

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

CAROLYN HAROUTUNIAN

v.

CITY OF WATERTOWN
DEPARTMENT OF PUBLIC
WORKS

Docket No. F347793

Promulgated:
June 11, 2025

This is an appeal filed under the formal procedure pursuant to G.L. c. 40, §§ 42A through 42F and G.L. c. 59, §§ 64 and 65, from the refusal of the City of Watertown Department of Public Works ("appellee" or "DPW") to abate water-usage charges imposed on Carol Haroutunian ("appellant") for the quarterly periods commencing July 1, 2021 and ending January 3, 2022 ("period at issue").

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 1.32.¹

Carol Haroutunian, pro se, for the appellant.

Jeffrey Blake, Esq., for the appellee.

¹ This citation is to the regulation in effect prior to January 5, 2024.

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.

This appeal arose from the refusal of the appellee to abate water bills for the period at issue for water usage at 20 Parker Street, Watertown ("subject property"), which was owned by the appellant. The original water bills were issued on November 12, 2021, for the period July 1, 2021 through October 1, 2021 ("Q1"), in the amount of \$7,826.55 subsequently reduced to \$5,432.97, and on February 14, 2022, for the period October 1, 2021 through January 3, 2022 ("Q2"), in the amount of \$ 2,152.54 subsequently reduced to \$1,687.40. Not satisfied with the reduced amounts, the appellant timely filed an application for abatement with the appellee, which was denied on December 7, 2022. The appellant seasonably filed an appeal with the Board on March 7, 2023.² The balance in water-usage charges for the period at issue remains unpaid and has become a lien on the subject property. The Board therefore found and ruled that it had jurisdiction to hear and decide this appeal.

Ms. Haroutunian testified that she does not reside at the subject property and that during the period at issue she lived in

²The appellant's petition was stamped as received by the Board on March 9, 2023, but the petition was mailed in an envelope postmarked March 7, 2023. Under G. L. c. 58, § 7, the Board used the postmark date as the date of filing.

Florida and the subject property was rented. Ms. Haroutunian further testified that for the quarterly period immediately prior to the period at issue her water-usage charge was \$339 and she was unaware of any reason for such a drastic increase in water usage other than a faulty water meter. She maintained that she had "good tenants" and if there had been a leak of any type resulting in excessive water usage, as suggested by the appellee, her tenants would have notified her. On cross-examination, Ms. Haroutunian conceded that she had not visited the subject property in the summer of 2021 and was not aware of evidence of water damage, including tiles near a toilet having been replaced.

The appellant then called to testify Russell A. Roland, whom she offered as an expert. The appellee objected based on the lack of prior notice and also failure to provide a *Curriculum Vitae* for Mr. Roland. Mr. Roland's testimony was allowed subject to the appellee's cross-examination and the Board's evaluation of his expertise. Mr. Roland testified that 422,512 gallons of water over a six-month period of time, the appellant's billed water usage for the period at issue, is "far too much to be attributed to a leak." He further testified that such an "absurdly high" number "clearly has to be an issue with the meter."

On cross-examination, Mr. Roland testified that his experience was limited to working for companies that provided software to utilities. Mr. Roland also testified that he had not

visited the subject property and did not therefore see the bathroom where the toilet in question may have been leaking. The Board found no value in Mr. Roland's testimony because he is neither an expert in the subject matter nor is he a factual witness since he never visited the subject property.

Greg St. Louis, Superintendent for the DPW, testified for the appellee. Mr. St. Louis testified that in the summer of 2021, the DPW received a "System Notification" about unusually high water-usage at the subject property. He further testified that it was the department's policy to send written notice to the address where the water was consumed and that review of records for the subject property indicated that written notice was, in fact, sent to 20 Parker Street, Watertown.

Mr. St. Louis testified that the appellant had originally been charged the "highest tier" water rate given the volume of water that was consumed for the period at issue. He explained that taxpayers who consume more water are charged a higher rate to promote conservation. Having received the system notification for the subject property and determining that the high water-usage for the period at issue seemed to be inadvertent, in comparison to previous water-usage bills for the subject property, the appellee reduced the appellant's water-usage bills for the period at issue.

Lastly, Mr. St. Louis testified when DPW was granted access to the subject property there were no tenants. During their visit,

they made note of water damage in a bathroom that was most likely, they opined, from a wax ring seal around the toilet that had given out and had been leaking. Further, they noted evidence of tiles having been replaced. Lastly, the DPW staff tested the water meter and found that it fell within the standard accuracy parameters of plus or minus two percent.

On cross-examination, Ms. Haroutunian asked Mr. St. Louis if "such a small leak" as a toilet could amount to 422,512 gallons of water, the usage on her water bills for the period at issue. Mr. St. Louis replied that while a leak such as the one thought to exist at the subject property may not create much usage in a single day, it "certainly would over a period of time ... six months" in this case.

Based on the evidence presented, the Board found that the appellant did not sustain her burden of proving that the disputed water-usage charges were excessive. In reaching its decision, the Board found probative and credible the evidence that there had existed at least one leak when employees of the DPW gained access to the subject property and noted evidence in a bathroom of water damage and subsequent repairs. Further, the appellant offered no probative evidence to demonstrate that the billed amounts were excessive.

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

OPINION

Water-usage charges not paid on or before the due dates shall be liens upon the real estate to which the water services were supplied and "shall be added to or committed as a tax." G. L. c. 40, §§ 42A and 42B. A taxpayer aggrieved by a water-usage charge "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 (emphasis added).

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-usage 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 water-usage charges for the period at issue 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-usage 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-usage charges. See e.g. **Schlaiker v. Assessors of Great Barrington**, 365 Mass. 243, 245 (1974). The appellant must demonstrate that the water-usage charges on the bills 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 her burden of proving otherwise. **Lacerra v. Harwich Water Department**, Mass. ATB Findings of Fact and Reports 2008-1325, 1333.

In the present appeal, the Board found that the appellant did not sustain her burden of proving that the disputed water-usage charges were excessive. In reaching its decision, the Board found probative and credible the evidence that there had existed at least one leak and noted evidence in a bathroom of water damage and

subsequent repairs. Further, the appellant offered no probative evidence to demonstrate that the billed amounts were excessive.

"[The Board can] accept such portions of the evidence as [appear] to have the more convincing weight." *Assessors of Quincy v. Boston Consol. Gas Co.*, 309 Mass. 60, 72 (1941). "The [B]oard is not required to believe the testimony of any particular witness." *Id.* "The credibility of witnesses, the weight of evidence, and inferences to be drawn from the evidence are matters for the [B]oard." *Cumington School of Arts, Inc. v. Assessors of Cumington*, 373 Mass. 597, 605 (1977).

On this basis, the Board found and ruled that the appellant failed to meet her burden of proving that the water-usage charges for the period at issue were excessive. Accordingly, the Board 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