

December 15, 2020

IN RE: ELARSA Properties, LLC

DOCKET NO: 35WRREFZZ9904, 35WRREFZZ903, 35WMMERZZ9902, 35WRREFZZ9899, 352RREFZZ9896, 35WRRFZZ9901, 35WRREFZZ9900, 35WRREFZZ9898, 35WRREFZZ9897

STATEMENT OF RECORD:

1. ELARSA Properties, LLC (hereafter "Petitioner") filed a Petition for Appeal with the Office of Administrative Review (OAR) on April 20, 2018. The petition requested a refund from the Department of Revenue for multiple water/sewer bills each dated July 19, 2017 relating to the properties located at 23 S. Ruby St., 2110 E. Stella St., 6139 Locust St., 2000 S. Garnet St., 3429 Emerald St., 2437 S. Beulah St., 1833 S. Beechwood St., and 1940 S. Beechwood St. in Philadelphia, PA.
2. A public hearing before the Tax Review Board (TRB) Master was scheduled for September 19, 2018. Petitioner requested and was granted a continuance.
3. A public hearing before the TRB Master was held on November 2, 2018. At that time, the matter was continued.
4. A public hearing before the TRB Master was held on December 10, 2018 for rendering of the decision only. At the conclusion of the hearing, the Master announced its decision to deny the petition.
5. Petitioner requested and was granted a rehearing before the full TRB.
6. A public hearing before the full TRB was held on November 19, 2019. At the conclusion of the hearing, the Board announced its decision to deny the petition.
7. Petitioner has appealed to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner requested a refund from the Department of Revenue for multiple water/sewer bills relating to the following properties that he had sold to a third party: 23 S. Ruby St., 2110 E. Stella St., 6139 Locust St., 2000 S. Garnet St., 3429 Emerald St., 2437 S. Beulah St., 1833 S. Beechwood St., and 1940 S. Beechwood St. in Philadelphia, PA. The bills were each dated for July 19, 2017.
2. For docket number ending in 9904, the principal amount due was \$1,457.82, zero dollars in penalty charges, zero dollars in liens, for a total amount due of \$1,457.82.
3. For docket number ending in 9903, the principal amount due was \$1,348.74, zero dollars in penalty charges, zero dollars in liens, for a total amount due of \$1,348.74.
4. For docket number ending in 9902, the principal amount due was \$1,024.88, zero dollars in penalty charges, zero dollars in liens, for a total amount due of \$1,024.88.
5. For docket number ending in 9899, the principal amount due was \$1,502.22, zero dollars in penalty charges, zero dollars in liens, for a total amount due of \$1,502.22.
6. For docket number ending in 9896, the principal amount due was \$377.17, zero dollars in penalty charges, zero dollars in liens, for a total amount due of \$377.17.
7. For docket number ending in 9901, the principal amount due is \$1,528.61, zero dollars in penalty charges, zero dollars in liens, for a total amount due of \$1,528.61.
8. For docket number ending in 9900, the principal amount due is \$11,824.76, zero dollars in penalty charges, zero dollars in liens, for a total amount due of \$11,824.76.

9. For docket number ending in 9898, the principal amount due is \$2,543.53, zero dollars in penalty charges, zero dollars in liens, for a total amount due of \$2,543.53.
10. For docket number ending in 9897, the principal amount due is \$636.11, zero dollars in penalty charges, zero dollars in liens, for a total amount due of \$636.11.
11. Petitioner was the owner of the property during all periods in question and served as a landlord to multiple tenants.
12. Petitioner argued that he justifiably relied on the advice of a representative from the Water Department.
13. Petitioner further alleged that he never received any notices of delinquency from the Water Department when his tenants failed to pay their water bills.
14. The City argued that Petitioner lacks standing and also insists that Petitioner is seeking remedy from the wrong party.

#### CONCLUSIONS OF LAW:

There was no dispute that the water was used and all of the bills were not paid. As per Water Department Regulations, a tenant may become a customer of the Water Department by submitting the required documentation, after which the Department will notify the owner that the tenant has applied to become a customer. Bills will then be sent to the tenant. The owner of the property remains responsible for the bill even during any periods of time when a tenant is a customer for billing purposes. Thus, in the event that the tenant fails to pay the water bill, it reverts to the property owner and may become a lien against the property. *See Philadelphia Water Department Regulation 100.2*. Therefore, Petitioner is responsible for the bills arising from the periods when his tenants occupied the properties.

Petitioner testified that he never received delinquent notices from the Water Department. However, Petitioner contradicted this assertion when he later stated that for the property located at 3429 Emerald St., he did "get a bill for like \$9,000" in November of 2016 (Notes of Testimony, p. 48, ln. 12). When asked by Chairwoman Kammerdeiner about his earlier statement that he had not received any bills and was later refused copies of the bills, Petitioner responded, "I eventually did get some information" (Notes of Testimony, p. 49, ln. 16 - 17).

Petitioner further testified that when he first began acquiring properties, he called the Water Department and asked a representative whether or not he should have his tenants' water bills sent directly to his mailing address or the address of the individual tenants. Although Petitioner never shared the specific advice he received from the representative from the Water Department, he argued that he justifiably relied on the advice regarding the Water Department's policy. Tax Review Board member Mr. Piccirilli pointed out that Petitioner had not inquired about Water Department Regulations and Procedures but rather asked "a question about what [his] practices should be as a landlord" (Notes of Testimony, p. 27, ln. 25 – p. 28, ln. 2).

The City asserted that Petitioner lacks standing for several reasons. First, the City argued that Petitioner is no longer the owner of the properties as he sold them all to a third party. The City contended that only the owner of a property has standing to seek redress from the Tax Review Board. Moreover, the City argued that Petitioner lacks standing because he previously filed petitions for all excepts two of the properties. These petitions "were either denied or dismissed for failure to appear or they were withdrawn" (Notes of Testimony, p. 60, ln. 20 – 21).

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The City also insisted that Petitioner is seeking remedy from the wrong party. The City claimed that since the amounts paid by Petitioner were paid out of escrow during a sale to a third party, “the proper mechanism for [Petitioner] would be to seek refund from title” (Notes of Testimony, p. 5, ln. 22 – 24).

The Board concluded that it was apparent that Petitioner did not understand that water bill delinquencies stay with the property when sold and are the responsibility of the owner if a tenant resides in the property and fails to pay even if it is their responsibility in the lease. The Board further held that Petitioner took responsibility for paying the delinquent water bills with the sanctioned payment of nine separate checks to the Water Revenue Department in order to provide for a sale without liens. In this case, Petitioner made the payments to provide good title and then sought refunds from the Water Revenue Bureau for these payments, claiming the City failed to advise him of the tenant’s delinquencies in a timely manner.

Therefore, the decision of the Board was to deny the petition.

Concurred:

Nancy Kammerdeiner, Chair

Gaetano Piccirilli, Esq.

George Mathew

Joseph Ferla