

EXCEPTIONS TO HEARING OFFICER'S REPORT

WATER RATE BOARD PROCEEDINGS - 2021

SUBMITTED BY MICHAEL SKIENDZIELEWSKI, MAY 25, 2021

According to the Hearing Officer, the following is presented:

*You can file **EXCEPTIONS**, which are objections to any finding or discussion contained in the report. This document must be clearly marked as such, and you must clearly indicate the basis for your disagreement. Each Issue with which you disagree must be separately numbered. This document must be sent to me and everyone on the service list, as well as sent directly to the Rate Board at WaterRateBoard@phila.gov These documents will be posted on the Rate Board's website unless I direct otherwise.*

I have copied the Hearing Officer's directive regarding the submission of exceptions in these WRB proceedings in order to ensure that the protocol is followed to the maximum extent possible.

Item #1...Document Request...PWD HELP LOANS

By order⁶¹ dated April 16, 2021, I granted PWD's April 8, 2021 Motion in Limine⁶² addressed to issues raised by participant Michael Skiendzielewski, and its April 8, 2021, Objections⁶³ to related discovery⁶⁴ Following Mr. Skiendzielewski's April 12, 2021, response⁶⁵ to the Objections, I granted the Motion and sustained the Objections, finding that "The Rate Board does not have the authority to investigate, administer or enforce public integrity laws or ethical codes. Therefore, discovery or testimony intended to address allegations of misconduct in connection with administration of the HELP loan program will be excluded from the scope of this rate proceeding."

In response to the above statement issued by the Hearing Officer on page 13 of the final report, the following is submitted:

1) Nowhere in my document request for PWD HELP loan records did I request that the Rate Board “....to investigate, administer or enforce public integrity laws or ethical codes..”

2) Consequently, the Hearing Officer’s statement:

Therefore, discovery or testimony intended to address allegations of misconduct in connection with administration of the HELP loan program will be excluded from the scope of this rate proceeding.” Is inappropriate and unfounded since such a request was never presented in my records request. Also, such a request for WRB review of ethical codes or integrity laws was not contained in my response to PWD’s objections to my document requests.

Item #2...RECUSAL REQUEST...WRB COUNSEL

Also on May 10, 2021, participant Michael Skiendzielewski by email85 requested “recusal of counsel to the Water Rate Board due to the relevant decision-making, conflicts” claiming that “WRB has a basic and primary professional responsibility to ensure and safeguard the processes, reports and deliberations that occur and are produced from such deleterious effects such as conflicts of interest, unprofessional conduct, unethical decision making, etc. as evidenced on the record by counsel to the Water Rate Board.” He attached as support a letter, dated May 18, 2017, from this counsel. I treated the email as a petition (or motion) and by Order86 dated May 11, 2021, denied it.

In response to the above statement issued by the Hearing Officer on page 17 of the final report, the following is submitted:

1) In her order which denied the motion for recusal, the Hearing Officer stated on page 1, paragraph 2:

“...This request is DENIED. Not only did Mr. Skiendzielewski fail to present any credible evidence to support his request...”

In response to this statement and claim by the Hearing Officer, the following information, facts and conduct and decision-making of WRB counsel was submitted in my motion for recusal. These details were contained in paragraph 4 in an email/motion for recusal sent on May 10, 2021 to the Hearing Officer, Chairman WRB and all participants in the current proceedings:

Such issues include, but are not limited to:

- (1) the civil-rights violative statement in May 2018 closing off government access/redress to this citizen and consumer and since that time, this consumer has yet to receive a single response from the Inspector General's Office, the Chief Integrity Officer of Philadelphia, and several Integrity Officers in city departments, where allegations of ethical and integrity violations and misconduct were submitted,**
- (2) the professional misconduct exhibited by the failure of properly advising PWD petitioners to the Tax Review Board of their right to a second appeal to the TRB over a span of many years, when he was Law Department supervisor of the unit responsible for legal services at TRB proceedings and to the TRB**
- (3) affirming that the city/PWD have no financial liability for the expenses incurred from a consumer's failed long sewer laterals, though he himself approved a modified PWD HELP loan where the PWD paid for \$5500 of the consumer's expenses for the loan,**
- (4) in response to an allegation of financial impropriety in the management of PWD HELP loans to the Integrity Officer, Kathleen McColgan, Deputy Revenue Commissioner, Revenue Department of the City of Philadelphia, WRB counsel submitted a four-page document HE authored and HE signed as the official city response closing the investigation into the allegation submitted in 2021 (WRB counsel's letter, in which HE does not investigate the allegation of**

financial impropriety but rather details my advocacy and efforts in that regard, was generated in 2017)....(COPY ATTACHED)

- 2) A 4-page letter authored by counsel to the WRB was sent to this PWD consumer in 2017 in which he details a long list of steps, efforts and advocacy both within and outside city government, neighborhoods groups, including professional associations, university programs, and other ethics//integrity associations regarding the official decision making and conduct in this case. This document was entered into the WRB proceedings on the public record both by this participant and by the Hearing Officer. In her review of this document, the Hearing Officer concluded that:

“....the letter also itself makes clear the probity, professionalism and integrity of the involved individual (WRB counsel).....”

One may suppose that if the Hearing Officer included in her assessment and review the four items in my recusal motion detailing the specific conduct and decision-making of WRB counsel, there may have been a different determination in response to my recusal motion. Once again, the Hearing Officer asserts that I “failed to submit any credible evidence to support his request (motion)”.

- 3) In paragraph 2, page 1 of the Hearing Officer’s denial of my recusal request, the Hearing Officer issues a judgment on my efforts, advocacy and constitutionally-protected rights and privileges under the First Amendment of the US Constitution to petition government officials and representatives in order seek redress for real, genuine and fact-based issues and allegations of professional misconduct to city designated ethics and integrity “watchdog” departments. The Hearing Officer describes my conduct as “abusive and disruptive” behavior, in line with PWD counsel’s assessment in his 2017 letter to this citizen in response to the issues in this case. For attorneys to interpret and present my conduct first as “behavior” and second, as “abusive and disruptive” is quite surprising given those who were apparently offended are both professional

attorneys. But as I have reiterated on several occasions, they are in positions of public service, and, as a retired Captain of the Philadelphia Police Department, I lived accountability, oversight and public service every moment of my career.

4) In her order denying recusal, page 1, paragraph 4, the Hearing Officer states the following:

Mr. Skiendzielewski has shown the same behavior in this case, with his continued refusal to recognize the scope of the proceeding before the Rate Board, in both this and the preceding rate proceeding, to the point where I had to issue an Order in Limine (April 16, 2021) addressed to his participation. Specifically, I excluded from the proceeding “(i)allegations of “financial impropriety” in the operation, management and disposition of the HELP loan program, allegations of misconduct by Counsel for Water Revenue Board (“WRB”) and (iii) allegations related to the 2017 investigation by [name omitted].”

(1) If this is a professional forum, which it is purported to be, why does the Hearing Officer use the phrase “shown the same behavior in this case”?

(2) “Refusal to recognize the scope of the proceeding before the Rate Board”.

No, I do recognize the scope of the proceeding now, I did last time and am looking forward to a third participation when the hearings begin anew next year. The WRB is charged with reviewing facts and information that impact water rates. Just because the Hearing Officer, the WRB, guided by city attorneys and management, decide that such an issue does not merit such a designation as “impacting water rates”, does not make it so. When, according to state law, the city has no liability for long lateral expenses and costs, and the records shared now in two WRB proceedings clearly demonstrate in at least one instance, the PWD paid off 55% or \$5500 of a customer’s HELP loan expenses, such conduct does in fact “impact water rates”.

3) Specifically, I excluded from the proceeding “(i)allegations of “financial impropriety” in the operation, management and disposition of the HELP loan program, allegations of misconduct by Counsel for Water Revenue Board (“WRB”) and (iii) allegations related to the 2017 investigation by [name omitted].”

- 1) Where in the public WRB records did I make “allegations of financial impropriety” in the operation, management and disposition of the HELP loan program? I have looked throughout my motions and requests for records and do not see such a statement?
- 2) “allegations of misconduct by Counsel for the Water Revenue Board” This is the second instance in the final report where you have erred in describing counsel to the Water Revenue Board, where you apparently meant to say Water Rate Board. In any event, you stated that you excluded from the proceeding allegations of misconduct by counsel to the WRB.....there was no need to exclude them, since you never acknowledged, mentioned and possibly reviewed the four instances and issues relating to the conduct and decision-making of WRB counsel that I presented in my recusal motion.
- 3) Finally, “allegations related to the 2017 investigation by [name omitted] were excluded.

I know of nowhere in professional circles or organizations, public or private, where the target of an allegation(s) is permitted to conduct the investigation of his own conduct and decision-making and then, to offer it as the conclusive and professional final disposition and outcome in the investigation of serious ethical/integrity matters. Regardless of agency oversight or lack thereof, a professional, in this case attorney, has a responsibility and duty to refrain from offering such a report in public as the final review of the allegations.

ITEM #3.....SETTLEMENT PROPOSALS AND CONFIDENTIALITY

It was difficult to discern exactly what Mr. Skiendzielewski is objecting to in the proposed partial settlement; he did not submit any document entitled objections, but rather sent numerous emails.....**It seems**

that he is objecting to certain proposals made to him by PWD in the course of settlement negotiations.

The above statements are presented by the Hearing Officer in her final report, page 31, paragraph 3.

- 1) Regarding the Hearing Officer's statement, it is unprofessional in such proceedings to suppose or conjecture what this participant is "objecting to in the proposed partial settlement." I understood that such public, official, regulation-specific procedures are governed by facts, written statements and documents submitted during the hearings. To be clear, my unstated objection concerned how the settlement was proceeding given the uncertain nature of the status and amount of federal stimulus money provided for PWD.

Per the Hearing Officer,**It seems that he is objecting to certain proposals made to him by PWD in the course of settlement negotiations.**

I have made it clear in numerous correspondence to the Hearing Officer and all the WRB participants that my objections or concerns did not relate to "certain proposals" but to the nonviable, worthless and disingenuous nature of at least two of the proposals or avenues for resolution through certain city departments.

(1) Proposal 1 – filing an application with the Revenue Department of the City of Philadelphia through its "refund unit"

(2) Proposal 2 – filing an application for damages and expenses via the Risk Management Unit of the Finance Dept.

In both cases, successful processing of applications is barred due to time limitations and constraints. Attempts to access and file these proposals were either rejected or not responded to by city officials.

In these two “bogus proposals” offered in open and honest negotiations between this participant and the PWD, both proposals and/or procedures cannot be pursued since time limits for filing rendered these offers meaningless. So, since the Hearing Officer was aware of the reasons that made these two offers and proposals were defective and of no value, the facts re PWD proposals, at least two of them, is that they were empty and false offers to settlement and given the legal staff reviewing these settlement efforts, it is unprofessional and inexcusable for PWD management and counsel to engage in such dubious conduct during open and honest settlement negotiations.

The only response from the Hearing Officer re the confidentiality and unviable proposals issue was a May 7th email which stated:

Mr. Skiendzielewski:

Settlement discussions are confidential negotiations among participants.

Ironically, the Hearing Officer posts my email statement on page 32 of the final report asserting the worthless value of the two proposals:

As Hearing Officer, you are certainly entitled to, have the authority to and are free to do as you please. But it is abundantly clear and documented now in these records of communications, correspondence and emails that you made a declaration regarding the CONFIDENTIALITY of communications between parties involved in settlement discussions and when I show, prove and demonstrate with facts and evidence that PWD, its management and attorneys, have used this issue of CONFIDENTIALITY to hide from public discourse and WRB and records, bogus, unviable and useless proposals and offers to settlement which fly in the face of your allegiance to COLLABORATION, which all know is based on candor, forthrightness and genuine and honest professional conduct

2) On page 32, paragraph 2 of the final report, the Hearing Officer presents the following information:

As noted by PWD in its Brief at 67, fn 224, however, "Settlement negotiations are privileged, confidential and inadmissible into evidence. **The law is clear that an unaccepted offer to compromise or settle cannot be introduced into evidence.** See, e.g., Redevelopment Authority of City of Philadelphia v. Pelullo, 409 A.2d 122, 125 (Pa. Cmwlth. 1979). Mr. Skiendzielewski participated in settlement discussions with the Department.

As mentioned earlier, numerous attempts via email correspondence were made to the Hearing Officer regarding the worthless proposals offer in good faith settlement negotiations and the only response to this question was a statement in a reply email that asserted that settlement negotiations were confidential in nature. Despite repeated attempts asking the Hearing Officer the source, legal citation, the WRB statute, etc. that is the legal basis for that declaration of confidentiality, I never received a response from the Hearing Officer regarding the legal source of her decision.

The first notice that this participant received regarding the legal source of the confidentiality decision was in the final report issued by the Hearing Office in which she quotes the PWD as providing the basis for confidentiality in settlement proceedings. Of course, the concern here is whether the Hearing Officer used her own legal source or citation to assert confidentiality or was it based on what PWD provided in their brief. Of course, the reason and/or basis for confidentiality because in this instance, confidentiality provides a convenient cover for the worthless and unviable proposals that PWD offered during open and honest settlement negotiations.

Regardless of the legal source of the confidentiality issue or who provided this decision, the fact of the matter is that the legal citation simply DOES NOT APPLY in the circumstances in this case re the settlement negotiations:

The law is clear that an **unaccepted** offer to compromise or settle cannot be introduced into evidence.

The two worthless offers and proposals submitted by PWD in settlement negotiations were in fact ACCEPTED, but they were valueless and empty. Records will show that this participant did file an application with Risk Management for damages and the application was rejected by Barry Scott, Risk Manager for the City of Philadelphia due to time limit constraints. Similarly, an application was filed with the Department of Revenue, Kathleen McColgan, Deputy Revenue Commissioner for the refund-unit consideration and despite repeated requests re the filing, this participant has never received a response, though the website indicates a three-year time limit for filing (which has expired).

- 3) Finally, I present a portion of my email message sent to the Hearing Officer re confidentiality on page 32 of her final report. At a virtual public meeting during the WRB proceedings, the Hearing Officer encouraged the attendees and PWD consumers to understand this WRB process and proceedings as a COLLABORATION between the Philadelphia Water Department and its customers.

You (hearing officer) made a declaration regarding the CONFIDENTIALITY of communications between parties involved in settlement discussions and when I show, prove and demonstrate with facts and evidence that PWD, its management and attorneys, have used this issue of CONFIDENTIALITY to hide from public discourse and WRB and records, bogus, unviable and useless proposals and offers to COLLABORATION, which all know is based on candor, forthrightness.

CONCLUSION:

For the reasons set forth in the record and these exceptions, this participant requests that the Rate Board:

Item #1...Document Request...PWD HELP LOANS

Overturn the Hearing Officer's denial of my request for records relating to PWD HELP LOANS for the following reasons, posted in my response to PWD's objections:

I reaffirm my request that due to the size and scope of the PWD HELP loan program and the financial resources assigned to a process that provides interest-free loans to PWD customers, there is assuredly costs involved for PWD and its customers to secure these sums through loans and it is reasonable, prudent and justified for PWD consumers to be able to review and judge for themselves exactly how the HELP loan program is being administered and managed and the costs involved in administering such an important program.

The financial issues that relate to the PWD HELP loan program are the expense of securing the monies to fund the program, as well as the costs added to the program when loans are forgiven. Another undetermined though critical concern focuses on which class of PWD consumers pays for these HELP loan expenses. Are the program expenses paid for by only residential customers since they are sewer (residential) related or are the HELP loan program costs borne by all PWD customers, including business accounts?

When the PWD decides to discount or reduce the amount of the PWD Help loan due from the consumer, what are the written rules, procedures and/or guidelines that are utilized to make such a decision, which adversely impacts PWD revenue? How and why are such steps as discounting PWD HELP loans undertaken when state law asserts that the PWD has no liability or financial responsibility for the expenses related to lateral repair at a consumer's residence?

Item #2...RECUSAL REQUEST...WRB COUNSEL

Overtturn the Hearing Officer's denial of my request for recusal of counsel to the Water Rate Board for the reasons in the record for these proceedings:

Regardless of the responsibility and task of the WRB with respect to the setting of water rates and related concerns, the WRB has a basic and primary professional responsibility to ensure and safeguard the processes, reports and deliberations that occur and are produced from such deleterious effects such as conflicts of interest, unprofessional conduct, unethical decision making, etc. as evidenced on the record by counsel to the Water Rate Board.

(1) the civil-rights violative statement in May 2018 closing off government access/redress to this citizen and consumer and since that time, this consumer has yet to receive a single response from the Inspector General's Office, the Chief Integrity Officer of Philadelphia, and several Integrity Officers in city departments, where allegations of ethical and integrity violations and misconduct were submitted,

(2) the professional misconduct exhibited by the failure of properly advising PWD petitioners to the Tax Review Board of their right to a second appeal to the TRB over a span of many years, when he was Law Department supervisor of the unit responsible for legal services at TRB proceedings and to the TRB

(3) affirming that the city/PWD have no financial liability for the expenses incurred from a consumer's failed long sewer laterals, though he himself approved a modified PWD HELP loan where the PWD paid for \$5500 of the consumer's expenses for the loan,

(4) in response to an allegation of financial impropriety in the management of PWD HELP loans to the Integrity Officer, Kathleen McColgan, Deputy Revenue Commissioner, Revenue Department of the City of Philadelphia, WRB counsel submitted a four-page document HE authored and HE signed as the official city response closing the investigation into the allegation submitted in 2021 (WRB counsel's letter, in which HE does not

investigate the allegation of financial impropriety but rather details my advocacy and efforts in that regard, was generated in 2017). In no professional circles, public or private, does the target of serious misconduct and ethical violations investigate his own conduct and decision-making and then offer the investigative report as the final decision in the case. Such conduct is improper and unprofessional.

The obligation and duty of the Water Rate Board is to ALL Philadelphia Water Department consumers that these hearings are fair, balanced, impartial and unbiased and, if necessary, steps will be taken to ensure that the public hearings are protected in that regard.

ITEM #3.....SETTLEMENT PROPOSALS AND CONFIDENTIALITY

Direct the PWD, its management and counsel to return once again to settlement negotiations and discussions with this WRB participant in good-faith and open/honest participation and collaboration in order to have a reasonable, equitable and fair opportunity to resolve the issues in these matters.

The record has clearly demonstrated, confidentiality notwithstanding, that during earlier settlement discussions between this participant and PWD, its counsel and management, whether consciously or unconsciously, offered worthless, bogus and unviable processes or options for resolution and settlement and such conduct is professionally and ethically unacceptable.

Submitted by:

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