

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

203 SUMMER ST., LLC¹

v.

**BOARD OF ASSESSORS OF
THE CITY OF MALDEN**

Docket No. F347910

Promulgated:
September 17, 2025

This is an appeal filed under the formal procedure pursuant to G.L. c. 40, §§ 42A through 42F, G.L. c. 83, § 16E, and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the City of Malden ("assessors" or "appellee") to abate water and sewer charges reflected in a water/sewer bill issued to Eric Lung on March 9, 2023 ("contested bill").

Commissioner Bernier heard this appeal. He was joined by Chairman DeFrancisco and Commissioners Good, Elliott, and Metzger in the decision for the appellee.

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.34.

Eric Lung, pro se, for the appellant.

Alicia McNeil, Esq., for the appellee.

¹203 Summer St., LLC ("appellant") is the current owner of 203 Summer Street, the property relating to the contested matters in this appeal, and Mr. Lung is signatory for the LLC.

FINDINGS OF FACT AND REPORT

Based on testimony and exhibits offered into evidence at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On March 9, 2023, the City of Malden issued to Mr. Lung a bill in the amount of \$17,937.07 for water and sewer charges at 203 Summer Street in Malden ("subject property"). On April 11, 2023, the appellant filed an abatement application with the Malden Public Works Commission, which was denied the same day. The appellant seasonably filed an appeal with the Board on April 24, 2023. The contested water and sewer charges remain unpaid. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The appellant presented its case through the testimony of Mr. Lung and his wife, Shuai Lung. The appellant also submitted various documents, including: correspondence between the attorneys at the Lungs' initial purchase of the subject property; copies of various water and sewer bills from October 2020 through January 2023; a property management contract for the subject property dated September 9, 2022; an email from Ronnie Tom, Malden water department, to Yem Lip, dated March 21, 2023; and listings of Malden water rates for calendar years 2020 through 2023.

The assessors offered several documents, including: a copy of the minutes from the Public Works Commission's April 11, 2023, meeting - the appellant's abatement hearing; the subject property's water and sewer account detail; and other documents.

Mr. Lung testified that he and his wife purchased the subject property on September 8, 2020, and for the ensuing twenty-nine months until March 9, 2023, when he requested and was issued the contested bill, the monthly water and sewer bills were always estimated bills that were paid in full. Mr. Lung further testified that it was his belief that the estimated billing was the standard practice and argued that the contested bill was more than three times too high. However, he offered no evidence to support this claim. Mr. Lung further argued that because the high meter reading at issue stemmed from a leak that began approximately four months prior to his ownership of the subject property, and because there was no actual meter reading performed at the time of closing the sale in 2020, the contested bill for the period at issue is the previous owner's liability.

Based on the evidence presented, the Board found and ruled that the appellant's arguments were unavailing because the appellant failed to provide any probative evidence to demonstrate that the disputed charges were excessive and liability for the charges cannot be shifted to the subject property's prior owner by the Board.

Accordingly, the Board issued a decision for the appellee in this appeal.

OPINION

A taxpayer aggrieved by water and sewer charges "may apply for an abatement by filing a petition with the board or officer having control of the water department" and if such petition is denied in whole or in part, the taxpayer "may appeal to the appellate tax board upon the same terms and conditions as a person aggrieved by the refusal of the assessors of a city or town to abate a tax." G.L. c. 40, § 42E.

General Laws c. 59, § 65 provides in pertinent part:

A person aggrieved . . . with respect to a tax on property in any municipality may, subject to the same conditions provided for an appeal under section sixty-four, appeal to the appellate tax board by filing a petition with such board within three months after the date of the assessors' decision on an application for abatement as provided in section sixty-three, or within three months after the time when the application is deemed to be denied as provided in section sixty-four.

Accordingly, within three months after denial or deemed denial of an application for abatement of unpaid water and sewer charges, the owner may appeal to the Board. See ***Epstein v. Executive Secretary of the Board of Selectmen of Sharon***, 22 Mass. App. Ct. 135, 137 (1986).

In the present appeal, there was no dispute that the contested water and sewer charges remained unpaid, resulting in a lien on the subject property. See **Epstein**, 22 Mass. App. Ct. at 137. The Board also found that the application for abatement of the water and sewer charges was timely filed with the appellee and that the appellant seasonably appealed to this Board within three months of the denial. See G.L. c. 59, §§ 64 and 65. Accordingly, the Board ruled that it had jurisdiction over this appeal.

The burden of proof is upon the appellant to make out its right as a matter of law to an abatement of an assessment of water and sewer charges. See, e.g., **Schlaiker v. Assessors of Great Barrington**, 365 Mass. 243, 245 (1974). The appellant must demonstrate that the water and sewer charges on the bill are improper. See **Foxboro Associates v. Assessors of Foxborough**, 385 Mass. 679, 691 (1982); **Epstein**, 22 Mass. App. Ct. at 136. The charges are presumed valid until the appellant sustains his burden of proving otherwise. **Lacerra v. Harwich Water Department**, Mass. ATB Findings of Fact and Reports 2008-1325, 1333.

In the present appeal, the appellant failed to provide any probative evidence to demonstrate that the water and sewer charges at issue were excessive. Further, there is no mechanism for relief at the Board based on a claim that a prior owner should be responsible for the disputed charges. Accordingly, the Board ruled that the appellant failed to sustain its burden of demonstrating its right to an abatement and issued a decision for the appellee in the instant appeal.

THE APPELLATE TAX BOARD

By: 
Mark J. DeFrancisco, Chairman

A true copy,

Attest: 
Clerk of the Board