

March 25, 2024

IN RE: Dean, Dawn

Property: 5108 Gainor Rd

Docket No: 28WAMERZZ8182

Statement of Record:

- 1) Dawn Deane (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board (Board) on or around March 2019. The petition requested a review of the HELP Loan amount charged to the petitioner's account for work done at the property of 5108 Gainor Road, Philadelphia, Pa by the Water Department.
- 2) A public hearing was held on June 18, 2019 before a Tax Review Board Hearing Officer who continued the case for additional research on the HELP Loan.
- 3) The case was relisted on October 25, 2019. The Hearing Officer denied the petition.
- 4) On October 31, 2019, the Petitioner appealed the Hearing Officer decision to the Tax Review Board.
- 5) It was listed before the Board on June 8, 2021. The Petitioner requested a continuance, which was granted.
- 6) It was listed again on November 3, 2022, however, it was continued as the City attorney was no available.
- 7) The Petitioner then failed to appear at the listing on February 16, 2023. She requested a re-hearing before the Board which was granted.
- 8) This case was then scheduled before the full Board on November 28, 2023 for a public hearing. After hearing testimony and evidence, the Board reduced the principal HELP Loan amount due to 2,477.50 and directed the Petitioner to follow the payment procedures.
- 9) The City filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Fact:

- 1) Petitioner is the owner of the property at 5108 Gainor Road, Philadelphia, Pa.
- 2) At issue is the Homeowner's Emergency Loan Program Agreement, (hereafter "Help Loan") initially entered into by the Petitioner and the City of Philadelphia's Water Department on March 6, 2018, then changed and entered into on March 26, 2018 and the again, on April 12, 2018 and whether the enforcement of the contract against the Petitioner should be enforced.
- 3) The initial principal of the loan was \$7,415.22 (Hearing Transcript; pg. 5; Lns. 4-7).. No penalties or liens have accrued on this bill.
- 4) Petitioner testified that in 2016, "my block of 51st Street and 5108 Gainor Road, that whole block was dug up. Okay. It was completely dug up on a T-area, and these giant things were put into our street...there was a lot of construction going on my property...everything that was happening was happening right in front of my house". (Hearing Transcript; pg. 9; Lns. 5-15).
- 5) Petitioner explained, "a little while later, that's when I started having the issues with my—in the front of my house. And it also impacted 5106, who also had to get a loan. They convinced us to get the loan and we would share the price or whatever, because her property had to have the same exact thing done as my property". (Hearing Transcript; pg.9-10; Lns. 21-4).

- 6) Petitioner further noted, “we called the city because I kept getting, I guess, violations or whatever, and we had to get it done. That’s when I felt, you know, pressed to take this loan out because there was just everything. Bubbles, sewage, everything was running down the street in the middle of winter, and it was freezing...about a year, maybe not even a year later, they came back and dug up my street again”. (Hearing Transcript; pg. 10; Lns. 7-18).
- 7) City witness, Mr. Derek Segers, manager of the HELP program, testified that a City of Philadelphia Water Department contractor assessed the property and found a defect for a “defective lateral and trap-curb trap”. (Hearing Transcript; pg. 15; Ln. 4).
- 8) Mr. Segers explained that a HELP loan agreement was drawn up with the Petitioner. “Her initial cost looks like it was \$2,477... that was the initial base...At the conclusion of repairs, it was 7000—I’m looking at \$7,502.50. Now, there was another cost sheet that was written that was voided. And on all these documents—I’m sorry, Ms. Deane signed them. So on the initial estimate, Ms. Deane signed for the \$2,477. Then Ms. Deane signed for a change because we voided the document out”. (Hearing Transcript; pg. 18; Lns. 3-10).
- 9) Mr. Segers further explained the need for the change order and cost. “The first cost went to additional cast iron, 16 feet of cast iron, which is \$1,280. You see the lateral, \$2,175. Three cast iron fittings at \$300. The excavation machine. This is on a second occurrence, not the first, \$600. And then you see the street permits. \$265 would be for connection. The lateral inspection... \$500 would be for the opening of the street. And you notice that he says, under miscellaneous, it says seven extra yards, so that’s seven extra yards to open the street. That total came to \$6,185”. (Hearing Transcript; pg. 24-25; Lns. 15-10).
- 10) Petitioner explained that “I wasn’t given many days to think about this loan. I was given first, initially, 10 days. And it was, like you said, at a lower rate. And then I was given five days to say that you have to get this taken care of”. (Hearing Transcript; pg. 44; Lns. 17-23).
- 11) Evidence submitted by the Water Department indicated that the 1st HELP loan agreement signed by Ms. Deane was signed on March 6, 2018 for \$2,477.50. It was voided, and another signed on March 26, 2018 for \$6,185. Then a third document was executed on April 12, 2018 for \$7,502. (City Exhibits).
- 12) The work was completed on April 12, 2018. (Hearing Transcript; pg.26; ln. 12-13).
- 13) The City also explained that “there had been work done by a contractor, and the work was completed in May 2017. And then there was another contractor that started work in September of 2018”. (Hearing Transcript, pg. 41; Ln: 4-8).
- 14) The TRB reduced the principal amount of the bill to the original loan amount of \$2,477.50, noting they found that Petitioner’s “testimony credible regarding the problem of appearing only after the city opened – this problem, appearing only after the city opened the street for other work”. (Hearing Transcript, pg. 46; Ln: 3-5).

Conclusions of Law:

The Petitioner bears the burden of proof to establish by substantial evidence that the City’s bill had been improperly assessed. *Ernest Renda Construction Co., Inc v. Commonwealth*, 94 Commonwealth Ct., 608,504 A2d 1349 (1986). This evidence may be in the form of testimony, documentation, or other demonstrative evidence.

The Petitioner asserts that the Water Department’s Help Loan agreement should not be enforced as she believed the initial issue with her defective lateral and curb stop were caused by previous work by the

City, the amount that was explained to her was not clear, and then further that she was pressured to sign the loan.

The Board finds the Petitioner arguments persuasive and finds that the neither the second nor third version of the HELP loan was executed properly by the City. The Board finds it questionable the need for multiple voided contracts- each with additional charges and explanations and amounts that weren't clear to the Petitioner regarding how much of that amount was her share or her neighbors.

Further, several of the documents in the City's Exhibit packet signed by the Petitioner and representatives from the Water Department have inconsistent dates and information. Specifically, the Homeowner's Emergency Loan Program Agreement and Plumbing Contractors Certification & Guarantee Homeowner's Emergency Loan Program were both signed by the Petitioner on March 6, 2018 but the final amount and inspection certification was signed over a month later on April 12, 2018. The Board is uncertain whether the change orders or agreements were explained to the Petitioner in a way that would indicate that the additional cost would be added to the HELP Loan she initially signed.

Lastly, the Board found the Petitioner testimony credible in regard to her feeling pressured and bullied into signing the documents presented to her and her subsequent decision to proceed with the work and sign off. Specifically, the City corroborated the Petitioner's testimony regarding the cause of the trap and lateral issues-- construction work done on her property shortly before - in May 2017- the City began issuing the violations regarding her curb trap

The Board finds that the first contract should stand as the Petitioner fully understood what was required of her in that iteration of the contract.

Concurred:

Nancy Kammerdeiner, Chair

Paula Weiss

Dominique Ward, Esq.

Ryan Boyer

George Matthew

