

November 10, 2022

IN RE: Lambert, Shirley

TRB Docket No.: 14STMERZZ6601- Property: 4115-17 Brown Street, Philadelphia, PA

Statement of Record:

- 1) Shirley Lambert (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board("TRB") on May 7, 2019. The petition requested a review of the bill issued by the Department of Revenue for the refuse tax assessed on the property at 4115-17 Brown Street, Philadelphia, Pa, with corresponding account ending in -2900 from 12/31/2010 to 12/31/2019.
- 2) A public hearing before the Tax Review Board at the Master level was scheduled on November 25, 2019., the hearing officer requested that Petitioner acquire power of attorney from the new owners of the property, as she no longer had standing.
- 3) A new hearing was scheduled on February 24, 2020 and while Petitioner did submit documentation, it was not notarized. The case as continued again.
- 4) An executed Power of Attorney date August 31, 2020 granting authorization from German Yakubov, the President of 4115 Brown LLC, the current owner of property at 4115-17 Brown Street to Shirley Lambert to "dispute any balances that pre-date our ownership as of May 16, 2019".
- 5) A hearing before the Tax Review Board was scheduled for September 28, 2020. The Petitioner requested that the appeal be put before the Board, rather than the Master level on August 9, 2020. This request was granted.
- 6) The hearing was then scheduled before the Tax Review Board on March 31, 2022. After hearing evidence, Tax Review Board denied the petition.
- 7) Petitioner has filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Facts:

- 1) Petitioner was the owner of properties at 4115-17 Brown Street, Philadelphia, Pa.
- 2) The property is categorized a "two apartment hotel". (Notes of Testimony; Pg. 24; Ln. 10-11). Specifically, the property is described by the Petitioner as "one house, with two separate doors" (Id.; Pg. 14; Ln. 2-3).
- 3) The City testified that the Refuse account was now "under the new owner's name... the refuse account follows the property". (Notes of Testimony; Pg. 24, Ln. 1-4).
- 4) Petitioner "seeking reimbursement because she should have never been charged refuse because it is a single family home, a residential home only... [the] balance of the sale of the property paid off the bill due in owing. At this point you're seeking a refund that because she didn't get that from the escrow." (Id.; Pg.9- 10; Ln. 22-5).
- 5) Petitioner testified that she has owned the property since 1986, lived in the property the entire time and "this property is not a rental property at all". (Id.; Pg. 15; Ln.16).
- 6) The City provided evidence to the Board that the Petitioner filed a lawsuit in "Landlord Tenant Court back in 2015". (Id.; Pg. 5-6, Ln. 23-1). Petitioner also admitted to obtaining a rental license

and attaching to the lawsuit she filed in Landlord Tenant Court to evict a family member who was living there.

Conclusion of Law:

Under Article 3 of the Tax Review Board Regulations, a Petition for Review “shall be filed by any taxpayer who is contesting any decision or determination relating to his/her liability for any unpaid money or claim collectible by the Department of Revenue for or on behalf of the City or School District of Philadelphia”. At the hearing, the Petitioner bears the burden of proof to establish by substantial evidence that the City’s assessment is incorrect. Ernest Renda Construction Co. Inc, v. Commonwealth, 94 Pa. Commonwealth Ct. 608, 504 A. 2d 1349 (1986).

In this matter, the City assessed the Petitioner for the property under The Philadelphia Code Chapter 10-717.1 the curbside waste collection fee, otherwise known as the Refuse Collection fee.

10-717.1. Eligibility for Municipal Collection and Fees for Neighborhood Sanitation and Cleaning Services.

...

(2) There is hereby imposed on all owners of residential or commercial properties eligible for City curbside waste collection an annual fee of three hundred dollars (\$300) per property for neighborhood sanitation and cleaning services, including the collection of refuse, waste and recyclable materials and related cleaning services. Upon a determination by the Department that costs of neighborhood sanitation and cleaning services justify an increase in the fee, the Department may increase the fee, as appropriate, by regulation.

Exemptions: The following are exempt or partially exempt from the fee:

(a) Collection from single-family dwellings;

(b) Collection from condominiums and cooperatives, as defined in subsection (1);

(c) Collection from a property in connection with which the property owner demonstrates, to the satisfaction of the Department, that it has in place one or more private waste hauling contracts that provide for collection of the refuse, waste and recyclable materials generated at the property;

(d) Collection from a duplex (two-family dwelling) in connection with which the property owner demonstrates, to the satisfaction of the Department, that the owner resides in one of the living units, provided that the exemption shall apply to fifty percent (50%) of the fee imposed pursuant to subsection (2). 188

(3) The Department may establish regulations to implement this Section, including regulations establishing additional eligibility for curbside collection and regulations providing for interest and penalties for late payment and non-payment.

(4) The provision of false information to the City in an effort to demonstrate private service shall (a) constitute a violation and subject the property owner to penalties as set forth in this Chapter; and (b) make the property owner liable for the annual fee.

During the hearing, the Petitioner asserted their property should be considered exempt from the City refuse tax assessment since the time the Petitioner owned the property, this was used as a single-family residence. Specifically, the Petitioner argues that they qualified under 10-717.2, Exemptions, Section(a) and would be entitled to a refund of the funds paid to settle the refuse account. However, as explained by Board Member Ward, "it is troubling and hard for the Board to overcome that there is a filed complaint in Landlord Tenant Court that evidence is that a tenant did in fact live in the property. Under the penalty of perjury, it was signed by the petitioner that she was actually renting out the property". (Id.; Pg. 33; Ln. 22-5).

Therefore, the decision of the TRB was to deny the Petition for Appeal.

Concurred:

Nancy Kammerdeiner, Chair

George Matthew

Ryan Boyer

Joseph Ferla