles but the 4-page document does not investigate the issues in the allegation but rather presents a chronology and analysis of the efforts and advocacy undertaken by this WRB petitioner and PWD consumer.

On May 11, 2021, the Hearing Officer properly denied Mr. Skiendzielewski's request, citing his failure to "present any credible evidence to support his request."

First, it was the Hearing Officer who allege that this petitioner failed to "present any credible evidence to support his request" and now PWD through its counsel assert that "the Hearing Officer properly denied Mr. Skiendzielewski's request." It is hard to understand and believe that both parties failed to find and read the list of issues,

conduct and decision-making by WRB counsel as a basis for the recusal motion. I do not know whether the parties did not see the following serious and egregious matters, or they have judged the content of these fact-based allegations as not being “credible evidence.”

(1) the civil-rights violative statement in May 2018 closing off government access/redress to this citizen and consumer and since that time, this consumer has yet to receive a single response from the Inspector General's Office, the Chief Integrity Officer of Philadelphia, and several Integrity Officers in city departments, where allegations of ethical and integrity violations and misconduct were submitted,

(2) the professional misconduct exhibited by the failure of properly advising PWD petitioners to the Tax Review Board of their right to a second appeal to the TRB over a span of many years, when he was Law Department supervisor of the unit responsible for legal services at TRB proceedings and to the TRB

(3) affirming that the city/PWD have no financial liability for the expenses incurred from a consumer's failed long sewer laterals, though he himself approved a modified PWD HELP loan where the PWD paid for \$5500 of the consumer's expenses for the loan,

4) in response to an allegation of financial impropriety in the management of PWD HELP loans to the Integrity Officer, Kathleen McColgan, Deputy Revenue Commissioner, Revenue Department of the City of Philadelphia, WRB counsel submitted a four-page document HE authored and HE signed as the official city response closing the investigation into the allegation submitted in 2021 (WRB counsel's letter, in which HE does not investigate the allegation of financial impropriety but rather details my advocacy and efforts in that regard, was generated in 2017)...

As reflected in the Report and the Order in Limine (April 16, 2021), the Rate Board does not have the authority to investigate, administer or enforce public integrity laws or ethical codes.⁸⁸ As the Rate Board does not have the authority to investigate, administer or enforce public integrity laws or ethical codes, and Mr. Skiendzielewski's request for recusal does not relate to granting or denying PWD's proposed rate increase, his request should be denied.

“administer or enforce public integrity laws or ethical codes”

IS NOT THE SAME AS OR EQUAL TO “Recusal”

Conflation at its finest, PWD counsel has worked this technique into a fine science.

PWD respectfully requests that the Rate Board deny Mr. Skiendzielewski's exception and uphold the Hearing Officer's proper denial of his request for recusal of counsel for the Rate Board.

Regardless of the outcome re this recusal request, as mentioned earlier, all the details, issues, facts, conduct, decision-making, documents, etc. that are concerned with this recusal motion are in the public record and that status will serve this petitioner and all PWD customers and Philadelphia citizens well in the near future. Even these PWD efforts through their counsel in this reply to my exceptions to the Hearing Officer's final report is further evidence of the conflicts of interest which are endemic to the procedures in the WRB hearings. If any professional, regardless of the field, training or experience, genuinely studies and reviews the issues, conduct and decision-making of WRB counsel and decides to support recusal, then there is nothing more that I can do.

Mr. Skiendzielewski elected to proceed pro se in this proceeding. The Hearing Officer is not required and is not to assume the role of an advocate on behalf of Mr. Skiendzielewski.

I “elected” to proceed pro se in this proceeding. Tacit admission that I am under-powered and outgunned when facing the bevy of PWD and city attorneys. A sense of humor is essential in the WRB culture.

Saving the best for last, though. Hearing Officer is not to assume the role of an advocate on behalf of Mr. Skiendzielewski but it is fine, appropriate and acceptable for PWD and its counsel to act as an advocate for the Hearing Officer as you have in your statements and support on behalf of her conduct and decisions in your reply document here.

In exceptions, Mr. Skiendzielewski finally claims that settlement negotiations are not confidential.

That assertion is not true and nowhere in my documents, emails and filings have I stated that. You list PWD 6 attorneys at the beginning of this document and it is replete with inaccuracies and misstatements.

What I was asking the Hearing Officer is the legal source, citation or reference for her decision that she used for her decision re confidentiality. Finally, she makes a statement in that regard but does not assert the basis for her decision but rather quotes findings of PWD attorneys.

But you know all of this but choose to present the story and case differently.

Regardless of the legal source of the confidentiality issue or who provided this decision, the fact of the matter is that the legal citation simply DOES NOT APPLY in the circumstances in this case re the settlement negotiations:

The law is clear that an **unaccepted** offer to compromise or settle cannot be introduced into evidence.

The two worthless offers and proposals submitted by PWD in settlement negotiations were in fact ACCEPTED, but they were valueless and empty. Records will show that this participant did file an application with Risk Management for damages and the application was rejected by Barry Scott, Risk Manager for the City of Philadelphia due to time limit constraints. Similarly, an application was filed with the Department of Revenue, Kathleen McColgan, Deputy Revenue Commissioner for the refund-unit consideration and despite repeated requests re the filing, this participant has never received a response, though the website indicates a three-year time limit for filing (which has expired).

These offers were not UNACCEPTED, they were accepted and I proceeded with the process. But, as you know, the offers were worthless and bogus.

The Hearing Officer's Report correctly adopted PWD's position that settlement negotiations are privileged, confidential and inadmissible into evidence.

Another fine revelatory statement. This is probably an instance where the Hearing Officer is advocating for PWD and

its counsel as PWD counsel did in a similar fashion supporting her denial of recusal.

IN CONCLUSION:

For the reasons set forth in the record, its Brief, and these Reply Exceptions, petitioner, Michael Skiendzielewski respectfully requests that the Rate Board reject the replies filed by PWD to my exceptions to the Hearing Officer's final report.

Sincerely,

Michael Skiendzielewski

516 Parkhollow Lane

Philadelphia, PA 19111

