

**August 4, 2023**

**IN RE: Sciulli, Egidio**

**Address: 1343 Ellsworth Street**

**Docket No: 35WRMERZW0881**

Statement of Record:

- 1) Egidio Sciulli (hereafter "Petitioner") represented by attorney, Mary Catherine Baur, filed a Petition for Appeal with the Tax Review Board ("TRB") on September 10, 2020. The petition requested a review of a bill charged to the petitioner's account for the property at 1343 Ellsworth Street, Philadelphia, Pa by the Water Revenue Bureau (WRB).
- 2) A public hearing before a Hearing Officer at the 1<sup>st</sup> level (Master Level) was held on August 3, 2020. After the presentation of evidence, Hearing Officer adjusted the bill for the "*period from 7/17/2017-12/18/2019 based on 8000 cubic feet per month*". The interest fees were also abated 100%.
- 3) The Petitioner appealed the decision to the full Tax Review Board.
- 4) The case was listed before the Tax Review Board was held on February 22, 2022. It was continued at the hearing.
- 5) The case was next listed on November 1, 2022 and continued at the Petitioner's request.
- 6) The case was listed on February 21, 2023. After hearing the evidence and testimony, the Board denied the petition on the merits, abated 100% of the penalties, and provided the Petitioner 30 days to enter into a payment agreement.
- 7) Petitioner has filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Fact:

- 1) Petitioner is the owner of the property at 1343 Ellsworth Street, Philadelphia, Pa.
- 2) This property is a "multi-family" with "five units; five full baths and six people live in that property". (Notes of Testimony; Pg. 31; Ln. 18-20). It has been fully occupied by tenants during the period in question.
- 3) At issue is the billing period from July 17, 2017 to October 18, 2019. At the time of the hearing the unpaid balance totaled \$19,059.78 (principal of \$17,957.68, penalties of \$1,102.10, and \$0 lien fees).
- 4) Petitioner alleges that the bill issued by the Water Revenue Bureau due to the meter change was inaccurate. Specifically, Petitioner argues that there are no leaks as certified by a master plumber and "on either side there's has been major construction ... [and] they sort of did something themselves and that was not supposed to be done". (Id.; Pg.8; Ln. 16-20).
- 5) Petitioner's witness, Enrico Sciulli, Petitioner's son and certified master plumber, testified as an expert that upon inspection of the property on October 25, 2019, he "checked all the fixtures checked the meter, checked all the coolants. There were no leaking pipes. No fixtures leaking. No sinks were dripping. There was no water running at all when I was there until I went on and actually flushed and turned-on faucets". (Id.; Pg. 11; Lns. 16-22).

- 6) The City's representative testified that during the period in question the Encoder Receiver Transmitter, ("ERT"), had stopped transmitting the monthly usage to the Water Department. As such, WRB sent estimated readings to the Petitioner.
- 7) On September 19, 2019, the technicians from the Water Department went out to the property to "change the ERT...[resulting] in a backbill based on the reading ...that was obtained at the ERT change". (Id.; Pg. 32-33; Lns.22-11).
- 8) The City's representative also characterized the usage as "jumped to extreme high usage at the two months after the ERT was changed. Then back to normal and then it just... fluctuates up and down". (Id.; Pg. 35; Lns. 2-6).

#### Conclusions of Law:

The Petitioner bears the burden of proof to establish by substantial evidence that the City's bill had been improperly assessed. *Ernest Renda Construction Co., Inc v. Commonwealth*, 94 Commonwealth Ct., 608,504 A2d 1349 (1986). This evidence may be in the form of testimony, documentation, or other demonstrative evidence. Petitioner failed to meet this burden.

The Petitioner first asserts that the bill in dispute is incorrect as the usage is inconsistent "with usage figures before and after the two-year period in dispute". (9/10/2020 Petition; Pg. 2); However, based on the Account History provided by the WRB, the Board notes fluctuating high and low usage before the ERT change- the months of November and December 2016 and then after the ERT change- the months of April, May, and June of 2021. The Board notes that this is rental property with 5 tenant units; during the disputed period it is possible that fluctuations in usage occurred causing the reading on Sept. 19, 2019 and subsequent backbill to be the amount billed by WRB.

Additionally, the Petitioner's assertion that the cause of the high usage was possibly the neighbors on either side of the property undergoing construction during the disputed period is not sufficient, without any additional evidence, for the Board to consider that a valid explanation for the bill. Additionally, testimony from the Petitioner's own's witness contradicts that proposition that a neighbor could have accessed the meter in the basement and connected as "no one has a key for the basement other than us, the owners". (Notes of Testimony; Pg. 42; Lns. 7-8).

The Tax Review Board found that the Petitioner failed to present any evidence or meet the burden that the City's assessment was improper or incorrect. The bills during the disputed period were estimated and did not account for the actual usage due to the ERT's malfunction. Once replaced, an actual reading of the water usage resulted in the backbill which the Board finds to be reasonable based on the type of property- 5 unit rental property, fully occupied during the disputed period- and the history of fluctuations in usage both before and after the ERT change.

As such, the Board denies the petition on the merits but abated 100% penalties as set forth in the Philadelphia Code Chapter 19-1705(2), as the Petitioner did not act in bad faith or with negligence.

Concurred:

Nancy Kammerdeiner, Chair

George Matthew

Paula Weiss