

October 4, 2019

IN RE: Mike Mohjan

DOCKET NO: 26NUMERZZ7292

26NUMERZZ6979

STATEMENT OF RECORD:

- 1. Mike Mohjan (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board on March 31, 2017 seeking review of a bill for the removal of hazardous materials from the property located at 127 West Sharpnack St., Philadelphia, PA.**
- 2. A public hearing was held before a Tax Review Board Master on December 10, 2018. The decision of the Master, as ratified by the Tax Review Board, was to abate 100% of the lien, interest and administrative charge, and to reduce the principal to \$0.00.**
- 3. The City of Philadelphia filed an appeal to the Philadelphia Court of Common Pleas.**
- 4. Petitioner filed a Petition for Appeal with the Tax Review Board on January 29, 2019, seeking review of an additional bill for demolition of the property located at 127 West Sharpnack St., Philadelphia, PA .**
- 5. A public hearing before the full Tax Review Board was scheduled for May 9, 2019 for both cases.**
- 6. The Tax Review Board rendered its decision on May 9, 2019 to grant Petitioner's request to abate the bill in full.**
- 7. The City of Philadelphia has appealed to the Philadelphia Court of Common Pleas.**

FINDINGS OF FACT:

- 1. Petitioner owned the property located at 125 West Sharpnack St., Philadelphia, PA during all times relevant to this appeal.**
- 2. In 2002, the adjacent property located at 127 West Sharpnack St. was declared "Imminently Dangerous" by the Department of Licenses and Inspections (L & I) and an immediate demolition was ordered by L & I.**
- 3. The property at 127 West Sharpnack was demolished but it left an exposed common wall to which the city performed stucco work.**
- 4. Petitioner asserts that he had no notice from the City regarding the violation and had never received any bills or notifications about the outstanding bill until he received a letter from Angel Luis Franqui, Esq., the Attorney for the City of Philadelphia dated February 8, 2006.**
- 5. Petitioner believed that there was a mistake and sent a letter to the attorney with his explanation. Petitioner testified that he received no response and in 2017, when Petitioner sold his property, the title company's investigation discovered two liens on the property.**
- 6. The principal amount due for the demolition and the removal of hazardous materials was \$6,483.18, \$5,353 for labor and materials, with an administrative charge of \$1,125.18, interest in the amount of \$6,579.25, for a total of \$13,062.43.**

CONCLUSIONS OF LAW:

The City challenged the jurisdiction of the Tax Review Board stating that the Petition for Appeal had been filed beyond the 60-day limit set forth in the Philadelphia Code Chapter 19-1702. The Philadelphia Code Chapter 19-1702(1) requires that petitions for review be filed with the Tax Review Board no later than sixty (60) days from the date of the bill being questioned. However, the Board can consider accepting a petition outside of the prescribed time frame on a *nunc pro tunc* basis. The Board's *nunc pro tunc* policy reviews the appeals of petitioners who can demonstrate that the untimely filing was due to circumstances beyond their control, not a result of any negligence, where any delay was corrected as quickly as possible and there such delay has not prejudiced the ability of the City to present and defend its assessment of the bill.

The Petitioner submitted his petition on March 31, 2017 insisting that the lien had been placed on the wrong property. The initial acceptance of his petition by the Tax Review Board was based on the information submitted, however at the hearing the Board considered the City's position in regard to timeliness of the Petitioner's appeal. The City's argument rested on the elapse of time since the work was performed, arguing that it created a prejudice to the City as no records were available to present during the hearing because "the document retention policy for the city is to destroy records, such as these, after 8 years". (Notes of Testimony, p.7, l. 6-7).

While the City's arguments regarding prejudice is compelling, the Board found the Petitioner's testimony credible and persuasive, specifically that that the Petitioner's first notice of the outstanding amount was from the letter he received from the Attorney for the City dated February 8, 2006, as he provided a copy of a handwritten letter addressed to the attorney dated February 10, 2006 informing him that he believed the lien was mistakenly placed on his property. Petitioner testified that after mailing the letter, he received no additional letters from the attorney or the collection agency. Petitioner's testimony thus indicates that the late filing was not a result of any negligence on the part of the Petitioner.

It was the opinion of the Board that both liens placed on 125 West Sharpnack Street were filed in error. After reviewing the evidence and testimony, the Tax Review Board's determination to accept the Petitioner's *nunc pro tunc* appeal and decision to grant Petitioner's request to abate the bill in full should stand.

Concurred:

Nancy Kammerdeiner, Chair

George Mathew

Ryan Boyer

Joseph Ferla