

**July 31, 2021**

**IN RE: J. Kinderman & Sons Inc.  
DOCKET NO: 35WRMERZW3436**

**STATEMENT OF RECORD:**

1. J. Kinderman & Sons Inc (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board on May 2, 2017. The petition requested a review of the water/sewer bill for the periods from September 2013 through March 2017 for the property at 2900 S. 20<sup>th</sup> Street, Philadelphia, PA.
2. Public hearings before the Tax Review Board (hereafter "the Board") were scheduled for July 18, 2017, May 15, 2018, October 16, 2018, December 4, 2018, January 15, 2019, August 13, 2019, and December 17, 2019. Continuances were granted on all these dates and rescheduled.
3. Petitioner then filed an Amendment to Petition for Appeal with the Board on January 13, 2020. The petition requested a review of the water/sewer bill for the period to be extended through January 2020.
4. A public hearing before the Board was scheduled for April 21, 2020. At that time the matter was continued due to the closure of the City services due to Covid-19.
5. A public hearing before the Board was scheduled for October 20, 2020.
6. At this hearing the Board approved the Petitioner's amendment to the petition to include the additional years. The Petitioner presented testimony and evidence and an additional date was needed for the City to conclude its' case in chief; the hearing was continued for further testimony.
7. The additional Board hearing was scheduled for January 19, 2021. The City concluded its case, and the Board placed the case under advisement, ordering both Petitioner and the City to deliver briefs to the Board within ten (10) business days of the mailing date of the decision letter.
8. A public hearing before the Board for the reading of the decision only was scheduled for March 23, 2021. The Board decided to abate the excessive usage charges of \$161,689.03 and 100% the penalties for the period from September 1, 2013 to January 8, 2020.
9. The City 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 2900 S. 20<sup>th</sup> Street, Philadelphia, PA. This bill covered the periods from September 2013 through March 2017. The petition was then amended for periods January 1, 2016 to January 2020. The principal amount due for that period- September 2013 to January 2020 was \$212,315.47, lien charges of \$30.00 and penalty charges of \$9,255.69 for a total of \$221,601.16.
2. Petitioner was the owner of the property during all periods in question.
3. Petitioner testified the building was used for a "very small manufacturing line that has three to four people and the rest is essentially an office and a warehouse... most of the year we've go about 10 employees [a]nd when we are in peak season around the fourth quarter, we fluctuate between 10 and 20 people". (Notes of Testimony, p. 29, ln. 2-8).
4. Petitioner asserted that their account was adjusted multiple times (Notes of Testimony, p. 112, ln. 5) and that meters were replaced "four different times over the course of the last eight years" (Notes of Testimony, p. 113, ln. 3-4) due to errors with the Water Department.

5. The City's maintained that the readings of the meters and subsequent bills were "actual" usage of water. The City also notes that the meters at this location, were removed and changed
6. The City explained that the excessive usage could have been caused by "a faulty backflow preventor... dumping gallons of water without being noticed" (Petitioner's Brief, pg. 2).

#### CONCLUSIONS OF LAW:

The party initiating an action carries the burden of proving his or her claim in an administrative hearing. Department of Transportation v. Pa. Human Relations Commission, 84 Pa. Cmwlth. 98, 480 A.2d 342 (1984). The City argued that Petitioner failed to meet the burden of proof to rebut the presumption that the bills being contesting were correctly issued or accurately reflected the water that had been used at the property during the periods in question. Petitioner "failed to provide sufficient records to rebut [the] presumption of correct metering and billing [by] the city" (Notes of Testimony, p. 110, p.4-5).

However, the Board found that the Petitioner met this burden. Specifically, Petitioner's testimony, which the Board found credible, regarding how the property was being used, did not support the excessive usage that the City alleged. Additionally, the numerous times that the City had to re-bill and/or adjust the bills over the years in question raised two significant questions: how did the City calculate what was actually owed for each period of excessive use considering the multiple adjustments made and whether the calculations presented were accurate. The Board concluded that the presentation by the City failed to answer either question adequately. Lastly, the Board holds that explanation posited by the City for the excessive usage and testified to by Mr. Lawrence, an expert on backflow prevention, seemed to be speculation; a mere guess considering that the City had visited the location on many occasions and tested at least two (2) meters previously used by the property, finding no issues with the meters. Considering the amount of water used over the 7-year period and the many interactions with the Petitioner, the Board anticipated that the City would have had a more tangible explanation for the excessive usage.

The Board holds that the Petitioner met their burden in rebutting the presumption that the City issued accurate water bills during the course of the periods in question. The Board found that the City's assertion that the cause of the excessive charges was due to a faulty backflow preventor or an underground leak was an insufficient justification or explanation as to the excessive amount due. Therefore, the decision was to grant the petition.

Concurred:  
Nancy Kammerdeiner  
Ryan Boyer  
George Matthews  
Paula Weiss

Recused: Gaetano Piccarelli, Esq.