

August 31, 2021

IN RE: Troy Horton

DOCKET NO: 35WRMERZW2358

STATEMENT OF RECORD:

1. Troy Horton (hereafter "Petitioner") filed a Petition for Appeal with the Office of Administrative Review on August 9, 2018. The petition requested a review of the water/sewer bill for the periods from July 31, 2010 through October 30, 2017 for the property at 6141 Carpenter St., Philadelphia, PA.
2. A public hearing before the Tax Review Board was scheduled for November 20, 2018. Petitioner requested and was granted a continuance.
3. A public hearing before a Tax Review Board Master on February 4, 2019. The decision of the Master, as ratified by the Tax Review Board, was to abate 100% of the lien and penalty charge, and Petitioner was ordered to enter into a payment arrangement with the Water Revenue Department within thirty (30) days of the date of the revised bill.
4. Petitioner requested and was granted a rehearing before the full Board.
5. A public hearing before the full Tax Review Board was scheduled for April 14, 2020. However, the office was closed due to COVID 19 restrictions and the matter was continued at that time.
6. A public hearing before the full Tax Review Board was scheduled for December 15, 2020. The decision of the Board was to place the case under advisement; ordering Petitioner to provide a brief specifically on the applicability of the Deadman's Statute to the facts of the case by January 4, 2021. The City was given the opportunity to respond to Petitioner's brief by January 15, 2021.
7. After receiving the briefs from both parties, the Board rendered its decision on April 13, 2021. The Board announced its decision to abate 100% of the penalties. Furthermore, Petitioner was ordered to enter into a payment plan with Water Revenue Department within thirty (30) days of the adjusted bill date.
8. Petitioner has appealed to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner requested a review of a delinquent water/sewer bill for the property at 6141 Carpenter St., Philadelphia, PA.
2. Petitioner took title to the property by deed dated September 2012 from his father, Mantel Horton. However, the Mr. Mantel Horton, remained the listed customer on all correspondence and bills from the Philadelphia Water Department.
3. Petitioner is appealing the bill covering the periods from July 31, 2010 through October 30, 2017. The principal amount due for that period was \$7,554.74, lien charge of \$101.45 and penalty charge of \$667.12 for a total of \$8,323.31.
4. The Water Department representative testified that on October 30, 2017, a Meter-Shop Field Service Representative entered the property and determined that the Encoder-Receiver-Transmitter, ("ERT"), was stuck and failed to transmit the readings since it had been installed on July 10, 2010.
5. Once taken back to the meter shop, the meter was examined, and it was determined that 99,500 ccf's had been advanced. This was the amount back billed to the Petitioner by the Water Department.

6. Petitioner asserted several objections. First, that the Dead Man's Statute bars the City's witnesses from testifying as the back billing by Water Department involves the estate of his father. Specifically, his father, Mantel Horton remained the customer listed on the Water bills and the Petitioner was acting as the executor of the estate.
7. Petitioner also claimed that the City should be sanctioned in this matter on the grounds of spoliation of evidence insisting that the transmitter in the ERT had malfunctioned and the City's destruction of the ERT.
8. The City rebutted that the Dead Man's statute is not applicable and does not bar the testimony of the City's witnesses as Petitioner obtained title to the property from his father within his father's lifetime and his father's estate has no interest in this case.
9. The City argued that it should not be sanctioned on the grounds of spoliation of evidence as it was routine to service the ERT and there was no indication there would be need for the ERT two years after it was replaced.

CONCLUSIONS OF LAW:

The Pennsylvania Dead Man's Statute provides in relevant part:

[I]n any civil action or proceeding, where any party to a thing or contract in action is dead... and his right thereto or therein has passed... to a party on the record who represents his interest in the subject in controversy neither any surviving or remaining party to such thing or contract, nor any other person whose interest shall be adverse to the said rights of such deceased... party, shall be a competent witness to any matter occurring before the death of said party... 42 Pa. C.S.A § 5930.

Petitioner testified that his father died in March of 2015. Thus, according to Petitioner, the Dead Man's Statute applies. Petitioner asserted that the Water Revenue Bureau and the Philadelphia Water Department are "the surviving or remaining part(ies) to the thing or contract with the decedent" (Petitioner's Brief, P. 5) and thus, the City's witnesses from the Water Department and the Water Revenue Bureau are barred from testifying.

Petitioner further alleged that the Water Department and the Water Revenue Bureau "failed to monitor and maintain their water consumption and billing equipment in the subject property" for more than seven (7) years (Petitioner Brief, p. 5). According to Petitioner, both departments should be sanctioned for their actions.

The City maintained that the Dead Man's statute does not apply to this case. Petitioner took title of the property by deed in September 2012, three (3) years before Petitioner's father died. Moreover, the City argued that even though the ERT had been returned to the manufacturer during the period in question, "the return of the ERT was routine and not made in bad faith" (City Brief, p. 6). Thus, the City should not be sanctioned in this matter.

The Board rejects the applicability of the Dead Man's Statute to the facts of this case. Specifically, the statute is applicable to civil matters where any party to a thing or contract in action is *dead*. Although Petitioner's father died in March of 2015, Petitioner had taken title to the property in 2012 while his father was still *alive*. Furthermore, the bills in question pertain to the period where Petitioner is the actual property owner, not his father. In regard to the spoliation argument, the Board found that the Water Department and the Water Revenue Bureau followed routine procedure in terms of the handling

of the faulty ERT and did not fail to monitor and maintain their equipment. Therefore, the decision was to abate only the penalty.

Concurred:

Nancy Kammerdeiner, Chair

Gaetano Piccirelli,

Paula Weiss

Ryan Boyer