

November 5, 2023

IN RE: PelCo Builders, Inc

TRB Docket Nos: 26LFMERZZ9779

Statement of Record:

- 1) Pelco Builders, Inc. (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board ("Board") on October 25, 2021.
- 2) The petition requested a review and abatement of a violation fees assessed by City of Philadelphia's Department of License and Inspections ("Department") against the Petitioner for failure of workers on site of the property 763 N. 39th Street, Philadelphia PA to have in their possession of required OSHA cards.
- 3) A public hearing before the hearing officer was scheduled for February 25, 2022. Petitioner failed to appear for the hearing.
- 4) The Petitioner requested a rehearing which was granted due to an administrative error in noting the Petitioner's timely request for a continuance.
- 5) A subsequent hearing was scheduled on July 20, 2022; Petitioner again failed to appear and requested a rehearing before the Board.
- 6) The case was listed for hearing on March 30, 2023. The City's attorney requested a continuance as their witness was unavailable.
- 7) The case was listed for hearing on June 22, 2023. Evidence and testimony were taken, and the Board granted the petition, abating the entire bill.
- 8) City of Philadelphia filed an appeal to the Court of Common Pleas.

Findings of Fact:

- 1) Petitioner is Pelco Builders, a contractor licensed to conduct business in the City of Philadelphia.
- 2) On August 31, 2021, a Licensing Violation Notice was issued to the Petitioner regarding 4 workers, "working for Pelco Builders, not in possession of required OSHA cards," (C-2, Notice of Violation).
- 3) This was issued after a City Inspector visited the work site on the property of 763 North 39th Street and observed 4 workers, who were unable to provide the required OSHA cards, wearing Pelco T-Shirts.
- 4) On October 4, 2021, the Department issued a Statement of Outstanding Fees, or bill to Pelco Builders, CF-2021-083591, for payment of the violation. Specifically, "Principal amount is \$4,000. No interest or administrative charge at this time." (NOT; pg. 5; Ln. 12-15).
- 5) Petitioner's representative, Linda Merritt, Pelco's Executive VP of Administration, testified that Pelco Builders never received the Licensing Violation Notice. She explained, "I reached out to the central district office first, explaining to them, I got this bill, we have this bill for \$4,000, its not a Pelco job, what do I do...Mr. Redmond emailed me back and he attached to his email that actual violation which reflected the OSHA violations". (Id.; Pg. 16; Ln. 6-17).
- 6) Ms. Merritt also testified that Pelco "had nothing to do with it. We never set foot on the property. We made no money. Those were not our employees. I even passed around those pictures that Johnathon Redmond emailed over to me, you know, do you recognize these

people...I'll turn over our payroll records and you can look for their names. It's not going to be there. They're not our people." (Id.; Pgs. 20-21; Lns. 16-23).

- 7) Mr. Lech, Director of the Department of License and Inspections' Audit and Investigations Unit, testified, "there's an assumption made. Somebody is wearing attire of a builder on a construction site, we issue violations based on that assumption." (Pg. 53, Ln. 9-12). Mr. Lech further explained that if it is brought to the Investigations Unit of a possible error, "by means of contact in the office or mailing us. If it's obvious that there was an error, we would resolve those violations as issued in error. If we reviewed those violations and still felt that they were valid, we would direct them to make a formal appeal. (Pg. 54; Ln.1-5).
- 8) In this particular case, after Petitioner let the City know that Pelco was not involved on the project on the property, the Department's Audits and Investigation's Unit "reached out to the "listed contractor, WP Construction... to provide a full list of subcontractors that were active on that project...They did provide the information. Pelco Builders was not listed on that information." (Id., Pg. 55, Ln. 8-14).
- 9) Additionally, Mr. Lech agreed that there was no evidence "other than the fact there were two workers or four workers...wearing Pelco T-Shirts...to establish that Pelco was an unlisted subcontractor on this work site [or] had any other involvement with the activity there". [Id.; Pg. 57; Ln. 4-13).

Conclusions of Law:

Under Section 19-1702(1) of the Philadelphia Code, the Tax Review Board has broad jurisdiction to hear petitions for review.

§ 19-1702. Petitions for Review.

(1) Every petition for review of any decision or determination relating to the liability of any person for any unpaid money or claim collectible by the Department of Revenue, for or on behalf of the City or the School District of Philadelphia, including, but not limited to, any tax, water or sewer rent, license fee or other charge, and interest and penalties thereon, shall be filed with the Tax Review Board within 60 days after the mailing of a notice of such decision or determination to the petitioner.

The City's main argument is that the Board does not have jurisdiction to hear whether or not the assessed "bill is appropriate amount for whatever is already established". (Id.; Pg. 8; Ln. 2-3). More specifically, that the "Tax Review Board doesn't have the jurisdiction over what the BLIR ("Board of License and Inspection Review") has jurisdiction over." (Id.; Pg.10; Ln.15-17) As the Petitioner failed to exercise the right to appeal the actual violation to the BLIR, the "presumption of propriety became conclusive, so it can't now be challenged because that challenge had to have gone through a certain statutory process". (Id.; Pg. 9; Ln. 17-21).

The Board disagrees with the City's attempts to limit its jurisdiction and create a Board that simply rubber stamps the City's bills without review. The City would have the Board simply "assess [whether the] City is properly assessing the fines for these four violations...there's four violations. They're Class II. They're \$1,000 apiece, and the bill is for \$4,000, so no mistake in math there." (Id.; Pg. 73-74; Lns.24-5)

In this matter, the Petitioner asserted that they never received the Licensing Violation Notice and were first notified of any monies due by receiving the Statement of Outstanding Fees dates October 4, 2021. The Board finds Petitioner's testimony credible regarding not receiving the initial notice of the licensing fee violation and following the procedures for appeal to the Tax Review Board put forward in the Statement of Outstanding Fees. Therefore, Petitioner's timely filing of their petition for review before the Tax Review Board in regard to their liability for a license fee bill was correct and within the Board's jurisdiction.

This case is an example where the Board feels compelled to find the City's bill was incorrectly issued due to the insufficiency of the evidence connecting the Petitioner to the underlying violation. Simply put, the Petitioners demonstrated that their company had no connection whatsoever to the contractor, subcontractor or property that was found to be in violation- "Pelco Builders didn't have anything to do with this project and they shouldn't be asked to contribute \$4,000 on something that they had nothing to do with". (Id.; Pg. 12; Ln. 16-19). The City's own witness also could not provide any evidence to support the bill's assessment to the Petitioner. The Board finds that it has an obligation to review a Petitioner's argument when the argument is that the bill is incorrectly and improperly issued to the Petitioner.

The Board finds that the City's inability to put forward any evidence; aside from the City's *assumption* that T-Shirts worn by the workers indicated that they were Pelco workers; connecting Petitioner to the work site or the actual workers who were not in compliance insufficient. Further, the additional investigation conducted by AIU when provided with this information from the Petitioner, failed to collect anything supportive of the City's original determination or at least identify the workers as actual Pelco workers. As testified by Mr. Lech, the only evidence connecting Pelco to the workers and therefore to liability as indicated by the Statement of Outstanding Fees, were woefully just T-Shirts. The Board believes the City's evidence leaves much to be desired and in the interest of fairness and equity, grants the petition and abates the balance.

Concurred:

Nancy Kammerdeiner, Chair

Paula Weiss

Dominique Ward, Esq.

George Matthews

Ryan Boyer