

**BEFORE THE PHILADELPHIA WATER,
SEWER AND STORM WATER RATE BOARD**

In the Matter of the Philadelphia Water :
Department's 2022 Special Rate Proceeding :

:

Direct Appeal of HEARING EXAMINER'S ORDER DENYING HAVER MOTION TO REMOVE PUBLIC ADVOCATE; AND HEARING EXAMINER'S ATTEMPT TO COVER UP ALLEGATIONS OF "HONOR SERVICE FRUAD" BY INCLUDING IN HER ORDER A REFUSAL TO HEAR FURTHER CHALLENGES: *"As I am denying the Motion to Remove. I will not address this issue further, but in the future such material will be stricken from the record entirely and not considered."*

PETIONER AVERS THAT THERE ARE ONLY TWO POSSIBILITIES: EITHER MR. BALLENGER IS SERVING AS THE PUBLIC ADVOCATE WITHOUT BEING APPOINTED OR MR BALLENGER'S CONTRACT WAS EXTENDED AS PART OF "QUID PRO QUO" ARRANGMENT GUARNTEEING MR. BALLENGER FUTURE EMPLOYMENT AS A CONDITION OF HIS AGREEING TO THE TERMS DEMADED BY THE PHILADELPHIA WATER DEPARTMENT IN THE LAST RATE CASE.

IT IS ENCOMBANET UPON THE PHILADELPHIA WATER RATE BOARD TO REMOVE MR. BALLENGER, TO STOP INAPPROPRIATE ACTIONS AND TO ENSURE THAT THE PUBLIC IS ADEQUATELY REPRESENT.

Background

1. In the beginning of these proceedings, the Hearing Examiner ruled that the hearings are new, not a continuation of the old rate case.
2. The finality of the last rate case was, in part, necessitated by the Philadelphia Water Department's borrowing via bonds.
3. On February 25th 2022, The Hearing Examiner denied Petitioner's Haver Motion to Remove for Cause the entity acting as the public advocate. In the Hearing Examiner's decision, she makes clear that one of the conditions of the previous settlement was the payment for services to Mr. Ballenger in these proceedings. It should be clear to all members of the Public and to every member of the Philadelphia Water Rate Board that Mr. Ballenger only agreed to the settlement because It INCLUDED A CLAUSE GUARANTEEING, among other things, HIS FUTURE EMPLOYMENT AND COMPENSATION.
4. The Federal Courts have made clear that financial inducements to act in a prescribed manner may and often does constitute Honest Service Fraud.
5. In the last year, the United States Justice Department successfully prosecuted an elected City Council Person for accepting employment from a Labor Union. Under the criteria used in that case, an entity acting as the Public Advocate accepting future employment as an inducement to settle should be consider "honest service fraud" even if there were other clauses in the settlement.
6. The Hearing Examiner's attempt at covering up the facts by refusing to accept any other filings challenging the legality of Mr. Ballenger's actions, should be unacceptable to people who believe in justice, transparency and ensuring that those paid with public funds work for the Public, not engage in quid pro quo settlements that ensure their

own employment. The Hearing Examiner's refusal to review challenges to the impropriety of Mr. Ballenger's actions necessitates this direct appeal to the Philadelphia Water Rate Board.

7. The Philadelphia Water Rate Board should stand with Citizens who demand honest service and remove a person who demanded future employment as a term of a settlement, even if that was not the only term.

Facts:

8. In the settlement accepted by the hearing examiner and upheld by the Philadelphia Rate Board, the Board on June 16th 2021 wrote *"By approving the Settlement, the Rate Board is agreeing (in advance) to the use of the Special Rate Reconciliation Proceeding. Both the Department and the Public Advocate will be deemed to be Participants in the Special Rate Reconciliation Proceeding without notification to the Rate Board. . . It is the view of the Board that this provision in the Settlement ensures that the interests of PWD customers will be recognized from the commencement of any reconciliation proceeding and that a Public Advocate will be able to provide that service."*
9. Mr. Ballenger was not and has not been appointed the public advocate for life.
10. Mr. Ballenger appointment to serve as the Public Advocate is for a single rate case. While he may be reappointed, his reappointment must go through the public process in each rate case.
11. The Hearing Examiner in response to Petitioner's prior motion ruled that this instant proceeding is a new proceeding, not a continuation of the last rate case.
12. The finality of the last rate case was needed to allow the Philadelphia

Water Department to borrow money.

13. Nowhere was it written in the settlement agreement that the Public Advocate would be Mr. Ballenger or Community Legal Services.
14. **In effect, in return for agreeing to a large rate hike, paid by the Philadelphia Water Consumers, Mr. Ballenger was given a contract renewal, without any opportunity for any other party to seek the contract to represent the Public in the current proceedings.**
15. If the Hearing Examiner and/or the Water Rate Board had questioned Mr. Ballenger if he would have agreed to the terms the Philadelphia Water Department sought without the promise of future employment, the Hearing Examiner and The Water Rate Board would have heard Mr. Ballenger clearly state, he would not have accepted the terms offered without the guarantee of his future employment as the Public Advocate.
16. **Mr. Ballenger, in exchange for agreeing to the terms the Philadelphia Water Department requested, demanded and accepted, among other things, financial considerations and future employment for himself.**
17. Former Councilman Henon, was convicted of Honest Service Fraud despite the accepted fact that he provided services to the public unrelated to his employment for the union.
18. **The demand for future employment and financial compensation for agreeing to a settlement, even if there are other things in the settlement, appears to be the definition of Honest Service Fraud, where a person elected or appointed to represent the public accepts, as an inducement for action employment and/or additional compensation.**

19. Unless the Water Rate Board removes Mr. Ballenger as the Public Advocate and allows others to submit proposals to represent the Public, the members of the Water Rate Board, are in effect, approving a “quid pro quo” term in a settlement agreement and participating in Honest Service Fraud.

20. Unless the Water Rate Board take the appropriate action, Petitioner Haver will request that the US Attorney charge Mr. Ballenger, The Philadelphia Water Commissioner and the Members of the Philadelphia Water Rate Board with violation of 18 U.S. Code 1346

Argument

21. Either the Hearing Examiner errored in not delineating the difference between the entity the Public Advocate and the person, Mr. Ballenger, who has no lifetime appointment to the position, whose service is limited to the appointment, and who is not guaranteed future employment, even if there is an agreement that a public advocate shall serve in a rate case, in denying Petitioner’s request for the removal of Mr. Ballenger as the Public Advocate; or

22. There was a “quid pro quo” in the last settlement agreement, guaranteeing Mr. Ballenger future employment in exchange for agreeing to the terms set forth by the Philadelphia Water Department, which appears to Petitioner to be the definition of Honest Service Fraud; and

23. Unless the Philadelphia Water Rate Board removes Mr. Ballenger as the Public Advocate and seeks proposals from any person and/or entity seeking to be the Public Advocate in the instant proceedings, the Hearing Examiner, The Philadelphia Water Commissioner and the Philadelphia Water Rate Board will all be complicit in the quid pro quo agreement, giving Mr. Ballenger future employment in exchange for agreeing to the terms requested by the Philadelphia Water Department

Relief

24. Petitioner requests the Philadelphia Water Rate Board overrule the

Hearing Examiner and remove Mr. Ballenger and any other person or entity that requested, demanded or made as a condition of an agreement, employment or compensation from or for the role of the Public Advocate

- 25. To ensure the honest service, no person or entity be allowed to make their employment or accept financial consideration for agreeing to a settlement that forces the Public to pay higher rates. Future employment and compensation should not and cannot be allowed to be an inducement to settle a water rate hike.**
- 26. Even if the Philadelphia Water Rate Board were to believe that a requirement to retain a Public Advocate as part of a settlement were in the Public interested, it should protect the Public from a “quid pro quo” agreement between parties by refusing to guaranteed employment to the person or entity who signs the agreement for the Public.**
27. Because Mr. Ballenger, is on record saying that he does not believe he had the responsibility to seek public input before agreeing to the terms in the settlement, the bright line between guaranteeing employment and compensation for the person or entity who signs the agreement and the person or entity who represents the public must be enforced.
- 28. No one selected or elected to represent the Public should be allowed to make as a condition of a settlement future employment for themselves.**

On March 22, 2022, I Lance Haver, to the best of my knowledge under penalty of law, certify that the above statements are true and based upon the existing record.

Lance Haver