



Board of Appeals of Baltimore County

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June 9, 2017

Joseph and Mercedes Kachinski
12609 Ivy Mill Road
Reisterstown, MD 21136

Nancy C. West, Assistant County Attorney
Office of Law
The Historic Courthouse
400 Washington Avenue
Towson, Maryland 21204

RE: *In the Matter of: Joseph and Mercedes Kachinski*
Case Nos.: CBA-17-018

Dear Mr. and Mrs. Kachinski and Ms. West:

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".

Krysundra "Sunny" Cannington
Administrator

/klc
Enclosure
Duplicate Original Cover Letter

c: Stephen Hinkel/Department of Public Works
Bobbie Rodriguez, Chief of Metropolitan District Financing/Department of Public Works
Steven Walsh, Director/Department of Public Works
Michael E. Field, County Attorney/Office of Law

IN THE MATTER OF:
JOSEPH AND MERCEDES KACHINSKI
416 East Pennsylvania Avenue
Towson, MD 21286

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO: CBA-17-018

Re: Appeal of Sewer Service Charges

* * * * *

OPINION

This matter comes before the Board as an Appeal from a letter from Steven A. Walsh, Director of the Department of Public Works, denying the request of Appellants, Joseph and Mercedes Kachinski, to reduce their Sewer Service Charge of \$1,703.48 for the billing period of July 1, 2015 to June 30, 2016. This Board held an evidentiary hearing on May 9, 2017. Mr. and Mrs. Kachinski, appeared *pro se*. Assistant County Attorney, Nancy C. West appeared on behalf of Baltimore County. For the reasons discussed in detail below, we find in favor of Baltimore County.

FACTS

The only witness called by the County was Bobbie Rodriguez, Chief of the Metropolitan District. Ms. Rodriguez testified that the Metropolitan District is an area of the County served by public water and sewer, and that the subject property, like every other property connected to the District's sewer system, is assessed a charge to cover the costs of treatment and transportation of wastewater. Ms. Rodriguez confirmed that the charges are based on the volume of water used during the prior calendar year as reported by Baltimore City. The sewer charge rate is mandated by Executive Order and currently is \$50.85 per 1,000 cubic feet of water consumption. Baltimore City is responsible for the water meters measuring the water going into any given property and

bills accordingly. The County, however, is responsible for sewer charges for properties receiving City water but located in the County.

Ms. Rodriguez testified that in late summer of 2015, the Kachinskis received a water bill from the City for a rental property at 416 East Pennsylvania Avenue, Towson, Maryland, 21286, for usage during the period of July 1, 2015 to June 30, 2016. This bill reflected a usage of 295 units. With one exception some years earlier mentioned more fully below, the typical usage for this property for the same time period had been between 15 and 30 units. Significantly, after the one abnormally large water bill at issue here, the metered usage reverted to the consistent 15 to 30 unit amount that was typical for this property. The Kachinskis complained to the City about this onetime spike in apparent usage. As a result, a City inspector examined the water meter for the property. Ms. Rodriguez testified, based on the electronic data maintained by the City, that the inspector found that the meter appeared to be operating properly. Ms. Rodriguez also testified that, as a result of the Kachinski complaint, the City reduced the aberrant water bill to an amount consistent with the typical usage. There is no information as to the basis for that reduction. The evidence also demonstrated that, thereafter, the City replaced the meter. Finally, Ms. Rodriguez testified that assuming the meter correctly measured the flow into the dwelling, the amount of the sewer charge by reason of the usage spike was \$1,703.48.

The Kachinskis did not dispute these facts. Their fundamental argument was that the meter must have been malfunctioning because: (1) the tenants for that property had never used that much water; and (2) the City's action in first reducing the large water bill and then replacing the meter must mean that the City recognized that the meter had malfunctioned. The Kachinskis also presented evidence that in 2012 there had been one abnormally large water bill charge of

approximately \$3,000. This fact was argued as indicating that the meter was capable of an isolated and inexplicably large reading.

DISCUSSION

These cases are problematic. It appears that the contested sewer charges arise most often when the City has made an adjustment forgiving the unexplained usage. Then, when the County refuses to make the corresponding adjustment on the sewer charges, the property owners feel, as would anyone, that they have been treated unfairly. They hear about this “water in equals water out” presumption in Section 20-5-105 of the Baltimore County Code which must appear to be a legalism that unfairly negates their honestly held view that the meter was corrupt. They are forced to incur the expense of an attorney or litigate the appeal *pro se* and then deal again with procedures which are not intuitively apparent to non-lawyers (even though the Board substantially relaxes the process for lay litigants). The property owners see the two allied governmental units taking inconsistent positions, an obvious source of irritation and frustration. At the end of the day, one suspects that these good, honest, and forthright citizens believe that they are being at least misunderstood, if not ever so slightly mistreated, by their government. Certainly this Board finds, without question, that Mr. and Mrs. Kachinski are truthful, sincere, and responsible property owners who are acting in complete good faith.

The other side of the dispute has substantial equity as well. The County presents its position in a thorough and exceedingly professional manner. Where, in particular, the property owners are unrepresented by counsel, the Assistant County Attorney goes out of her way to insure that the property owners’ positions are clearly presented to the Board. The County’s quite reasonable thought process is that simply because Baltimore City, without explanation, has forgiven an abnormal water bill does not necessarily mean that the meter was malfunctioning, nor

does it necessarily mean that the water was not used, nor does it necessarily mean that the water did not go into the sewer system. The County has chosen not to give what seems like “the one free bite” that the City does. The County incurs total county-wide sewer expenses. It is responsible to all County residents who pay sewer charges, and its failure to collect proper fees from one user unfairly affects, at least minimally, the costs assessed against other users. Consequently, the County makes its own independent assessment and then acts accordingly.¹ It is a reasonable point of view which the subject property owners nonetheless find aggravating.²

This editorializing is offered to help Mr. and Mrs. Kachinski, and perhaps future property owners facing the same situation, understand that their position in all its fullness is understood and respected by this Board. Hopefully, then, they recognize that this Board is not just a reflexive, unthinking rubber stamp ratifying a County money grab. We fully understand and sympathize not only with Mr. and Mrs. Kachinski’s factual position but also with their general exasperation. We try to examine the evidence carefully, thoughtfully, and independently. After doing so in this case, we simply find that the preponderance of the evidence supports the County’s position, and we are ruling accordingly.

These cases seem to reduce to one simple question: was the meter malfunctioning? If there is credible evidence that the meter lacked integrity, then this Board will unhesitatingly find in favor of the property owner – statutory presumption notwithstanding. As we see the facts in this case, however, there is little question but that the meter measured water usage properly.

¹ From one other case, we have learned that the County does, in fact, take a more lenient view on owner-occupied properties, and does make some effort to ameliorate the shocking and unexpected news that there is a large sewer bill to be paid. Where the owner is involved in a for profit activity, the County’s view seems to be that the sewer charge is a cost of doing business. For a number of reasons, this is not an unreasonable position.

² It does not help the County’s popularity that the sewer bills are issued as part of the property tax bill and as to the sewer charge, it can be as much as a year after the fact.

There was one billing period that had a tenfold increase in reported water usage. For years prior, the usage was very consistent. And after the one abnormal period, the usage read by the meter reverted to the typical amount. There is no reason to believe that a meter malfunctions in this way. If it were defective, one would expect continued high readings or some other measuring anomalies. In this instance, the evidence strongly suggests that the tenants engaged in some activity or had some problem like a running toilet that they did not disclose to their landlords. Mrs. Kachinski testified that she believes her tenants did nothing to create the situation. We respect her belief, but it seems far more likely that there is tenant knowledge or tenant responsibility that was not disclosed to the Kachinskis.

The Kachinskis presented evidence that there had been a previous blip some years earlier. This information actually supports the Board's conclusion. It is simply not reasonable to believe that two large isolated readings years apart, where both were surrounded by "normal" readings, are the product of meter malfunctioning. As stated above, it seems illogical to believe that a malfunctioning water meter would operate in this fashion. On the contrary, it is strong evidence that two sets of tenants, at two separate points in time, knew something or did something that accounts for the spikes (and did not see fit to inform their landlords). The fact that an old meter was replaced could sometimes be evidence of an actual malfunction. In this case, however, it is not. It is more likely that an old meter scheduled for eventual replacement by a modern wireless meter was replaced sooner than it might otherwise have been because of the controversy in this case. And, the evidence is clear that the meter was functioning properly at the time of replacement.

The statutory presumption, at a minimum, permits us to infer that the water in equals the water out. In this case, even without statutory authorization to engage in that logic, we find that

the evidence established that the water that came in more likely than not went into the sewer system. Accordingly, we affirm the sewer charge of \$1,703.48.

CONCLUSION

In light of the evidence presented, the Board finds that the Sewer Service Charge in the amount of \$1,703.48 assessed by the Baltimore County Department of Public Works for 416 East Pennsylvania Avenue, Towson, Maryland, 21286, for sewer usage for the period of July 1, 2015 to June 30, 2016 is AFFRIMED.

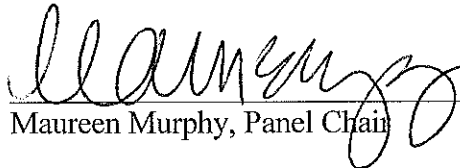
ORDER

THEREFORE, IT IS THIS 9th day of June, 2017 by the Board of Appeals of Baltimore County

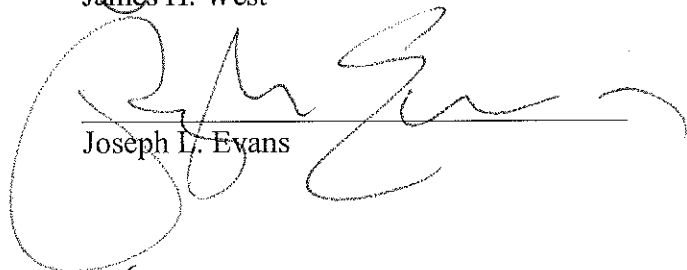
ORDERED that the Sewer Service Charge in the amount of \$1,703.48 assessed by the Baltimore County Department of Public Works for 416 East Pennsylvania Avenue, Towson, Maryland, 21286 for sewer usage for the period of July 1, 2015 to June 30, 2016, is **AFFRIMED**.

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**


Maureen Murphy, Panel Chair


James H. West


Joseph L. Evans