

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

YESHI TAMIRU

v.

BOARD OF ASSESSORS OF
THE CITY OF EVERETT

Docket No. F337029

Promulgated:
March 26, 2019

This is an appeal 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 Everett ("appellee") to abate water and sewer charges imposed on Yeshi Tamiru ("appellant") for the first quarter of fiscal year 2018 ("period at issue").

Commissioner Good ("Presiding Commissioner") heard this appeal and in accordance with G.L. c. 58A, § 1 and 831 CMR 1.20 issued a single-member 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.

Abeda Attles, Esq. for the appellant.

Keith Slattery, City Solicitor, for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of the testimony and exhibits entered into evidence at the hearing of this appeal, the Presiding Commissioner made the following findings of fact.

This appeal rose from the refusal of the appellee to further abate a water and sewer bill for the period at issue ("subject bill" or "bill at issue") for water and sewer usage at a two-family residence located at 24 Vernal Street in Everett ("subject property"), which was owned by the appellant. The original amount of the bill was \$22,373.07. On May 3, 2018, the appellant timely filed an Application for Water Adjustment with the Board of Public Works Water Division, which acted on the application on May 10, 2018 by abating \$10,272.45. Not satisfied with the abatement, the appellant seasonably filed an appeal with the Appellate Tax Board ("Board") on August 3, 2018. The balance in water and sewer charges from the bill at issue remains unpaid and has become a lien on the subject property. Based on these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction over the instant appeal.

The appellant testified at the hearing. She contended that the bill at issue was too high and not commensurate with actual water usage. The appellant has owned the

subject property since 2010. She resides in one unit and rents the other. A total of five people lived at the subject property during the period at issue.

The appellant submitted the bill at issue into evidence. The appellee also submitted a water-usage history for the subject property. The appellant had previously received and paid estimated water and sewer charges since November 2013. Her estimated water and sewer bill immediately preceding the bill at issue was \$236.01. The City replaced the water meter at the subject property on March 12, 2018. The first actual-read bill - the bill at issue - for a read made in April 2018, rose to \$22,373.07. The subsequent actual-read bill for July 2018 dropped down to \$115.18. The appellant denied the presence of any leaks at the subject property or having had a plumber make any repairs at the subject property.

Ernie Lariviere, Water Superintendent, testified for the appellee. He testified that Everett began a campaign to replace water meters during the latter part of 2013. He testified that the City reached out to homeowners through door-knob fliers, mailings, telephone calls, and notices placed in water bills. Mr. Lariviere submitted a record of the many efforts made to contact the appellant from October 2013 through July 2014, which included: three notices;

three door hangers; an "orange flyer"; a telephone call to the telephone number on record (which was made to a number that apparently served a facsimile machine); and two shut-off notices. The appellant was not responsive to any of these requests. Mr. Lariviere testified that the appellant's tenant ultimately allowed the City to access the subject property and replace the water meter.

Mr. Lariviere further testified that, when two employees were replacing the water meter at the subject property on March 21, 2018, they detected a leak draining into one of the bathtubs. An entry in the appellee's activity log for that same date indicated that the "homeowner is aware" of the leak and was advised to "fix it." The log also indicated that the appellee contacted the appellant by phone two days later and again advised the appellant of the bathtub leak and that a water and sewer bill of approximately \$20,000 would be forthcoming. The log reflects that appellant responded by indicating that her sink was leaking and advised the appellee that it had no permission to enter her property.

Mr. Lariviere also submitted a daily usage chart depicting the gallons of water used at the subject property since the water meter had been replaced. The chart shows that water usage between March 10 and March 21, 2018 was

mostly in the 3,000-gallon range, with one day in the 4,500-gallon range. After March 22, 2018, a day after the March 21, 2018 telephone conversation between the appellant and appellee, the usage rate dropped dramatically to well below the 1,000-gallon range, suggesting that the appellant responded to the appellee's visit and call by having the leak or leaks repaired. The Presiding Commissioner found Mr. Lariviere's testimony and evidence to be credible.

On the basis of the evidence presented, the Presiding Commissioner found that documented usage at the subject property dropped dramatically a day after a logged conversation with the owner about an impending bill in excess of \$20,000 and the presence of a water leak. Moreover, considering that the subject bill was based on an actual read, and that an estimated read would not have detected a leak, the Presiding Commissioner concluded that the bill at issue reflected a more accurate water usage than did her prior estimated bills.

The Presiding Commissioner thus found and ruled that the appellant failed to meet her burden of proving that the bill at issue was inaccurate. Accordingly, the Presiding Commissioner issued a decision for the appellee in the instant appeal.

OPINION

The burden of proof is upon the appellant to make out its right as a matter of law to an abatement of an assessment or water charge. See *Schlaiker v. Assessors of Great Barrington*, 365 Mass. 243, 245 (1974). The appellant must demonstrate that the water-usage charge on the water bill is improper. See *Foxboro Associates v. Assessors of Foxborough*, 385 Mass. 679, 691 (1982); *Epstein v. Executive Secretary of Bd. of Selectmen of Sharon*, 22 Mass. App. Ct. 135, 136 (1986). The charge is presumed valid until the appellant sustains its burden of proving otherwise. *Lacerra v. Harwich Water Department*, Mass. ATB Findings of Fact and Reports 2008-1325, 1333.

In the present appeal, the Presiding Commissioner found that the appellant did not sustain her burden of proving that the disputed water and sewer charge was excessive. In reaching her decision, the Presiding Commissioner relied on the testimony and documentation offered by the appellant as well as that offered by the appellee's witness. The Presiding Commissioner found credible the evidence that at least one leak was present at the subject property when employees of the City finally gained access to change the water meter, after many months and repeated requests. Further, the actual-usage chart

depicted a dramatic drop in water usage at the subject property a day after a logged telephone conversation regarding the presence of two leaks and "a \$20,000 water and sewer bill." Moreover, the prior water and sewer bills at the subject property were merely estimated charges, and therefore would not have reflected leaks that could have existed for quite some time at the subject property.

"[The Board can] accept such portions of the evidence as appear to have the more convincing weight." *Assessors of Quincy v. Boston Consolidated 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 the Arts, Inc. v. Assessors of Cumington*, 373 Mass. 597, 605 (1977).

On this basis, the Presiding Commissioner upheld the disputed water and sewer charge and decided this appeal for the appellee.

THE APPELLATE TAX BOARD

By: Patricia M. Good
Patricia M. Good, Commissioner

A true copy,

Attest: Wm. J. Kelly
Clerk of the Board