

IN THE MATTER OF:
MEERA LINGAYAT AND
UMA MURTHY
909 ST. AGNES LANE
BALTIMORE, MD 21207

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: CBA-24-025

RE: Appeal of Sewer Service Charge

* * * * *

OPINION

This matter comes before the Board of Appeals of Baltimore County following an appeal by Petitioners, Meera Lingayat and Uma Murthy, (“Appellants”), of a decision letter issued by D’Andrea L. Walker, Director of the Department of Public Works and Transportation (“DPWT”), dated February 12, 2024, indicating that the Appellants, as owners of the property located at 909 St. Agnes Lane, Baltimore, Maryland 21207 (“subject property”), owed sewer service charges of \$5,695.95 attributable to the subject property. The Appellants noted a timely appeal to the Board. Baltimore County (“County”) was represented by Assistant County Attorney Katherine Loverde, Esquire. The Appellants appeared *pro se*.

FACTUAL BACKGROUND

The factual background of this matter is essentially uncontested. Appellants are the owners of the subject property which is a residential rental property. The property is located in the Metropolitan District (“District”) which consists of the area within the County served by public sewer and water. The City of Baltimore (“City”) manages the water consumption component, and the County manages the sewer component. Property owners within the District are billed quarterly by the City for their water usage and annually by the County for sewer usage. The sewer charges are reflected on the annual County property tax bills. While the property tax

component of the tax bill begins July 1 and ends June 30, the sewer charges stated on a property owner's tax bill are based on water usage for the prior **calendar** year.

In this instance, then, the County issued a real property tax bill on July 1, 2023, to Appellants for property taxes due for the period July 1, 2023, to June 30, 2024. The sewer charges, however, were for calendar year 2022. The initial sewer billing from the County was for \$6,144.45. When Appellants received their 2023 property tax bills, they contested the assessment. They had previously noticed an abnormally high water usage from the subject property and had been in contact with the City regarding an abatement of those charges. The inflated sewer usage occurred in three billing quarters, reflected in the water bills issued based on readings on 1/13/22, 4/13/22, and 7/13/22. The recorded usage was 341 units, 331 units, and 135 units, respectively.¹ The typical usage for the subject property is between 12 and 17 units².

Michael Swygert, Acting Chief of the Metropolitan District Finance Office, testified to the above facts. He also indicated that the Appellants had requested an abatement because of the difficulties they had encountered in trying to obtain access to the property and in attempting to evict the tenant, both of which prevented them from fixing the internal water "leak", which turned out to be a running basement toilet.³ The Director of DPWT, who at the time of this matter was

¹ At the hearing, Appellants established that even though the decision letter refers generally to calendar year 2022, the actual billing overlapped with the last part of 2021. Michael Swygert testified that each year's billings are on a "rolling" basis, meaning that each calendar year assessment actually includes sewer usage in the preceding year. Therefore, the 2022 billing in this case actually included some usage from 2021. For the same reason, the 2023 billing included some usage from the end of 2022. It was established and Appellants acknowledged that there was no double billing. This means that the decision letter's reference to calendar year 2022 is nothing more than a shorthand way to say "twelve months of sewer charges reflected in billings in 2022". This shorthand language makes no difference in this matter.

² A unit equals about 748 gallons.

³ Once Appellants were able to gain access to the property, the only "fix" that was required was jiggling the toilet handle. *See infra* at p. 4.

D'Andrea Walker, exercised her discretion and reduced the bill to \$5,695.95, which is the final amount being contested in this matter.

Mr. Swygert testified that the authorizing statutes provide great discretion to the Director to reduce a sewer assessment based on an unusual reading. He indicated that it was DPWT practice to offer a reduction of up to two months of anomalous sewer charges within a three year period. The reduction is pursuant to a calculation by which the Post Repair Consumption is subtracted from the Actual Billed Consumption and the resulting number is then divided by two. In this matter, the Director took the third quarter of high charges, which was the lowest of the three quarters because the repair was made part way through that billing period. The reduction was calculated to be \$448.50. When questioned by the Board, Mr. Swygert indicated that the lowest quarter was chosen to be the quarter because it was the last quarter and the quarter in which the repair had been made, but he could offer no reason as to why those facts made the last quarter more significant than the preceding two quarters, each of which had more than double the consumption than the quarter selected to be the base for calculating the reduction. He acknowledged that had either of the other two quarters been used, the reduction would have been greater. In addition, he could offer no explanation as to why the Director elected to apply a reduction to only one quarter when the policy allowed for the reduction to be applied to two quarters. In effect, the Director chose to apply the reduction to the lowest quarter alone instead of to the two largest quarters or even the lowest quarter and one of the higher ones. There was no satisfactory justification why the Director exercised her judgment in this way.

The Appellants were candid from the very beginning of their interactions with the County that the large water usage readings were the result of a running toilet in the subject property. Unlike in many cases the Board sees, there is no dispute that the City meter readings were correct

and that the water used was actually discharged to the sewer.⁴ Indeed, the Appellants learned of the overage in water use from the online water usage postings done by the City well before the County had contacted them about the possibility of enhanced sewer charges. As a result, early on they were able to eliminate the possibility of an outside water leak. Accordingly, they knew that there was a problem inside the property, but they did not know the nature of the problem. The tenant had stopped paying rent, and Appellants tried to evict them. Consequently, while they were willing and able to make any needed repairs, their tenant refused to give them access to the property. The tenant changed the locks and refused to answer any telephone calls or respond to written correspondence. During the eviction process, it would have been imprudent and possibly dangerous for Appellants to force their way in, even with police protection if such were available, just to fix what turned out to be a running toilet. Part of the delay in the eviction process was the residual congestion in the County District Court system for landlord-tenant matters occasioned by the Covid pandemic. Ultimately, the court ordered the eviction, and two days before the forcible eviction would have occurred, the tenant moved out. Appellants hired a locksmith to gain entry to their property. It was in disarray. For the purposes of this matter, the cause of the offending water usage was found to be a running basement toilet. Appellants made the “repair” by jiggling the handle on the toilet.

Appellants corresponded with the County for about a year. Their essential request was that the County forgive the excess charges because their tenant had refused to give them access to the property and the Court system was unusually slow to evict the tenant. As explained above, the Director granted a discretionary reduction of \$448.50.

⁴ Baltimore County Code (BCC) §20-5-105 presumes that every user discharges 100% of their waste consumption into the sewer system and further presumes that the City water consumption records are correct.

DISCUSSION

The typical sewer case that comes before this Board involves disputes about the reliability of the meters, the integrity of the City meter reading process, or the possibility of a water leakage that did not go into the sewer system. This case is unusual in that there is no such dispute: the water was used inside the subject property; every drop went into the sewer system; and the meter readings are uncontested. The Appellants are in the rental property business, and the sole cause of controversy was the actions of their tenant. They selected that tenant; they agreed to rent to that tenant; and allowing that tenant to occupy the premises was their business decision. Under normal circumstances, we would see no reason the public should be expected to underwrite a bad business outcome. Costs associated with an unfortunate business decision are part of the expected risk in that commercial enterprise. Appellants testified that they have twelve rental properties. They can make money or lose money on any given property. They do not share their profits with the public, and the public should not have to absorb their losses (beyond that which is already done by various federal and state tax components like the deductibility of repairs and losses from income and the long-term depreciation of the total property cost).⁵ Even extraordinary costs generated by a recalcitrant tenant – no matter how unjust and no matter the unquestioned good faith of the landlords – are the end responsibility of the business owners. It is a knowing risk landlords take.

Having said all that, there is one distinguishing feature here: the Covid pandemic. The pandemic was a major disruption of all aspects of normal circumstances. It was, of course, officially acknowledged as a public emergency health matter in Baltimore County, the State of Maryland, the United States of America, and every worldwide governmental entity. Many of the

⁵ Water and sewer charges themselves can be deducted from income as business expenses.

normally functioning institutions of government were disrupted. There were many financial and economic accommodations that were made locally and nationwide for regular consumers such as restrictions on rent increases, moratoriums on evictions, and forgiveness of certain types of loan repayments, to name just a few. But it was not just consumers that received relief; there were similar and well publicized accommodations made for businesses that were suffering under the pandemic effects. The major impact of the pandemic was in 2020 and 2021. Nonetheless, its consequences continued to be real well into 2022, and to some extent even linger to the present.

The Board is aware that one of the areas that was affected was the local court system, and as indicated above, the County's landlord-tenant court suffered in particular. That system has heavy volume. Trying to address all of the complex issues associated with residential rental questions was especially difficult to address through the virtual court system. Backlogs were well documented and rather notorious. The bottom line is that tenants and landlords both experienced major problems. We assume that the Director's decision to permit the modest reduction in Appellants' sewer charges was, in part, in recognition of the pandemic. There is no question that Appellants acted in good faith regarding their sewer charges.

CONCLUSION

Pursuant to Baltimore County Code (BCC) § 20-5-128(a), in an appeal to the Board of Appeals, "the Board shall determine whether or not the determination, decision, order, or notice, which is the subject of review, is proper or correct." The Board may reverse, affirm (in whole or in part), or modify the determination, decision, order, or notice appealed from. *Id.* While we believe that the Director's reduction was warranted, we also believe that it did not go far enough in recognizing the severity of the pandemic's impact on the County court system and its effect on Appellants' ability to reclaim their property.

We want to stress that the Board believes that the County has acted responsibly. We also want to repeat that our normal view of such issues is that businesspeople must accept the consequences of their business decisions, including the consequences arising from what turns out to be a poorly selected tenant. However, the Board is sympathetic to how Appellants' situation was exacerbated by the pandemic. The County acknowledged that it has almost unlimited discretion to reduce sewage assessments. The vagueness of the justification for the reduction actually granted in this case justifies the Board's decision to grant a further reduction. Accordingly, we are reducing the sewer charge to \$2,848.00 which is about one-half of the amount in the Director's letter of February 12, 2024.

ORDER

THEREFORE, ON THIS 24th day of July, 2024, by the Board of Appeals of Baltimore County, it is hereby:

ORDERED that the February 12, 2024, decision letter from D'Andrea L. Walker, Director of the Department of Public Works and Transportation, providing a reduction in the sewer charges of from \$6,144.45 to \$5,695.95 is hereby modified; and it is further

ORDERED, that a charge of \$2,848.00 shall be imposed in lieu thereof.

In the matter of: Meera Lingayat and Uma Murthy
Case No.: CBA-24-025

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Joseph L. Evans, Chair



William H. Paulshock, Sr.



Bryan T. Pennington



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

July 24, 2024

Katherine M. Loverde, Assistant County Attorney
Baltimore County Office of Law
400 Washington Avenue, Suite 219
Towson, Maryland 21204

Meera Lingayat
Uma Murthy
12805 W. Old Baltimore Road
Boys, Maryland 20841

RE: In the Matter of: *Meera Lingayat and Uma Murthy*
Case No.: CBA-24-025

Dear Messrs. Loverde, Lingayat and Murthy:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all **Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington Hay".

Krysundra "Sunny" Cannington
Executive Secretary

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Michael Swygert, Acting Chief/Metropolitan District Financing/DPWT
Lauren Buckler, Acting Director/DPWT
James R. Benjamin, Jr., County Attorney/Office of Law