IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Alvin Sheldon Kanofsky Jacob Daniel Kanofsky, Appellants	:	
v.	:	No. 1398 C.D. 2012 Submitted: March 8, 2013
City of Philadelphia Tax Review Board	:	

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE BROBSON FILED: May 23, 2013

Appellants Alvin Sheldon Kanofsky and Jacob Daniel Kanofsky (the Kanofskys) appeal from an order of the Court of Common Pleas of Philadelphia County (trial court). The trial court denied the Kanofskys' appeal from an order of the Philadelphia Tax Review Board (Board). The Kanofskys inherited a residential property from their father, which is located in the City of Philadelphia and is vacant (the Property). The Board's decision addressed the Kanofskys' challenge to a bill the City's Department of Licenses and Inspections (L&I) issued for clean-up and sealing work L&I employees performed on the Property. The Board abated part of the principal of the bill, interest, lien, and administrative charges, thereby reducing the bill from $28,686 to approximately $10,441. We affirm in part and

vacate in part the trial court's order and remand the matter to the Board for further proceedings.

At issue in this matter, which arises under the Local Agency Law,[1] is whether L&I's notice of violations to the Kanofskys was sufficient and whether sufficient evidence supports the Board's findings and conclusion regarding the amount of the bill.

The City contends that L&I sent a violation notice on December 31, 2009, declaring the Property to be unsafe. L&I addressed the notice to "Philip Kanofsky and Mollie"[2] at 325 Shawmont Avenue-Apt. F, Philadelphia, PA 19128-4248.[3] The notice provided, in pertinent part, as follows:

> [L&I] has inspected the subject vacant premises and designated it as unsafe in accordance with Section 306 of the Philadelphia Property Maintenance Code.
>
> During the period of vacancy or rehabilitation you must maintain the premises in a clean, safe, and secure condition. All building doors, windows and openings from the roof, or other areas must be kept in good repair. Where such doors or windows or entrance to openings are readily accessible to trespassers, they must be kept securely locked, fastened or otherwise secured. The premises must be kept free of debris. The roof and drainage system must be maintained so as to prevent damage to this or adjoining premises. (See PM-306.0 et al) Important additional information:

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[1] 2 Pa. C.S. §§ 551-555, 751-754.

[2] Jacob Kanofsky's testimony indicates that Philip Kanofsky was his father, from whom the Kanofskys inherited the Property. (R.R., Item 3, N.T. at 7-8.)

[3] Jacob Kanofsky testified that his address is 325F Shawmont Avenue, Philadelphia, Pennsylvania, 19128. (Reproduced Record (R.R.), Item 3, Notes of Testimony (N.T.) at 2.)

> If you fail to comply with this order the City may clean or seal the building, repair the roof and drainage, or demolish the building as it deems necessary. The City may do so with its own forces or by contract and the owner will be billed for all costs incurred including an administrative fee. Failure to pay such bill will result in a lien being placed against the property (See PM-306.0 et al)
>
> This designation will remain until the premises is rehabilitated and the building is reoccupied or the building is demolished.
>
> If you intend to appeal this violation, you must apply at Boards Administration, Public Services Concourse, Municipal Services Building, 1401 John F. Kennedy Blvd., Philadelphia, PA 19102, *within 5 days of the date of this notice*. You will need to refer to the account number on this notice to file an appeal.
>
> (See A-801.2)
>
> Note: If you intend to demolish or rehabilitate the structure, or any part of it, you must obtain all required permits in advance of beginning such work.
>
> **Location: throughout**
>
> **The status of this violation is NOT COMPLIED as of 12/31/09.**

(Reproduced Record (R.R.), Item 1 at 3; bolding in original, other emphasis added.) The notice indicated that another violation occurred because "[t]he owner of every vacant building must obtain a license from the department . . . . (See PM-102.4)," and the owner had not obtained a license for the Property. *Id.* The notice also indicated that a violation existed with regard to the front door, which was "unsecured." *Id.*

Between January 11 and 13, 2010, L&I's employees cleaned out materials such as books, papers, and miscellaneous items (other than furniture) from the Property. (Statement of Facts (S.F.) no. 14.) L&I sent a bill addressed to

"Philip Kanofsky and Mollie" at Jacob Kanofsky's address, dated February 2, 2010, indicating that the cost of the work performed on the Property totaled $25,268.42. (R.R., Item 2.) The Kanofskys appealed the bill to the Board.

After conducting a hearing, the Board issued a decision in which it upheld the imposition of charges, but reduced the amount of the charges by abating the principal by fifty (50) percent and eliminating an administrative charge, interest, and lien charges. The Board determined that "[t]here was no Vacant Property License on file at L&I to direct the department to any other responsible party or mailing list. Petitioner admitted to not having this license." (S.F. no. 8.) The Board also found that "[p]hotos taken of the property's interior prior to the City's work and provided by the City showed piles of trash, books and household items throughout the rooms. See City Exhibit 7." (S.F. no. 9.) The Board determined that "[Jacob Kanofsky] testified that he did not recall receiving this Notice of Violation. He stated that he had received other such notices in the past and had complied at those times." (S.F. no. 11.) The Board also found that "[the Kanofskys] did not produce evidence to dispute the other violations. He questioned the large dollar amount of the bill for a property with one small house." (S.F. no. 12.)

The Board referenced provisions of the Philadelphia Property Management Code (Code), which require owners to maintain vacant properties "in a clean, safe, secure and sanitary condition," PM-306.1, and to "keep the interior . . . of the premises free of garbage and rubbish . . . PM-306.2[.]" The Board noted the photographic evidence demonstrating the fact that the interior floor space of the Property was in violation of the Code provisions.

The Kanofskys filed an appeal with the trial court. In their appeal to the trial court, the Kanofskys raised a number of issues relating to: (1) absence of notice; (2) excessiveness of the bill; (3) entitlement to reimbursement for loss of valuables; (4) inconsistent statements by the Kanofskys' initial counsel; (5) failure of the notice to satisfy due process; and (6) unjust enrichment/seizure without due process. In oral argument before the trial court, the Kanofskys argued that they never received the notice and that it was unlikely that L&I could have inspected the Property and mailed the notice on the same day, December 31, 2009, which was New Years Eve day. In addition to questioning whether L&I ever sent the notice, the Kanofskys also contended that, even if the notice actually came in the mail to Jacob Kanofsky's address, the notice did not provide sufficient time to respond, because it provided only five (5) days within which to file an appeal of the violation notice. The Kanofskys contended that Monday, January 4, 2010, was the earliest date upon which they could have received the notice, and that there was no way they could have complied with the five (5) day appeal period set forth in the notice. The Kanofskys do not dispute the fact that they never appealed from the notice, but, rather, only from the bill they received.

The trial court concluded that the Board did not err in determining that L&I sent the notice to the Kanofskys and that the notice was sufficient. The trial court rejected the Kanofskys' argument that the bill still was excessive after the Board reduced the amount. With regard to the Kanofskys' claims that the City owed money to them as reimbursement for the removal of allegedly valuable items in the house, or on the basis of unjust enrichment, the trial court concluded that such claims were beyond the Board's adjudicatory authority and beyond the scope

of the appeal to the trial court. The Kanofskys then appealed the matter to this Court.

On appeal,[4] we consider the following issues: (1) whether L&I notified the Kanofskys of the violations, (2) whether substantial evidence supports the Board's finding regarding the amount of the bill, and (3) whether the Kanofskys are entitled to be reimbursed for the value of some of the items removed from the premises. The Kanofskys essentially argue that the record does not support the Board's factual determinations regarding the notice and the components of the bill. The Kanofskys also discuss the alleged loss of valuable personal items.

We begin by addressing the issue of notice.[5] Section 1-110(1) of the Philadelphia Code provides in pertinent part:

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[4] When a trial court takes no additional evidence in an appeal from a local agency's adjudication, this Court's review is limited to considering whether the local agency violated any constitutional rights, erred as a matter of law, and whether all necessary findings of fact are supported by substantial evidence. 2 Pa. C.S. § 754. Thus, we must focus on the Board's decision and the proceedings before the Board, rather than on the trial court's decision. Moreover, we are constrained to review only issues that the Kanofskys raised initially before the Board, and we conclude that the Kanofskys have waived all other issues. *Com. v. Boros*, 533 Pa. 214, 220-21, 620 A.2d 1139, 1140 (1993). Section 753 of the Local Agency Law provides that "if a full and complete record of the proceedings before the agency was made such party may not raise upon appeal any other question not raised before the agency . . . unless allowed by the court upon due cause shown." Thus, we will not address the following issues the Kanofskys attempt to raise: (1) lack of due process in the service of the notice; (2) fraudulent service of the notice; (3) fraud with regard to the initial amount charged; (4) a conspiracy between the City and the Courts; (5) theft of valuable items; (6) perjury and mail fraud; (7) violation of the Kanofskys' rights by color of law; and (8) violation of their rights by unlawful search and seizure.

[5] As we suggested earlier, the Kanofskys never filed an appeal of the actual violation notice, but rather only challenged the bill they received. In some circumstances, a party bears a burden to challenge an allegedly invalid underlying *violation* notice by filing a nunc pro tunc
(Footnote continued on next page…)

Service of Notice of Violation.

All written notices of violation of any provision of the Code shall be deemed served:

When delivered by hand to the alleged violator; or

When regularly mailed to:

The alleged violator, or his agent;

The last-known residence of the alleged violator

. . .

The record indicates that L&I sent the violation notice to the Kanofskys on December 31, 2009. In accordance with the above-quoted Code provision, L&I mailed the notice via regular mail to the alleged violator. With regard to vacant properties, the City's vacant property ordinance requires owners to obtain a vacant property license.[6] If the Kanofskys had complied with this requirement to obtain a license, then L&I would have sent the notice to the person and address identified for such purposes in the license. In this case, because the Kanofskys did not obtain such a license, L&I sent a notice to an address that happened to be the address where one of the Kanofskys actually lived. Therefore, we conclude that the Board did not err in concluding that the notice was sufficient.

(continued…)

appeal of the violation. Here, however, because both parties have proceeded as if the issue of the violation notice's validity is before us, we will address that issue.

[6] PM-102.4 provides that "[t]he owner of every vacant structure [or] building . . . shall obtain a license from [L&I]."

The Kanofskys also argue that there is no substantial evidence to support the Board's determination of the amount of the bill. The City argues that the Kanofskys are only challenging the weight and the credibility of the evidence, which are issues that this Court may not review on appeal. We disagree with the City's characterization of the Kanofskys' claim.

Courts have defined substantial evidence as "relevant evidence upon which a reasonable mind could base a conclusion." *Rohde v. Unemployment Comp. Bd. of Rev.*, 28 A.3d 237, 242 (Pa. Cmwlth. 2011). In evaluating the record to determine whether there is substantial evidence to support the adjudicatory findings, this Court examines the testimony in the light most favorable to the prevailing party, giving that party the benefit of any inferences that can logically and reasonably be drawn from the evidence. *Id.* Courts engage in a substantial evidence analysis through examination of the record as a whole, *Taylor v. Unemployment Compensation Board of Review*, 474 Pa. 351, 355, 378 A.2d 829, 831 (1977), and may conclude that factual findings are binding in reviewing an appeal only when the record taken as a whole contains substantial evidence to support them, *Penflex, Inc. v. Bryson*, 506 Pa. 274, 286, 485 A.2d 359, 365 (1984).

With regard to the Board's determination of the amount of the bill, we agree that the Board had the power to abate the interest and penalty provisions of the bill.[7] The Code, however, does not provide the Board with the authority to settle on an amount that bears no relation to the actual evidence in the record. With regard to the principal, the Board appears to have endeavored to arrive at an amount that it perceived to be *fair* for the work L&I's employees performed.

[7] Section 19-1705(2) of the Philadelphia Code.

Unfortunately, while we agree with the Board's characterization of the City's evidence as confusing and unclear, the method by which the Board arrived at its amount does not appear to be supported by the record. Rather, given the obvious ambiguities in the purportedly empirical evidence the City provided, the Board's decision to cut the principal cost in half was an arbitrary reaction based on the Board finding that the City's evidence was not credible or persuasive.

The Board identified the problems with the City's attempt to prove its case:

> When reviewing the Abatement of Nuisance Worksheet and Bill, the [Board] found it to [contain] inconsistencies that the City did not explain. The initial testimony was [that] the work took 2 to 3 weeks (Notes of Testimony, page 15)[.] The document and subsequent testimony (N.T. page 23) clarified that the work only took 3 days. This subsequent testimony was [that] those [two to three] days [of actual work] were over [the course of] 2 to 3 weeks, while the bill showed 3 days in a row.
>
> The rows with the cost calculation had columns that, again, could not be adequately explained to the [Board]. For example, why does one column note 20 workers, another column note 10 workers, and 8 names appear on the worker list?
>
> The method of calculation was also confusing and unclear from both the worksheet and the explanation at the hearing.

(Board Decision p.3.)

The notes of testimony appear to support the conclusion that the City had eight (8) or ten (10) workers contributing to the clean-up of the Property. The bill also *suggests* the possibility that there may have been additional workers who drove trucks. But, the bill does not indicate which of the eight named workers worked cleaning up or driving. The record also appears to support a finding that

the workers worked a total of two or three days. Viewing the testimony and the bill in the light most favorable to the City (for purely hypothetical purposes), the total number of billed hours among both workers and drivers was approximately 650 hours. Given an average daily work day of eight hours, it would seem that over the course of three days, the total number of hours would more reasonably be between 192 and 336.[8]

While the City demonstrated that it expended some labor hours cleaning out the Kanofskys' Property, we cannot conclude that the Board's ultimate factual determination that the principal of the bill should be cut in half is supported by substantial evidence. The Board failed to make factual findings based upon substantial evidence from the record. A reasonable mind could not find that the City's testimony and bill itself support the original billed amount. Nor could the same evidence support a finding that half the amount of the original bill is correct. Half of a number that cannot be established by empirical evidence is not a factual finding that is supported by substantial evidence. While the record surely supports a finding that some L&I workers removed bags full of papers, books, and other items from the Property, and, therefore, L&I is entitled to some amount for its abatement work, the Board will have to determine the amount of the bill that is supported by the record evidence.

Consequently, we must vacate the Board's decision with regard to this issue and remand the matter to the Board to review the record it created and to

[8] Eight workers working eight hours a day (64 hours) for three days equals 192 hours (64 hours times three days). Fourteen workers (a number that is as arbitrary as the number identified on the bill) working eight hours a day (112) for three days equals 336 hours (112 hours times three days).

render factual findings that are supported by substantial evidence in that record. We note additionally that the bill purports to charge for "trucks" on an hourly basis. The Board will have to consider whether the City adequately demonstrated or explained this facet of the bill, such that it may recover the $8,100 it billed the Kanofskys for this line item. The justification for this item is as confusing as the labor hours the City billed, which we have discussed above.

Finally, with regard to the Kanofskys' final claim regarding the loss of their property, both the Board and the trial court correctly concluded that such claims, which arise under the common law, are not within the jurisdiction of the Board. Section 19-1702 of the Philadelphia Code; *Mack v. Civil Serv. Comm'n (City of Philadelphia)*, 817 A.2d 571 575 (Pa. Cmwlth. 2003) (holding that, unlike courts, administrative agencies only have powers legislature has given them).

Accordingly, we affirm the trial court's order with regard to the issue of the sufficiency of the City's violation notice and the other common law claims that the Kanofskys raised. We reverse the trial court's order regarding the amount of the bill, and remand the matter to the trial court in order to remand the case to the Board for further proceedings consistent with this opinion.

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P. KEVIN BROBSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Alvin Sheldon Kanofsky Jacob Daniel Kanofsky, Appellants	:	
v.	:	No. 1398 C.D. 2012
City of Philadelphia Tax Review Board	:	

ORDER

AND NOW, this 23rd day of May, 2013, the order of the Court of Common Pleas of Philadelphia County (trial court) is AFFIRMED in part and VACATED in part. The trial court's order is AFFIRMED with regard to the issue of the sufficiency of the City's violation notice and the other common law claims that the Kanofskys raised. The trial court's order is VACATED as to the amount of the bill. The matter is REMANDED to the trial court with instruction that the matter be remanded to the City of Philadelphia Tax Review Board for further proceedings consistent with this opinion.

Jurisdiction relinquished.

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P. KEVIN BROBSON, Judge