

**BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES**

IN RE: John Maher
c/o Jeremy Flynn- Agent Owner
4405 East West Highway
Suite 306
Bethesda, MD 20814

Service Address:
[REDACTED] 23rd Street, NW

Account No: [REDACTED]
Case No: 21-61012

Amounts in Dispute: \$ 3,073.30

Before Janet W. Blassingame, Hearing Officer
May 11, 2021 at 12:00 Noon

The customer contested a water and sewer bill for the above account for the period of time July 31, 2020 to September 1, 2020. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on May 11, 2021. Present were Jeremy Flynn- agent/owner; Arlene Andrews on behalf of DC Water, as well as, Rosalind George, D.C. Water.

The property involved is a two (2) bedroom rowhouse, having one and one-half (1 ½) bathrooms, one kitchen, a washing machine and a dishwasher. Mr. Flynn has owned the property for ten (10) years and stated that the water and sewer bill, generally, ranges between \$150.00 and \$200.00 per billing cycle. He, also, stated that the tenants moved from the property on July 30, 2020.

Mr. Flynn testified that after the tenants vacated the house, he did turn-around work during the months of August and September. He described the work performed to include painting, installing new counters in the bathrooms and renovating the kitchen. He stated that new appliances were installed along with new counter-tops in the kitchen and new toilets were installed in the bathroom.

Mr. Flynn stated the increased water usage at the property was like a mainline had severed but usage went back to normal. He stated that he hired Robert Clam of Erie Plumbing on May 20, 2021. Mr. Flynn stated that the increased water usage started at 3:00 p.m. on August 24, 2020 and continued until 10:00 p.m. on August 26, 2020. Mr. Flynn stated that the property is and was vacant and that new tenants are scheduled to move-in on June 1, 2021. He stated that the most recent water and sewer bill was dated May 6, 2021 and was in the amount of \$143.73.

Mr. Flynn stated that DC Water did a re-bill of the account because it added the cost of the water meter. He stated that the May 6, 2021 bill statement was for the period 12/31/2020 to 5/3/2021.

Ms. Andrews interjected that in July 2020, the customer's charge was \$187.18. She stated that the charge in June 2020 was \$454.82 for the period 4/30/2020 to 5/28/2020 and that the bill was based upon an estimate of usage. She stated the customer's bill in May 2020 was for \$414.03 based upon an actual meter read, the customer's bill in April 2020 was for \$299.43 based upon an actual meter read and the customer's bill in March 2020 was for \$139.83 based upon an actual meter read.

Mr. Flynn asserted that not enough time elapsed for the amount of water to be used as was charged to his account. He asserted that the size of the main line determines how much water can be used. He stated that the charges/facts are not based in reality...

Mr. Flynn stated that a DC service representative told him that the utility would do an underground leak inspection. He asserted that the service technician saw no registration of the water meter. Mr. Flynn, also, stated that no plumber came to the property in August 2020.

Ms. Andrews retorted that whatever water goes thru the water meter is read and used for invoicing.

Ms. Andrews stated that the service technician did not take a meter reading on the day of the underground leak inspection.

Ms. Andrews testified that she reviewed the meter reads from the property and a spike in usage started in February 2020 and usage increased every subsequent month. Referring to the account for the property, Ms. Andrews read water usage to have been as follows:

1/2/20 -	3.43 CCF
2/3/20 -	4.13 CCF
3/30/20-	19.71 CCF (field read)
4/29/20 -	28.08 CCF (field read)
5/28/20 -	31.06 CCF

Ms. Andrews stated that DC Water estimated the customer's water usage regarding 5/28/20, 6/29/20 and 7/30/20.

Ms. Andrews testified that DC Water changed the water meter at the property on 8/13/20 at which time the meter read 218.59. She stated the usage charged on 9/1/20 was for 3.74 CCF. Ms. Andrews stated that the high-water usage occurred over a period of three (3) months and that the customer's water usage started to decrease as of 8/16/20.

Ms. Andrews stated that the customer's MTU stopped transmitting again in December 2020. She stated that the meter was changed 12/31/20 and the MTU was replaced 8/13/20. Ms. Andrews testified that DC Water conducted an underground inspection at the property and no leaks were found. She testified that DC Water tested the water meter on 1/15/21 and it was determined that the meter had 100.76% accuracy.

Ms. Andrews stated that when Mr. Flynn contacted the utility in August 2020, there was continuous water usage occurring at the property between 8/24/20 and 8/26/20.

Ms. Andrews asserted that for three (3) months prior to the MTU stopping transmission of meter reads, the customer ignored that increased water usage was occurring at the property.

Ms. Andrews stated that DC Water sent a HUNA alert (high water usage alert) to the customer on 2/10/20.

Ms. Andrews asserted that water usage at the property increased over time.

Ms. Andrews stated that DC Water generated a service order in response to calls from the tenant of the property.

Mr. Flynn contended that going from a \$400.00 bill to a \$3,000.00 bill is absurd.

Ms. Andrews stated that DC Water did not determine that the water usage was not due to a leak. Mr. Flynn stated that he does not need anyone to tell him that the water usage was not due to a leak. He asserted that a mainline would have had to fail to account for the amount of water allegedly charged to his account.

Mr. Flynn pointed out that DC Water has changed two (2) pieces of its equipment at the property.

Ms. Andrews asserted that DC Water found no meter overread, faulty computation or meter malfunction and as such, no adjustment of the customer's account is warranted.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

FINDINGS OF FACT

1. The property involved is a single-family row house. Jeremy Flynn was identified as the property manager for the owner and he stated that the house has been owned for the past 10 years. (Testimony of Jeremy Flynn; DC Water Customer Interaction Note dated 12/2/2020)
2. The period in dispute is 7/31/20 to 9/1/20. (Testimony of the parties)
3. The tenants vacated the property on 7/30/20 and, thereafter, during August and September 2020, there was significant renovation of the property to include renovation of the kitchen and installation of new kitchen appliances and toilets. (Testimony of Jeremy Flynn)
4. The property has been vacant since the tenants left in July 2020; new tenants are scheduled to move-in as of June 1, 2021. (Testimony of Jeremy Flynn)
5. There was a progressive increase in recorded water usage at the property starting in February 2020. (Testimony of Arlene Andrews)

6. DC Water sent a HUNA alert to the customer on 2/10/20. (Testimony of Arlene Andrews)
7. The customer hired Erie Plumbing on 5/10/20. (Testimony of Jeremy Flynn)
8. Between August 24, 2020 and August 26, 2020, there was continuous water usage at the property. (Testimony of Arlene Andrews)
9. Water usage at the property significantly decreased on August 26, 2020. (Testimony of Arlene Andrews)
10. DC Water conducted an underground inspection and no leak was detected. (Testimony of Arlene Andrews)
11. DC Water tested the water meter and the meter was determined to have 100.76% accuracy. (Testimony of Arlene Andrews)
12. The MTU at the property stopped transmitting meter reads and DC Water obtained field reads by a technician for billing in March and April 2020. (Testimony of Arlene Andrews)
13. DC Water estimated the customer's water usage for billing in May, June and July 2020. (Testimony of Arlene Andrews)
14. DC Water replaced the MTU at the property on August 13, 2020. (Testimony of Arlene Andrews)
15. DC Water changed the water meter at the property on 12/31/20. (Testimony of Arlene Andrews)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.See, 21 DCMR 403.
3. D.C. Municipal Regulations bar adjustment of a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved

by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.”)

4. Meters shall be read quarterly or at such other times as the General Manager shall determine. (21 DCMR 308.1)
5. If at any time, a meter, data collection device or transmitter fails to register correctly or collect, deliver or transmit data or otherwise operate or bears evidence of having been tampered with, as determined by qualified personnel of the Authority, the water charge for the interval in which the incident occurred shall be based on the average previous water consumption for that interval. (21 DCMR 308.4)

DECISION

The customer in this case failed to show that more likely than not the disputed bill was wrong or for some other reason, he should not be responsible for payment of the charges.

The evidence and testimony established that water usage at the property started to progressively increase beginning in February 2020 and that DC Water sent a HUNA alert (high water usage alert) to the customer on February 10, 2020. The customer's bill dated February 3, 2020 reflected that 4.13 CCF of water had been consumed at the property, however, on the March 30, 2020 bill, the bill reflected 19.71 CCFs had been consumed at the property. The customer's next bill which was dated April 29, 2020, reflected 28.08 CCFs of water had been consumed. DC Water, then, estimated that customer's water usage for May, June and July 2020 because the MTU was not transmitting and the utility did not have field meter reads from the property. The utility changed the MTU on August 13, 2020. As it turned out, with the replacement of the MTU, the utility thereafter had hourly meter reads from the property and the reads indicated that there was continuous water usage at the property between August 24th and 26th and, thereafter, the high usage stopped. The evidence and testimony, further, established that there were contractors at the property during the months of August and September 2020, doing significant renovations which extended to work regarding toilets and renovation of the kitchen.

Neither party established the cause of the progressive water consumption or why high usage culminated after two (2) days of water continuous running at the property. DC Water did establish that the water meter was functioning accurately and an underground leak was not the cause of increased water usage at the property. The utility was, also, able to establish that it alerted the property owner that something was amiss at the property in terms of high-water usage occurring at the property. It is, also, clear that the property owner failed to take notice of the water usage at the property until the bill became exceedingly high leading to the bill dispute at issue. The customer did testify that a plumber was hired in May 2020, however, he failed to submit a plumber's report indicating the services provided or the plumber's findings. Moreover, the customer's testimony is contradicted in the utility's Customer Interaction Records in which a service representative (Karrington) wrote, in memorializing a conversation with Mr. Flynn, when

“Asked if they hired a plumber after receiving the high bill, he said no, they did not feel it was necessary since someone was usually there working at the property”.

There is a provision that dictates that DC Water is to read the water meter on a quarterly basis and the utility estimated the customer’s water usage for three (3) billing periods. (See, 21 DCMR 308.1) DC Water thereafter replaced the MTU at the property and automated meter reads resumed. As such, no fault is found on behalf of the utility in prevented the customer from knowing that something was amiss at the property and possibly mitigating the damage or increase in water usage for which he was billed.

Ultimately, the property owner is responsible for water used at his property. In this instance, the owner chose to ignore increasing water consumption until he received an extraordinarily high bill for water usage. No fault lies with DC Water for the customer’s neglect and/or failure to react to an alert or to increasingly higher bills over a period of several months. Lastly, the customer testified that the property was vacant, noting that the tenants moved in July 2020. In the customer’s testimony, he did state that renovations were being performed at the property in August and September 2020, however, in his interaction with a service representative, the customer stated “that someone was usually there working at the property”. In that someone was working at the property in August, not only is it conceivable that a worker caused whatever was causing the increased usage to significantly worsen in August, but a worker conceivably could have repaired whatever caused the water usage since the high-water usage stopped on August 26th and has not reoccurred. Mr. Flynn testified that the most recent bill- May 6, 2021 was \$143.73.

21 DCMR 408 dictates that when all checks and tests are inconclusive as to the cause of high-water consumption at a property, DC Water is not to adjust the customer’s account.

Accordingly, DC Water’s determination that the charges are valid and no basis exists to adjust the customer’s account is hereby AFFIRMED.

By: 
Janet W. Blassingame, Hearing Officer

Date: August 5, 2021

Copy to:

John Maher
c/o Jeremy Flynn, Agent Owner
4405 East West Highway
Suite 306
Bethesda, MD 20814

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES

IN RE: Cleveland Cooperative, Inc.

██████████
██████████ Macomb St. NW
Washington, DC

Account No: ██████████
Case No: 21-260945

Amounts in Dispute: \$ 3,542.80

Before Janet W. Blassingame, Hearing Officer
May 18, 2021 at 2:00 P.M.

CORRECTED DECISION

The customer contested a water and sewer bill for the above account for the period of time December 20, 2020 to January 5, 2021. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on May 18, 2021. Present were: ██████████ ██████████ of Cleveland Cooperative, Inc.; ██████████ ██████████, Cleveland Cooperative, Inc.; ██████████ ██████████ Cleveland Cooperative, Inc.; ██████████ ██████████ Cleveland Cooperative, Inc.; LaFatima Black, DC Water; Kimberly Arrington, DC Water; and, Kelly Fisher, Esq., DC Water, observing only.

The property involved is a 27-unit apartment building, having 14 one bedroom/one bath units and 13 two bedroom.one bathroom units. All units have a kitchen and radiators. Most units have dishwasher and two (2) units have private washing machines. There are two (2) washing machines in the building laundry room. The building has two (2) outside faucets. In year 2019, the water and sewer bills were approximately \$1,200.00 per billing cycle. In year 2020, the water and sewer bills ranged between \$1,000.00 and \$1,300.00 per billing cycle.

██████████ wrote to DC Water that the Cooperative was disputing two billing periods and since the bill dispute investigation started their bills have been volatile with two additional high months. She stated that the four (4) billing periods of concern were:

10/3/2020 - 11/3/2020	\$4,111.07
11/4/2020 - 12/2/2020	\$4,134.21
12/3/2020 - 1/5/2021	\$3,542.80
3/3/2021 - 4/2/2021	\$3,285.40

██████████ stated that they were not disputing other billing periods. She stated that a call to DC Water was made on 1/8/2021 because the last two (2) billings were high. She stated that she was told that the bills were based upon actual meter reads. ██████████ stated that the Cooperative is/was on auto-pay.

██████████ testified that there have been no renovations at the Cooperative. She added that the Cooperative's Board must be given notice and they have not received any notice of work being done at the building and the Board has not approved any work being done.

██████████ stated that there was roadwork being done in front of the building. She stated that the roadwork ended in September 2020.

██████████ testified that a plumber was hired to inspect the Cooperative for leaks. She stated that no leaks were found.

The Cooperative submitted a plumber's report by Thomas Plumbing Co. In the report the plumber stated that all units were checked and that the toilets were dye tested and all tub and sink faucets were checked for drips or any leaks. The plumber reported checking the laundry room and boiler room to include checking the hot water heater and the boiler. The plumber further reported that the water meter was checked and no leaks were found.

██████████ testified that he conducted a walking inspection and visually found no water waste.

██████████ stated that water usage for the Cooperative spiked between 3/3/2021 and 4/2/2021. He stated that there was no water usage problem reflected on the February 3, 2021 bill- \$1,573.34, as well as, no problem regarding the May 4, 2021 bill- \$1,058.56 or the September 2020 bill- \$1,286.00.

Ms. Black stated that there was a spike in water usage at the property between 2/28/21 and 3/22/21. She stated that water usage declined between 12/22/20 and 2/28/21.

██████████ stated that the customer is not registered to receive high water usage alerts (HUNA).

Ms. Black explained that the Cooperative's prior manager was registered but when management changed to EJV Realty, the property manager did not register for HUNA.

Ms. Black testified that the Cooperative was billed based upon actual meter reads from the property which are transmitted every hour. She asserted that the water meter only advances when water is being used and that there are no misreads when the meter reads are transmitted remotely.

Ms. Black testified that DC Water tested the water meter and the meter was determined to have 99.67% accuracy. She noted that the utility follows the standards for meter accuracy set by American Water Works Association and the meter accuracy is 98.5% to 101%5.

Ms. Black stated that there were spikes in water usage at the Cooperative between 10/2/2020 to 12/22/2020 and, again, between 1/28/2021 to 3/22/2021.

Ms. Black noted that no leaks were found by the plumber hired by the Cooperative and she testified that DC Water tested for an underground leak and no underground leak was detected.

Ms. Black stated that the utility's investigation found no doubtful registration on the water meter.

Ms. Black asserted that based upon all tests and checks being inconclusive as to the cause of the increased water usage, the utility finds no basis for adjustment of the account. She cited DCMR 21- 408.1.

Ms. Arrington added that something may have been going on in a unit of the building and she asserted that the Cooperative's management should sign-up for HUNA alerts.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

FINDINGS OF FACT

1. The property involved is a 27-unit Cooperative building which is controlled by a Board of Directors and managed by EJT Realty. (Testimony of [REDACTED] the record in this matter)
2. There was a significant increase in water usage at the Cooperative as reflected on three (3) billing cycles during the period 10/3/2020 to 1/5/2020. (Testimony of [REDACTED])
3. Water usage at the property declined as of 12/22/20 and remained down until 2/28/21 when water usage again spiked between 2/28/21 to 3/22/21. (Testimony of Ms. Black)
4. DC Water was contacted on January 8, 2021 by [REDACTED] of EJT Realty and the utility initiated bill dispute investigations for bills dated 12/3/2020 and 1/6/2021. (DC Water Interaction Report dated 1/8/21 and 2/25/21)
5. The Cooperative hired Thomas Plumbing Co. to inspect the building for leaks and no leaks were found. (Report of Thomas Plumbing Co. dated 1/12/21)
6. DC Water tested the water meter and the meter was determined to have 99.67% accuracy. (Testimony of Ms. Black)
7. DC Water conducted an underground leak inspection and no underground leaks were detected. (Testimony of Ms. Black)
8. DC Water has hourly transmitted meter reads from the Cooperative and the utility found no evidence of doubtful registration or misreads. (Testimony of Ms. Black)
9. Based upon its investigation, DC Water concluded that the high-water usage was controlled at the premises. (DC Water Interaction Record dated 2/25/2021)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:

- (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.
See, 21 DCMR 403.
3. D.C. Municipal Regulations bar adjustment of a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.")
4. An owner or occupant may challenge the most recent charges assessed by DC Water for water, sewer and groundwater sewer service by either:
- (a) Paying the bill, and notifying WASA in writing within thirty (30) calendar days of the bill date that he or she believes the bill to be incorrect and is paying under protest; or
 - (b) Not paying the current charges contained in the bill and notifying WASA in writing, within thirty (30) calendar days of the bill date of the reason(s) why the bill is believed to be incorrect.
(See, 21 DCMR §402)
5. "Challenges received after the thirty-day (30) period stated in §402.1 will be deemed to have been filed in an untimely manner...." 21 DCMR §402.2

DECISION

The customer in this matter failed to establish that more likely than not the bills being disputed were incorrect.

The evidence and testimony established two (2) periods when significant increases in water usage occurred at the Cooperative. The first spike occurred between 10/3/2020 and 1/5/2021 and the second spike occurred between 2/28/2021 and 3/22/2021. Based upon meter reads from the property, DC Water was able to pinpoint that water usage declined as of 12/22/2020 and remained within normal range until 2/28/2021. Unfortunately, the Cooperative hired a plumber to inspect the property on 1/12/2021 which was after water usage had declined and before the second spike in water usage occurred. Understandably, the plumber reported that

no leaks were found in any units and that the water meter was not leaking.

In conducting its investigation of the bill disputes, the utility tested the water meter and conducted an underground inspection. The meter was determined to be functioning accurately and no underground leak was detected. The utility also ruled that there was no meter misread or doubtful registration. And the utility has meter reads from the property reflecting when the spikes started and when they stopped

DC Water concluded that the high-water usage was controlled at the premises.

It was also revealed that the Cooperative's current management company failed to enroll the property in DC Water's HUNA alert program when property management changed. Coupled with being enrolled in auto-pay and not being enrolled in HUNA, no one connected with the Cooperative became aware of high usage occurring at the property until three (3) billing cycles of high-water usage had passed. DC Water regulations dictate that a customer is to notify the utility of a bill dispute within 30 days of receipt of the bill. (See, 21 DCMR 402) In this case, the Cooperative sought to dispute its November 2020 bill for the period 10/3/2020 – 11/3/2020 and its December 2020 bill for the period 11/4/2020 – 12/2/2020. The customer's representative contacted the utility to dispute the bills on 1/8/2021 and the utility contacted an investigation of the bills dated 12/3/2020 and 1/6/2021. The D.C. Court of Appeals ruled that 21 DCMR 402 was a rule processing regulation and not a jurisdictional bar to a late bill dispute, however, the Court held that the utility can waive its regulations but if it does not, a customer's dispute will be untimely. (See, Gatewood v. DC WASA, 82 A.3d 41, D.C. Court of Appeals 2013) In this case, the utility waived the time filing limits for the 12/3/2020 bill but not for the bill received in November 2020 and, as such, it investigated the customer's most recent two (2) billing cycles preceding the telephone call to the utility to dispute the bill charges.

Notwithstanding, the utility's waiver of the time limits to dispute bill charges for one bill and not another, the Cooperative cannot meet its burden of proof in showing that any charges are wrong or that it should not be responsible for payment of the bills for some other reason.

The Cooperative did not detect the cause of the high-water usage when it was occurring. If the Cooperative had been enrolled in HUNA, it might have been able to mitigate its loss of water by finding the cause. As it was, the plumber hired by the Cooperative inspected the property when high water usage was not occurring. DC Water speculated that the cause of the high-water usage might have come from one of the units in the building. The utility concluded that the usage was controlled at the property.

In cases such as presented here, when all tests and checks do not find the cause of excessive water consumption at a property, the Municipal Regulations bar DC Water from adjusting the customer's bill for the increased water usage. (See, 21 DCMR 408)

The evidence proved that DC Water's equipment was functioning properly and that there

was no underground leak as a possible cause of increased water usage occurring at the property. DC Water established that its water meter was properly recording water used at the home and the utility presented meter reads from the property reflecting when the spike started and when it stopped. Ultimately, the property owner and/or occupant is responsible for water usage occurring at it/his/her property and, in this instance, the Cooperative having paid the service charges, is not entitled to refund or credit for no basis can be found to relieve it of the responsibility for water used at the property.

Accordingly, DC Water's determination that the charges are valid and no basis exists to adjust the customer's account is hereby AFFIRMED.

By: Janet W. Blassingame
Janet W. Blassingame, Hearing Officer

Date: Aug. 10, 2021

Copy to:

Cleveland Cooperative, Inc.


Macomb Street, NW

Washington, DC

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES

IN RE: East Friendship Baptist Church
4401 Brook Street, NE
Washington, DC 20019

Service Address:
[REDACTED] 44th Street, NE

Account No: [REDACTED]
Case No: 21-22360

Amounts in Dispute: \$ 3,449.57

Before Janet W. Blassingame, Hearing Officer
June 2, 2021 at 10:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time October 22, 2020 to November 20, 2020. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was originally scheduled for a remote hearing on May 25, 2021. Present were Arlene Andrews and Kimberly Arrington on behalf of DC Water, as well as, Geneva Parker, D.C. Water, observing. When no representative of the customer neither logged in nor called in for the hearing, the Hearing Officer requested that the customer's representative be telephoned to ensure that there was no difficulty in logging into the hearing. Ms. Arrington telephoned [REDACTED], East Friendship Baptist Church, and [REDACTED] stated that the Notice of Hearing was received, however, she confused the date of the hearing and would request that the hearing be rescheduled. DC Water did not object to the rescheduling of this matter and [REDACTED] subsequently submitted a formal request to reschedule the hearing. This matter was rescheduled for a remote hearing on June 2, 2021. Present for the hearing were [REDACTED] on behalf of East Friendship Baptist Church and Arlene Andrews and Kimberly Arrington on behalf of DC Water.

The property involved is a single-family house owned by East Friendship Baptist Church (hereinafter referred to as "the Church"). No one resides in the house. The house is used for storage, community food distribution activities, service project activities and occasional meetings. The property has two (2) bathrooms, one kitchen, a washing machine and radiators.

[REDACTED] testified the property had been rented, however the tenants moved five (5) years ago. She stated that in recent years, i.e., 2019 and 2020, the toilet and sink on the main level of the house have been replaced. [REDACTED] stated that the Church employs a custodian whose responsibility is to open/close the house when it is used for food distributions. [REDACTED] stated that it is her responsibility to open/close the house when it used for service projects.

██████████ stated that on October 22, 2020 at 2:15 a.m., a Tuesday, she received notice of high-water usage occurring at the property. She stated that she took no action in response to the HUNA notice. She stated that she received a second HUNA alert on November 2, 2020 and she went to the property and checked the sinks, toilets, water heater and looked outside of the house but saw nothing amiss. She stated that she received a third HUNA alert on November 8, 2020 but when she checked the property, she found everything fine and nothing had changed within the house. She stated that she received a fourth HUNA alert on November 4, 2020. ██████████ stated that in response to the 4th notice, she had the Church's pastor and a member of the church who has a HVAC background to inspect the property and nothing was found amiss. ██████████ stated that she believed that the Church member inspected the house sometime between November 14th and 20th.

██████████ stated that it was strange that the HUNA alerts were all sent in the early morning hours. She reiterated that the property is vacant and all of the fixtures had been checked.

██████████ testified that when she received the water and sewer bill, she telephoned DC Water and was told that the bill was based upon a meter read and that the Church could enter into a payment plan.

██████████ testified that she thought the water and sewer charges were in error because of a new water meter.

██████████ stated that the Church's bill went back to normal. She stated that the December 2020 bill was \$256.20 and the January 2021 bill was \$39.89.

██████████ stated that DC Water performed a meter test and there is an indication of an error flag.

██████████ stated that the Church has not had in-person worship services since March 14, 2020.

Ms. Arrington stated that the bill has been looked at and it has been determined that the biller made an error based upon the automated system. Ms. Arrington stated that the Church should have been billed for 28 CCFs of water instead of 228.01 CCFs of water.

Ms. Arrington stated that DC Water would adjust the Church's bill for the property. She stated that 28.01 CCF is the correct read.

Ms. Arrington noted that in December 2020, the read was 15.12 CCF. She stated that, in her opinion, something was going on at the property. Ms. Arrington stated that water usage at the property is now back to normal and that less than 1 CCF per month is registering on the water meter.

Ms. Arrington stated that she has requested that the Billing Department note the corrected read.

Ms. Andrews stated that meter reads are transmitted by a signal to the nearest tower and then transmitted to DC Water. She stated that meter reads are transmitted every hour.

Ms. Andrews stated that DC Water pulled the water meter for testing on May 4, 2021 and the meter was determined to have 101.32% accuracy. She explained that DC Water follows the standards set by the American Water Works Association that acceptable water meter accuracy range is 98.5% to 101.5%.

Ms. Andrews testified that high water usage started at the property on October 20, 2020 and continued to October 21, 2020 amounting to 5.65 CCFs of water usage. Ms. Andrews stated that the customer's October 2020 bill was in the amount of \$111.58.

Ms. Andrews announced that the customer's December 2020 bill was correct.

Ms. Andrews stated that water usage at the property began to decrease on November 22, 2020 at 1:30 p.m. She stated that the usage started on a Tuesday and ended on Sunday.

Ms. Arrington stated that she will reverse the customer's last bill charges and that the customer would have a credit of \$200.00. She informed [REDACTED] to disregard the current bill for May 2021. Ms. Arrington, further, stated that if the Church desired a refund as opposed to a credit, a written request for refund must be submitted.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

FINDINGS OF FACT

1. The property involved is a single-family row house owned by East Friendship Baptist Church. (Testimony of [REDACTED])
2. The period in dispute is 10/22/2020 to 11/20/20. (Testimony of the parties)
3. The customer was charged \$3,449.57 on its bill dated 11/25/20; the customer paid the bill on 12/21/20. (Account Ledger)
4. The customer was billed for 228.01 CCF of water usage on the 11/25/20 bill. (Bill Summary dated 11/25/20; testimony of Kimberly Arrington)
5. DC Water acknowledges that a billing error was made and the customer's correct water usage for the period 10/22/2020 to 11/20/20 was 28 CCF of water usage. (Testimony of Kimberly Arrington)
6. DC Water has initiated through its Billing Department to correct the customer's account and to adjust the account. (Testimony of Kimberly Arrington)
7. No leaks or plumbing issues were detected in the property. (Testimony of [REDACTED])
8. DC Water tested the water meter and the meter was determined to have 101.32% accuracy. (Testimony of Arlene Andrews)
9. There was high water usage occurring at the property between 10/20/20 and 10/21/20 resulting in 5.65 CCF of water usage and an October 2020 bill of \$111.58. (Testimony of Arlene Andrews)

10. DC Water determined no error in billing regarding the customer's December 2020 bill statement. (Testimony of Arlene Andrews)

CONCLUSIONS OF LAW

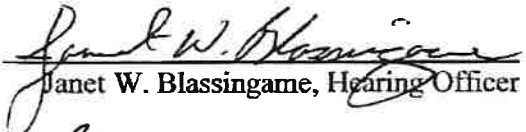
1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. If the investigation discloses meter overread or faulty computation, adjustment(s) shall be made to reflect the correct charges, as indicated by the correct reading or corrected computations.

DECISION

The customer prevails in this matter.

Based upon the evidence and testimony, a billing error was made by DC Water and the customer consumed 28 CCF's of water instead of 228.01 CCFs of water as billed for the billing period in dispute. DC Water has acknowledged its billing error and stated that the customer's account will be adjusted.

Accordingly, the customer is entitled to an adjustment of its account and if DC Water has not already done so, the customer's account shall be adjusted to reflect that it consumed 28 CCFs of water for the period 10/22/20 – 11/20/20 and appropriate credit shall be reflected on the account.

By: 
Janet W. Blassingame, Hearing Officer

Date: August 5, 2021

Copy to:

East Friendship Baptist Church
c/o [REDACTED]
4401 Brook Street, NE
Washington, DC 20019

**BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES**

IN RE: [REDACTED]

Service Address:
[REDACTED] Constitution Avenue, NE

Account No: [REDACTED]
Case No: 21-244729

Amounts in Dispute: \$ 800.18

Before Janet W. Blassingame, Hearing Officer
May 26, 2021 at 10:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time December 4, 2020 to January 6, 2021. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on May 26, 2021. Present for the hearing were: [REDACTED]; and, LaFatima Black and Kimberly Arrington on behalf of DC Water.

The property involved is a five (5) unit building of condominiums built in year 2001. [REDACTED] stated that his unit has an English basement which he has rented over the past five (5) years. He stated that the upper level has two and one-half (2 ½) bathrooms, a kitchen, and a washing machine. The basement level has one bathroom, a kitchen and a washing machine. The unit has two (2) outside faucets. [REDACTED] stated that during the Covid-19 Pandemic, his tenant moved into the upper levels of the home to facilitate her working from home, as well as, to better monitor and watch the property. The water and sewer account is on auto-pay and the bill averages ranges between \$95.00 and \$120.00 per billing cycle.

[REDACTED] stated that he has not been in residence during the Pandemic but his tenant has been at the property. He stated that the tenant has told him that she did not hear water running in the home. He stated that the tenant was away from the property between December 24, 2020 and December 28, 2020 and when she returned, she heard water running and determined that the problem was the rubber flapper in the upstairs toilet.

[REDACTED] stated that DC Water did send HUNA alerts of high-water usage at the property. He stated that the alerts were sent on December 22nd, 23rd, 24th, and 25th. [REDACTED] stated that the alerts were sent to his office in [REDACTED] however, his assistant, who would normally receive the alerts, was not in the office due to the Holidays and he, personally, was not in the office during the Holidays. [REDACTED] stated that he had been gone from the District of Columbia since March 2020 until two (2) weeks ago when he returned to the City.

██████████ stated that, as soon as, his tenant returned to the property, she took care of the water problem. He asked that DC Water take the Covid-19 Pandemic into consideration. He asserted that his condominium is not abandoned property but that the utility's efforts to alert of the occurring high water usage failed.

Ms. Black stated that the meter reads from the property are actual and were transmitted on an hourly basis.

██████████ interjected that he is not contesting the amount charges but believes an adjustment is warranted due to the lack of notice and the fact that repairs were performed as soon as he or his tenant became aware of the water issue. He asserted that the charge for water was \$211.00 but the charge for sewer was much more. He asserted that DC Water's charge for sewer service is much higher than that charged in other areas where he owns property.

██████████ asks for equity consideration.

██████████ acknowledged that two (2) HUNA alerts- December 22nd and 28th- were sent by DC Water by email to his law firm.

██████████ updated his email notification settings for HUNA alerts by DC Water.

██████████ stated that his assistant did not see the alerts because she was out of the office for Holiday.

Ms. Black responded that pursuant to 21 DCMR §406.2, no adjustment of the customer's account is warranted. Ms. Black further advised that she has no discretion in negotiating with a customer an adjustment.

██████████, then, responded by asking why DC Water had a hearing if equity could not be applied. He asserted that equity exists in all situations. Ms. Black responded that a customer has a right to request a hearing but DC Water does not adjust accounts when an adjustment is not warranted.

██████████ stated that the toilet flapper was repaired on December 28, 2020.

Ms. Black testified that the spike in high water usage at the property occurred December 21, 2020 to December 28, 2020.

██████████ asserted that he does not know what more he could have done to take care of the water issue and that the issue was resolved as soon as he knew.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

FINDINGS OF FACT

1. The property involved is condominium townhome with an English basement unit. (Testimony of ██████████)
2. The period in dispute is December 4, 2020 to January 6, 2021. (Testimony of the parties)
3. There was a significant increase in water consumption at the property between December 21, 2020 and December 28, 2020. (Testimony of LaFatima Black)
4. DC Water sent HUNA alerts to the customer on December 22nd, 23rd, 24th, 25th and 28th. (Testimony of LaFatima Black)
5. The customer's tenant, who has access to the entire property during the Pandemic, was on holiday and away from the property from December 24, 2020 to December 28, 2020. (Testimony of ██████████)
6. The customer was not in residence at the property during the period in dispute and had not been in residence at the property since March 2020 due to the Covid-19 Pandemic; ██████████ was in ██████████ his home state. (Testimony of ██████████)
7. The HUNA alerts sent by DC Water were by email to the customer's law firm in ██████████ and by written notice to the residence. (Testimony of ██████████)
8. The customer's assistant at his law firm was on holiday and not in the office and, as such, was unaware of the alerts sent by the utility. (Testimony of ██████████)
9. ██████████ was not in his law office during the 2020 Christmas holiday. (Testimony of ██████████)
10. Upon the tenant's return to the residence on December 28th, the tenant heard water running in an upstairs bathroom toilet and she discovered a problem with the toilet's flapper. (Testimony of ██████████)
11. The plumbing issue was resolved on December 28th and the high-water consumption stopped. (Testimony of the parties)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. D.C. Municipal Regulations relating to water and sanitation bar adjustment of a customer's bill if excessive water consumption is the result of a leaking faucet, household fixtures, and similar leaks or the malfunctioning water-cooled air conditioning equipment. (21 DCMR 406)

DECISION

The customer failed to establish a prima facie case that more likely than not the bill in dispute was wrong. The evidence and testimony established that there was a defective toilet in the house and, moreover, when the toilet was repaired, water usage declined. The customer, however, sought consideration, based upon an equity argument, that he should not have to pay the total amount charged to his account. The customer asserted that equity consideration was warranted due to the Covid-19 Pandemic and the lack of notice that high-water usage was occurring in the property.

The Covid-19 Pandemic played no factor in either the toilet defect causing the high-water usage or the lack of notice that high-water usage was occurring at the property. Based upon the

testimony of the customer, the causative factor of someone knowing that high-water usage was occurring at the property was because of the Christmas Holiday and tenant being away from the property and not being aware of the existence of the plumbing issue until she returned and because neither the customer nor his assistant was in his law office during the holidays to see the HUNA alerts since by the utility.

21 DCMR 406 dictates that DC Water does not adjust a customer's account when excessive water consumption is caused by a faulty internal fixture, such as a bathroom toilet. The customer acknowledged the accuracy of the amount billed and that he did not dispute the bill but thought the circumstance of not knowing of the problem and repairing the toilet as soon as he became aware of the faulty toilet were merit a reduction in the charge.

Ultimately, a property owner is responsible for what occurs at his property. In this case, DC Water sent alerts to the customer so that the customer might be aware and have an opportunity to mitigate loss. Unfortunately, the customer's mechanisms to receive messages failed because people were on holiday during the time that high-water usage was occurring at the property. Equity does not come into play under the circumstances in this matter. The utility did nothing to cause harm to the customer and it correctly billed the customer for water service.

Accordingly, DC Water's determination that the charges are valid and no basis exists for adjustment of the customer's account is hereby AFFIRMED.

By: Janet W. Blassingame
Janet W. Blassingame, Hearing Officer

Date: August 5, 2021

Copy to:



BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES

IN RE: [REDACTED]
[REDACTED] Underwood Street, NW
Washington, DC 20012

Account No: [REDACTED]
Case No: 21-310030

Amounts and Dates in Dispute:
12/24/2020 – 1/21/2021 = \$499.31
2/20/2021 – 3/18/2021 = \$308.26

Before Janet W. Blassingame, Hearing Officer
June 2, 2021 at 12:00 Noon

The customer contested two (2) water and sewer bills for the above account for the periods of time December 24, 2020 to January 21, 2021 and February 20, 2021 to March 18, 2021. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on June 2, 2021. Present were [REDACTED] and his wife, [REDACTED]; and Kimberly Arrington and LaFatima Black on behalf of DC Water.

The property involved is a single-family home purchased by [REDACTED] on December 23, 2020; he and his family moved into the home in February 2021. The house has three and one-half (3 ½) bathrooms, two (2) outside faucets, two (2) utility sinks, one kitchen, a dishwasher and a washing machine. The attic and basement are unfinished, however, there is a bathroom in the basement and the water to the bathroom is turned off.

Mr. [REDACTED] testified that prior to his possession of the property, the property was occupied, the water was on and he coordinated with the prior owners the turn-over of the utility accounts. He stated that his first water bill for the period 12/24/2020 to 1/21/2021 was in the amount of \$499.31 for 31.43 CCFs of water. He stated that prior to settlement on the purchase of the property, he looked at the water use history and his realtor said that he should get it checked out. Mr. [REDACTED] stated that he hired an inspector before making an offer to buy the property.

Mr. [REDACTED] stated that he may have gotten a high-water usage alert before moving-into the house. He stated that a contractor was in the house doing painting before his move-in. He stated that the spike lasted three (3) days.

Mr. [REDACTED] stated he telephoned DC Water regarding his water bill after a second spike in water usage occurred in February 2021. He stated that he also hired a plumber after the second spike occurred. Mr. [REDACTED] stated that he received additional HUNA alerts from DC Water in February 2021 and when he spoke with a DC Water service representative, he was told to get a plumber. Mr. [REDACTED] testified that he hired Michael & Sons to inspect the house but no leaks

were detected. Mr. [REDACTED] stated that one week after having Michael & Sons at his property, he hired Anna Contracting on March 4, 2021. He stated that the contracting company plumber was present at the property for an entire day during which the parts were changed in all of the toilets. Mr. [REDACTED] stated that although the toilet parts were changed, they were changed because they were old, not because the parts were defective and needed to be changed. Mr. [REDACTED] asserted that nothing was detected that would explain the occurrence of spikes in water usage at the home.

Mr. [REDACTED] asserted that after the water meter and MTU were changed at the property, there have been no further problems regarding water usage. He stated that equipment was changed on March 9, 2021. Mr. [REDACTED], further, asserted that the spikes were not consistent with the existence of a leak and the professionals suspected a meter problem.

When asked the nature of work being done at the house, Mr. [REDACTED] responded that the contractor was painting, doing window replacements and floors and tile work prior to his move-in. He stated that the work was started in January 2021 but continued when the couple moved into the house.

Mr. [REDACTED] stated that the inspector was at the property in Mid-November 2020. He stated that the property was inspected by a plumber in February 2021 and again on March 4, 2021.

Mr. [REDACTED] stated that asbestos tile was being removed in December 2020 and that a lot of water was used during the process. He stated that water use associated with the tile removal lasted 2 – 3 days.

Ms. Black stated that the meter reads are actual from an automated meter. She stated that the meter reads are transmitted hourly to a tower and then sent to DC Water. She asserted that a water meter only advances when water is being used. She stated that there are no misreads on an automated water meter and water meters do not self-repair.

Ms. Black testified that DC Water tested the water meter and the meter was determined to have 99.58% accuracy. She explained that DC Water follows the standards set by the American Water Works Associations and a water meter is accurate when its accuracy is between 98.5% and 101.5%.

Ms. Black testified that there were two (2) spikes in water usage at the property- 1/9/2021 to 1/12/2021 and 2/20/2021 to 2/22/2021. She stated that water usage at the property then returned to normal however, there were some small spikes in water usage after the water meter was changed at the property on March 9, 2021. She stated that the spikes occurred 4/24/2021 to 4/27/2021, 4/29/2021, 5/1/2021 and 5/2/2021.

Ms. Black stated that DC Water has the customer's plumber's statement of repairs. She stated that the utility's investigation showed no overread or faulty computation. She concluded that based upon 21 DCMR §408.1 that the customer's account should not be adjusted because the tests and checks were inconclusive, in that, no cause of the high-water usage was determined.

Ms. Arrington explained that DC Water pulls a customer's water meter when a dispute is filed. She pointed out that the customer's last bill dated 5/20/2021 reflected that the customer used 48 CCFs of water in one month. She stated that the customer had been averaging 8 CCF per month over the last couple of months and that usage is a little more than is considered normal for two (2) people. Mr. [REDACTED] interjected that he had been re-seeding his yard and believes that the small spikes seen in May 2021 are accurate. He asserted, however, that the larger spikes that have occurred at the property are not explainable.

Ms. Black told the customer that he must consider installing a sub-meter to determine the amount of water used that does not go into the sewer. She stated that use of a sub-meter will eliminate the sewer charge on water used in such activities as watering the lawn.

Mr. [REDACTED] expressed frustration and stated that he hired folks to come in to determine the water issue.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

FINDINGS OF FACT

1. The property involved is a single-family home purchased by [REDACTED] on December 23, 2020. (Testimony of [REDACTED])
2. The customer's realtor advised him to have the water usage of the property checked out prior to going to settlement and Mr. [REDACTED] hired an inspector before he made an offer to buy the property. (Testimony of [REDACTED])
3. Between purchase and move-in, a contractor was at the property doing painting, window replacements, floors and tile work. (Testimony of [REDACTED])
4. The contractor's work continued after the owner moved into the property. (Testimony of [REDACTED])
5. One work project performed by the contractor was removing asbestos and to do so, the contractor was using a lot of water; the customer said the work started on December 28, 2020 and lasted 2 – 3 days. (Testimony of [REDACTED])
6. Mr. [REDACTED] acknowledges that he may have received an alert that high water usage was occurring at the property before he and his wife moved into the property. (Testimony of [REDACTED])
7. [REDACTED] and his wife moved into the property in February 2021. (Testimony of [REDACTED])
8. The periods in dispute are 12/24/2020 to 1/21/2021 and 2/20/2021 to 3/19/2021. (Testimony of [REDACTED])
9. The customer wrote that he was not disputing the bill dated 2/22/2021 for the period 1/22/2021 to 2/19/2021 because water usage at the property was normal during that period. (March 28, 2021 letter to DC Water by [REDACTED] attached to the Petition for Administrative Hearing)
10. The bill dated 1/28/2020 for the period 12/24/2020 to 1/21/2021 was the first water and sewer bill issued to the customer as the new owner of the property. (Testimony of [REDACTED])

11. The customer acknowledges receiving high water usage alerts from DC Water in February 2021. (Testimony of [REDACTED])
12. During the first billing cycle of the customer's ownership of the property, water usage recorded on the water meter starting December 24, 2020 almost continuously thru the first billing cycle and into the second billing cycle. (DC Water's Meter Log Record)
13. Spikes in water usage occurred at the property 1/9/2021 to 1/12/2021, 2/20/2021 to 2/22/2021, 4/24/21 to 4/27/2021, 4/29/2021, 5/1/2021 and 5/2/2021. (Testimony of LaFatima Black)
14. After each spike in water usage at the property, water usage returned to within normal range. (Testimony of LaFatima Black)
15. The customer acknowledges re-seeding his lawn in May 2021 which would account for spikes in water usage. (Testimony of [REDACTED])
16. The customer hired Michael & Sons Plumbing on February 24, 2021 and no leaks were detected. (Testimony of [REDACTED]; Michael & Sons Plumbing report)
17. The customer hired Anna Contracting on March 4, 2021 and the company changed parts in all of the toilets. (Testimony of [REDACTED])
18. DC Water tested the water meter and the meter was determined to have 99.58% accuracy. (Testimony of LaFatima Black)
19. In its investigation of the customer's dispute, the utility found no evidence of meter overread or faulty computation of the customer's bills. (Testimony of LaFatima Black)
20. The meter and MTU was changed on 3/9/2021. (Testimony of [REDACTED])

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.See, 21 DCMR 403.
3. D.C. Municipal Regulations bar adjustment of a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved

by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.”)

DECISION

The customer in this matter tried to do all things prudent as a property owner. He hired an inspector prior to making an offer to purchase and he, later, hired two (2) different plumbers to inspect his property for leaks and no leaks were found. The evidence and testimony presented shows that, while there may not have been any plumbing defects at the property, excessive water usage occurred at the property both prior to move-in by the owners and after the new owners occupied the property and there have been small spikes in water usage recently occurring at the property.

The customer testified that his contractor, before move-in, was removing asbestos at the property and used a lot of water in the process. The customer testified that the process took 2 – 3 days and started December 28, 2020. A review of the meter reads from the property shows almost continuous water usage occurring at the property starting December 24, 2020 and continuing until January 2, 2021 when usage stopped at 17:00 hours. Prior to the water stopping on January 2, 2021, the meter log reflects only sporadic stopping of the water for no longer than two (2) hour intervals. Water usage restarted January 3, 2021 at 8:00 a.m. Water usage at the property stopped again on January 4, 2021 at 13:00 hours and there was no usage until 8:00 a.m. on January 5, 2021. Water usage resumed on the 5th of January for several hours but then stopped later in the day on January 5th and there was no reported water usage until mid-day on January 8, 2021. The Meter Log reflects sporadic water usage until the spike started on January 9th at 16:00 hours and continued until January 12th at 10:00 a.m. when usage declined but continued at two (2) hour intervals on the 13th until water usage started hourly at 13:00 hours on January 13th. The Meter Log reflects continuous hourly usage until January 26th.

As such, based upon the testimony, there were workers in the house prior to the owner’s move-in and renovations continued after the owner’s move-in.

Continuous water usage suggests a leak but, because water usage did sporadically stop, the water usage could have been due to workers using the water but it is clear that water usage was occurring.

Further, based upon the testimony and evidence presented, the customer hired Michael & Son to inspect the property during a period when high water usage was not occurring. The plumbing company was at the property on February 24, 2021 and the customer has declared that water usage in February was normal and not being dispute. The testimony was that the spike in water usage in February 2021 occurred between February 20, 2021 and February 22, 2021 and thereafter usage returned to normal. Accordingly, it is no surprise that the plumber found no leak at the property. Likewise, the customer testified that he hired Anna Contracting on March 4, 2021 and, again, excessive water usage was not occurring at the property during the period that

the plumber was at the property. There were no reported spikes in water usage at the property in March 2021. The fact that there was a spike February 20 – 22, 2021 does account for a higher water bill in March because the billing period was February 20, 2021 to March 18, 2021.

The customer asserted that spikes in water usage at the property resolved after the water meter and MTU were changed on March 9, 2021. The testimony and evidence, however, established that spikes in water usage occurred at the property, both, after Anna Contracting changed toilet fixtures at the property and after the water meter and MTU were replaced at the property. The customer had an explanation for the water spikes in May 2021; he had no explanation for spikes in April 2021.

The water meter was tested and determined to have 99.58% accuracy. DC Water found no misreading of the water meter, no overread or faulty computation. The utility also had hourly meter reads from the property allowing it to pinpoint when water was being used.

21 DCMR 408 dictates that when all tests and checks are inconclusive as to the cause of excessive water usage at the property, DC Water does not adjust a customer's account for the excessive water used. Here, the owners were renovating their property both before move-in and continuing thereafter and water was most certainly being used at the property by the contractor and workers. There is no evidence that DC Water's equipment was faulty and as such, DC Water's determination that no basis exists to adjust the customer's account for excessive water usage and the charges are valid is AFFIRMED.

By: Janet W. Blassingame
Janet W. Blassingame, Hearing Officer
Date: August 5, 2021

Copy to:

██████████
██████████ Underwood Street, NW
Washington, DC 20012

**BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES**

IN RE: Nassar Haider
2700 Prairie Meadow Drive
Champagne, IL 61822

c/o Chessely Robinson, Esq.
2516 Australia Drive
Raleigh, NC 20310

Service Address:
█ Good Hope Road, SE

Account No: █
Case No: 2018-4-62

Amounts in Dispute: \$ 10,722.10

Before Janet W. Blassingame, Hearing Officer
June 8, 2021 at 10:00 a.m.

NOTICE OF ERRATA

The undersigned Hearing Officer files this Notice of Errata to correct the typographical errors found in the Decision dated August 5, 2021.

<u>Page</u>	<u>Paragraph</u>	<u>Now Reads</u>	<u>Should Read</u>
1	2 nd paragraph	hearing on June 8, 2021 2021	hearing on June 8, 2021
5	last sentence	contacted the owner on May 28, 2028	contacted the owner on May 28, 2018

By: Janet W. Blassingame
Janet W. Blassingame, Hearing Officer

Date: August 10, 2021

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES

IN RE: Nassar Haider
2700 Prairie Meadow Drive
Champagne, IL 61822

c/o Chessely Robinson, Esq.
2516 Australia Drive
Raleigh, NC 20310

Service Address:
█ Good Hope Road, SE

Account No: █
Case No: 2018-4-62

Amounts in Dispute: \$ 10,722.10

Before Janet W. Blassingame, Hearing Officer
June 8, 2021 at 10:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time January 24, 2018 to May 17, 2018. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing. An Order of Default was entered March 19, 2019 against the customer for failure to appear for hearing. The customer appealed the dismissal of his case arguing that the Notice of Hearing was sent to the wrong address. The customer further asserted that no findings were made by the Hearing Officer and that the Decision by the Hearing Officer was arbitrary and capricious. DC Water decided to forego the challenged judgment and by consent the parties agreed that the matter would be remanded to the Hearing Officer for a hearing on the merits of the dispute.

This matter was scheduled for a remote hearing on June 8, 2021 2021. Present for the hearing were: Nassar Haider, a.k.a. Nasar Haider; Chessely Robinson, Esquire on behalf of Nassar Haider; Emil Hirsch, Esquire, on behalf of DC Water; as well as, Kimberly Arrington and Arlene Andrews, DC Water.

As a preliminary matter, Mr. Hirsch and Mr. Robinson identified documents which each intended to use during the hearing. The documents are as follows:

Petitioner:

<u>Exhibit Number</u>	<u>Exhibit Name</u>	<u>Admitted</u>
1	Bill Summaries from 2/15/2018 to 2/27/2019	yes
2	Handwritten Invoice dated 4/20/18 by 20/20 Drain Clean	
3	20/20 Drain Clean Invoice	yes
4	Request for Bill Reduction dated 6/2/2018	yes

5	Petition for Hearing	yes
6	Order of Default	
7	Notice of Hearing	
8	DC Court of Appeals Brief	
9	Bill Summary dated 2/15/2018	yes

DC Water:

<u>Exhibit Number</u>	<u>Exhibit Name</u>	<u>Admitted</u>
1	Motion For and Order of Remand	
2	Denial Letter by Eileen Wright dated 10/20/2019	
3	Investigative Report	yes
4	Request for Bill Reduction dated 6/2/2018	yes
5	Petition for Hearing	
6	DC Water Monthly Meter Readings	yes
7	Historical Summary of Customer Interaction Notes	yes
8	Bill Summary dated 5/15/2018	yes

Mr. Robinson opened by calling Mr. Haider as his witness. Mr. Haider stated that he was born 9/4/1045 and lives at 2700 Prairie Meadow Drive in Champagne, IL. He stated that he owns two (2) properties in Washington, DC. The first property is located at [REDACTED] Q Street, SW and the second property is located at [REDACTED] Good Hope Rd, SE. and the Good Hope Rd property is the property at issue. Mr. Haider stated that the property is a commercial/residential mixed-use building which he had been renting to a tenant. The building has an upstairs two-bedroom apartment having a kitchen and two (2) bathrooms. He stated that the ground level is a convenience store having one bathroom. He stated that the building has one outside faucet and is monitored by one water meter. Mr. Haider stated that his lease agreement with the building tenant is that the tenant could sleep upstairs in the apartment or he could sublet the apartment and the tenant would occupy and operate the convenience store; the tenant would be responsible for all utilities and maintaining the property.

Mr. Haider stated that the tenant did not tell him of any water problem. He stated that in April 2018, he found the property abandoned and he saw water on the floor. Mr. Haider explained that he found busted pipes inside the property and he found a December 2017 DC Water bill for \$2,700.00. Mr. Haider stated that he called a plumber to fix the broken pipe and leaks and Mr. Haider called his insurance carrier to make a claim for repair of the water damage. Mr. Haider stated that he contacted DC Water within a week of seeing the state of the property. He stated that he discussed with the utility's service representative the December 2017 bill for \$2,700.00 and he reached agreement to pay \$100.00 per month on the arrearage.

Mr. Robinson asserted that his client should not have to pay the amount owed to the

utility because it is not right that he pays for something caused by a natural disaster.

Mr. Haider stated that he got the full information regarding what was due and what happened in the building in May 2018 when the water meter was read. He stated that he got the water bill and sent a letter to DC Water. He stated that he was told that the utility would consider a reduction in the amount due.

Mr. Haider stated that DC Water did not come out to the property from May when he contacted the utility until June. He stated that he was living in Chicago, IL at the time and that his daughter moved so they missed receiving several of the water bill statements.

Mr. Robinson asserted that as an absent landlord, his client's obligation goes to reasonableness of the landlord's actions.

Mr. Hirsch cited Euclid St. v. DC Water, 41 Ad3 453 (2012 D.C.) stating that a landlord is always ultimately responsible for water use and that there is no mitigation by reasonableness or tenant liability. Mr. Robinson cited 21 DCMR 407.2 stating that the regulation addresses appropriateness for reduction of a customer's bill and one factor to be considered is the owner's negligence or reasonableness. Mr. Hirsch responded that based upon the "Best Evidence Rule", one must look to the lease between Mr. Haider and his tenant.

Mr. Robinson stated that there is no record of a bill being generated by DC Water for the period February 2018 to March 2018. He stated that his client was re-billed in May 2018 and as such, Mr. Haider had no way of challenging charges incurred in February and March 2018. Mr. Hirsch stated that Mr. Haider did not testify of not receiving bills but, nevertheless, DC Water is not asserting that the dispute is untimely, so whether the customer received the bill or if the bill was generated is immaterial.

The Hearing Officer asked Mr. Haider when his tenant stopped paying his rent for the property and Mr. Haider responded that the tenant stopped rent payments as of December 2017. To questions by the Hearing Officer, Mr. Haider further responded that he self-managed the property and did not employ a property manager. Mr. Haider declared that he received a bill for his other property owned in the District of Columbia but he did not get the bill for the property at issue. He asserted that DC Water had his phone number and email address.

Mr. Robinson continued his questioning of Mr. Haider and Mr. Haider stated that there was a water leak at the property in year 2016 and DC Water contacted him by a phone call to alert him of excessive usage. He recited his telephone number- 302-372-xxxx and his email address and stated that both phone number and email address were the same in year 2018.

Mr. Haider confirmed for the Hearing Officer that his lease with the tenant was signed in year 2017.

Mr. Haider referenced the invoice from 20/20 Drain Clean (ex. 3). He testified that a pipe burst at the entry of the building and that three (3) pipes were busted. He stated that a pipe was busted in the ceiling.

Mr. Haider stated that he called DC Water to request a bill reduction because he was not responsible for the water and sewer bill pursuant to his lease with his tenant. He asserted that he was not informed of bills by DC Water. He stated that he did recall what he was told by the service representative regarding reducing the bill but the utility, ultimately, did not reduce the bill and said that he was responsible for payment.

On cross-examination by Mr. Hirsch, Mr. Haider said that the telephone number under his name on the 20/20 Drain Clean invoice was not his telephone number and he did not know whose telephone number it was.

Referring to ex. 4, the letter from Nasar Haider dated 6/2/18 which contained a telephone number 202-351-xxxx, Mr. Haider stated that the stated telephone number is his current cell phone number. He stated his daughter lived at xxx Morgan Street, Chicago, IL but she moved either at the end of year 2018 or in 2019. He stated that he did not give DC Water an updated address in which to contact him. He stated that starting in June 2018, contact with the utility was by email.

Mr. Haider testified that his tenant stopped paying rent in December 2017 and that he knew by December 11th that he had not received a timely rent payment. Mr. Haider stated that he and the tenant talked on the telephone in either January or February 2018 but he had no contact with the tenant in March 2018 and he does not know when the tenant vacated the building. Mr. Haider stated that he did not come to the District of Columbia to inspect the condition of his property when rented to the tenant. Mr. Haider stated that the tenant told him that he was going to fix and improve the property.

Mr. Haider stated that, in September 2018, he provided DC Water with his daughter's address in Chicago, IL but did not give the utility his address in Champagne, IL even though he was living between both properties.

Mr. Haider testified that a DC Water service representative told him that the utility does not get involved in landlord/tenant disputes. Mr. Haider stated that the service representative did not tell him about HUNA notifications.

On re-direct by Mr. Robinson, Mr. Haider stated that the tenant told him that he was going to work on the unit and the pay rent. Mr. Haider stated that the tenant had paid the rent regularly and based upon the tenant's history, he put up with the tenant for a few months.

Mr. Haider stated that he had no communication with DC Water during the occupancy of his tenant, [REDACTED].

Mr. Haider testified that he had no knowledge of any property damage while the tenant was occupying his building.

The Hearing Officer asked the customer whether he sued the tenant and Mr. Haider responded that he did not sue the tenant and that his insurance did not cover the tenant's beach.

Mr. Hirsch moved for a dismissal of the customer's dispute. He argued that the customer failed to make a prima facie case as required pursuant to the Gatewood case. He asserted that because there is a lease with a tenant and the tenant is responsible of utilities, that is not enough cause to give the property owner relief in the form of a bill reduction when the tenant fails to pay the water and sewer bill. Mr. Hirsch cited the Euclid case. He went on to assert that not being informed of billing, also, is not legal ground to relieve the property owner of responsibility to look after his property. Mr. Hirsch asserted that this is a case of dereliction of duty as a property owner and that Mr. Haider is attempting to shift the blame for his own negligence. Mr. Robinson responded to Mr. Hirsch's argument by citing 21 DCMR §407.4 in which the General Manager has discretion to adjust a customer's bill when a leak is found on private property. Mr. Robinson asserted that his client was not challenging an owner's responsibility for payment of the water and sewer bill but his issue is the appropriateness to reduce the bill. Mr. Robinson asserted that the Euclid case does not apply in this matter and neither does the Gatewood case.

With respect to the Motion to Dismiss, the Hearing Officer denied the motion stating that she wanted DC Water to present its case as to why the customer owed the utility for water and sewer service. Based upon said ruling, Mr. Hirsch called Kimberly Arrington as his first witness.

Ms. Arrington stated that she has been employed at DC Water for seventeen (17) years and for the past three (3) years, she has been Supervisor for Escalations. She testified that her first contact with the customer's account was approximately six (6) months ago when she was told to provide the customer with an administrative hearing. Ms. Arrington stated that she pulled the customer's file and reviewed the documents and saw that there was a tenant and owner. She stated that the owner contacted DC Water on November 8, 2016 to add the tenant to the account and since then, the account bill goes to the owner and to the tenant. Ms. Arrington stated that the owner's bill copy is sent to his Chicago address and that the DC Water Collections Department contacted the owner on May 28, 2028.

Ms. Arrington identified the DC Water Historical Notes (DC Water ex. 7) described as a 4-page composite of the contacts between DC Water and Mr. Haider. Mr. Robinson objected to reference of the document. He cited the Clyburn Rule relating to business records taken into evidence. Mr. Robinson cited 741 A2d 395 (1991) stating that for the document to be admissible the original maker must have received the information in the course of regular of business. Mr. Hirsch responded that in an administrative hearing, hearsay is liberally applied and allowed. Referring to the note dated 6/29/18, Mr. Hirsch asserted that the note was contemporaneously made by the customer service representative and that all customer service representatives are required to note all interactions with customers. Mr. Hirsch argued that the contact notes are made in the ordinary course of business. Ms. Arrington testified that the composite notes were taken from the DC Water data base. The Hearing Officer overruled the objection by Mr. Robinson and the note document was admitted into evidence.

Ms. Arrington testified that DC Water customers must sign-up for HUNA alerts and must have an on-line account with the utility. She stated that the high-water usage alert is based upon a customer's usage threshold. Ms. Arrington testified that a customer service representative told Mr. Haider of the HUNA program and of his ability to sign-up for the program. Ms. Arrington testified that Mr. Haider never signed up for HUNA alerts.

Ms. Arrington testified that DC Water conducted an investigation of the customer's dispute of the bill dated 5/18. She stated that the utility verified water consumption in its STAR report of meter reads and that the reads suggest the existence of a leak at the property. Ms. Arrington referred to exhibit 6- monthly meter reads in the STAR automated meter read system. Mr. Robinson objected to ex. 6. Mr. Hirsch asserted that the reads are admissible and Mr. Robinson retorted that the document bears no signature or certificate of authenticity. Mr. Hirsch stated that the witness testified as to the record and there is no need for authenticity. Mr. Robinson cited Rule 902 of the Federal Rules of Evidence and Mr. Hirsch stated that the federal rules do not apply in this case. The Hearing Officer overruled Mr. Robinson's objection to the meter reads stating that the meter reads are maintained by DC Water in its ordinary course of business and are therefore admissible.

Turning to the DC Water Investigative Report dated 10/29/18, Ms. Arrington noted that there was a check mark by "increased Actual usage" on the report and that on the line of actions taken, it is noted that the account was on hold to 11/9/18. Ms. Arrington stated that the decision of the utility after investigation was that no account adjustment was warranted and the charges are valid. She further stated that the plumber's report was not received within 15 days of the notice of the repair but regardless of when the utility received the plumber's report, the report was taken into consideration during the investigation and in the decision by DC Water.

Ms. Arrington testified that DC Water holds owners responsible for water and sewer

charges based upon a D.C. Court of Appeals decision. She stated that the final check mark on the Investigation Report is that usage has declined- usage controlled at premises; not an underground leak. Ms. Arrington asserted that DC Water knew that the water usage was controlled at the premises because of the plumber's report.

Ms. Arrington identified a letter from DC Water to Mr. Haider (exhibit 2) stating that the letter accompanied the Investigation Report. She stated that the letter is referred to a Denial Letter. She stated that the utility considered the plumber's report, AMR readings, and Interaction Notes.

Ms. Arrington testified that Mr. Haider asked DC Water to send his water and sewer bills to the Good Hope Rd address and not to any other address.

With respect to the plumber's report, Ms. Arrington stated that the plumber wrote that pipes were fixed in the entryway and bathroom. She stated that DC Water policy is to look if fixtures are internal. She stated that there was nothing in the plumber's report stating that walls or plaster had to be removed to fix the pipes.

On cross examination, Ms. Arrington reaffirmed that the owner called DC Water in November 2016 to put the tenant on the water and sewer account.

Ms. Arrington stated that from November 2016 to November 2017, there were no other increases.

From the historical notes, Ms. Arrington stated that the first contact with Mr. Haider was on May 29, 2018 and on 5/30/18, he was informed that there had been high consumption from December 21, 2017 to April 19, 2018 and that usage had returned to normal between April 30, 2018 to May 17, 2018.

Ms. Arrington stated that the bill dated 5/30/18 was part of the investigation but the bill dated 7/6/18 was not included in the investigation.

The bill dated 2/15/18 (ex. 9) was admitted; Ms. Arrington stated that bill is accurate. Mr. Robinson stated that his client did not receive a bill for February or March.

Ms. Arrington stated that had the plumber's report stated that the pipes repaired were not visible, the utility would have considered such during its investigation. Referring to Exhibit 7, Ms. Arrington noted from the Interaction Notes that the customer service representative had said that the plumber had to say in the report the location of the leak or visibility of the pipes. Ms. Arrington further noted that nowhere in the plumber's report was it stated that the kitchen faucet

was running.

The Hearing Officer asked DC Water to show all interaction notes regarding the account and Ms. Arrington responded that DC Water changed its system in December 2017 and the legacy notes are not accessible. She stated that there were no notes of contact between January 2018 and May 2018, then, Mr. Haider was called by DC Water's Collection Department in May 2018.

Ms. Arrington stated that DC Water did not inspect the property.

Mr. Hirsch moved for Exhibit 1 to be admitted; the exhibit was admitted.

Mr. Haider was re-called by Mr. Robinson.

Mr. Haider, referring to Historical Note (ex. 7) dated 7/9/18 regarding resending the plumber's report, said he does not recall mentioning the kitchen faucet.

Mr. Haider stated that he does not have anything to show that the repaired pipes were invisible.

Mr. Robinson stated that he would like to submit a written closing statement by June 15, 2021. Mr. Hirsch was told that it was optional for him to submit a written closing statement but if he elected to do so, his statement would be due also on June 15, 2021.

A written Closing Argument by the customer was forwarded to the Hearing Officer on June 16, 2021.

Based upon the foregoing evidence and testimony adduced during the Hearing and considering the Closing Argument submitted by the customer, the Hearing Officer makes the following:

FINDINGS OF FACT

1. The property involved is a mixed-use building owned by Nasser Haider. The building has a second-floor apartment unit and a ground floor convenience store. (Testimony of Nasser Haider)
2. The period in dispute is January 24, 2018 to May 17, 2018. (Testimony of the parties)
3. The property owner entered into a lease agreement with tenant, [REDACTED], regarding the building in 2016 and, pursuant to the lease agreement, the tenant was responsible for payment of all utilities, including the water and sewer bill. (Testimony of Nasser Haider)
4. The tenant stopped payment rent to the property owner after December 2017; the

property owner was unaware of the status of the tenant's payment of the water and sewer bill. (Testimony of Nasser Haider)

5. The property owner was in contact with his tenant in January 2018 and believed the tenant's assertions that he was going to improve the property and, as such, the property owner decided not to press the tenant regarding rent arrearage. (Testimony of Nasser Haider)
6. The property owner had no contact with the tenant after February 2018 and was not given notice of the tenant's intent to vacate the building. (Testimony of Nasser Haider)
7. The tenant vacated the property unbeknownst to the property owner and the property owner does not know when the tenant vacated the property. (Testimony of Nasser Haider)
8. Mr. Haider resides out-of-state and did not employ a property manager but acted as his own property manager. (Testimony of Nasser Haider)
9. Mr. Haider visited the property in April 2018 and found the building vacant with water damage from busted pipes in the entryway and bathroom and he found a DC Water Bill Summary. (Testimony of Nasser Haider)
10. The property owner hired a plumber who repaired 3 CPVC pipes, as well as, installed a new kitchen faucet and shower valve and unclogged the backyard drain. (Testimony of Nasser Haider; 20/20 Drain Clean Invoice dated 4/23/2018)
11. After finding a water and sewer bill in the building, Mr. Haider telephoned DC Water on 5/29/18 and learned that there was an outstanding arrearage on the water and sewer account. (Testimony of Nasser Haider and Kimberly Arrington; DC Water Interaction Note 5/29/18)
12. The water and sewer Bill Summary for the property dated 2/15/18 reflected current charges due in the amount of \$2,821.68 and a water meter read date of 1/23/18. (Bill Summary dated 2/15/18)
13. Mr. Haider disputed the bill dated 5/15/18 in the bill amount of \$5,456.86 for the period 1/24/2018 to 2/22/2018. (DC Water Investigation Report Letter dated 10/29/2018)
14. The water and sewer Bill Summary for the property dated 5/15/18 reflects the water meter was read 2/22/18. (DC Water Bill Summary 5/14/2018)
15. The water and sewer Bill Summary for the property dated 5/30/18 reflects the water meter was read 5/17/18. (DC Water Bill summary dated 5/30/18)
16. DC Water waived its rule processing regulation regarding a time limit upon the property owner to dispute the water bill dated 5/15/2018. (Statement by Emil Hirsch, Esq. on behalf of DC Water)
17. The property owner added the tenant's name to the water and sewer account for the property in November 2016 and the bill went to the property address; the property owner provided DC Water with his daughter's address in Chicago, IL even though the property owner lived in Champagne, IL. (Testimony of Nasser Haider)
18. The property owner failed to update his account information when his daughter moved.

(Testimony Nasser Haider and Kimberly Arrington)

19. The property owner does not challenge an owner's responsibility for payment of the water and sewer bill. (Statement of Chessely Robinson, Esq. on behalf of Nasser Haider)
20. In investigating the customer's bill dispute, the utility verified the meter reads in the STAR system and considered the plumber's report submitted by the property owner. (Testimony of Kimberly Arrington)
21. DC Water excluded the existence of an underground leak as a cause of excessive water usage at the property because the usage declined which indicates that the usage was controlled at the premises. (Testimony of Kimberly Arrington)
22. High water consumption occurred at the property between 12/21/2017 and 4/19/2018; consumption returned to normal during the period 4/30/18 and 5/17/18. (Testimony of Kimberly Arrington)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. Meter shall be read quarterly or at such other times as the General Manager shall determine. (21 DCMR §308.1)
3. D.C. Municipal Regulations relating to water and sanitation bar adjustment of a customer's bill if excessive water consumption is the result of a leaking faucet, household fixtures, and similar leaks or the malfunctioning water-cooled air conditioning equipment. (21 DCMR 406)
4. Gatewood v. DC WASA, 82 A.3d 41, D.C. Court of Appeals 2013-the utility waived the time filing limits; after the customer makes a prima facie case, the burden shifts to the utility to rebut.
5. Street, LLC v. D.C. Water and Sewer, 41 A. 3rd 453, D.C. Court of Appeals 2012- The issue presented was whether WASA has the authority to hold the owner of a building Euclid responsible for paying a tenant's delinquent water services account. Because the applicable statute and regulations establish that the obligation to satisfy outstanding water service fees runs with the property where the water was consumed, the Court concluded that WASA is permitted to bill the owner of a building if a tenant consumes water, is billed appropriately, but fails to pay. The case established that the obligation to pay WASA's water service charges runs with the property where the water services are rendered.
6. DC Water is vested with the authority to "investigate" a challenged bill by verifying computations and meter readings and conducting an on-site inspection of the premises and the water meter, among other powers. 21 DCMR § 403.2
7. D.C. Code § 34-2407.02, which provides:

[I]f an owner of real property fails to pay District water and sanitary sewer service charges in full accordance with § 34-2407.01, *for all bills rendered* which remain unsatisfied for 60 days or more, the Mayor may file a certificate of delinquency with the Recorder of Deeds.

Upon filing, the certificate of delinquency shall constitute a continuing lien against the real property. (See, D.C. Code § 34-2407.02 (a)(1)-(2) (2001) (emphasis added).

8. D.C. Municipal Regulations relating to water and sanitation bar adjustment of a customer's bill if excessive water consumption is the result of a leaking faucet, household fixtures, and similar leaks or the malfunctioning water-cooled air conditioning equipment. (21 DCMR 406)
9. If a leak is found to be in a location where the leak is not apparent from visual or other inspection, the General Manager shall determine whether the leak is on public space, or private property, or on property that is under the control of the occupant. If the such leak is determined to be on private property or on property that is under the control of the owner or occupant, the owner or occupant shall repair the leak and the General Manager may, at his discretion, upon request of the owner, adjust the bill(s) for the periods during which the leak occurred by an amount not to exceed 50% of the excess water usage. (See, 21 DCMR §407)
10. In deciding whether to adjust for a leak not visible to the naked eye, the General Manager may take into consideration:
 - (a) There has been no negligence on the part of the owner or occupant in notifying the Department of unusual conditions indicative of a waste of water;
 - (b) The owner has taken steps to have the leak repaired promptly upon discovery of a leak on private property;
 - (c) Repairs have been made by a District registered plumber...;
 - (d) Form ES-138 has been obtained from the Authority, completed in full, signed by the owner or occupant and certified by the plumber who made the repair; and
 - (e) The request for adjustment has been made promptly.(See, 21 DCMR §407.5)

DECISION

The customer contended that he should be granted an adjustment to his account for excessive water usage due to busted pipes. The customer's argument was that he repaired the pipes as soon as he became aware of the condition of his property. The customer stated that he accepts that a property owner is responsible for the water and sewer bill charges when a tenant fails to pay the utility per a lease agreement, but, nevertheless, he seeks relief from excessive water charges caused the leaks within the property.

The testimony and evidence were that the property owner was an absentee landlord living in the State of Illinois. He testified that he lived between Champagne, IL and Chicago, IL where

his daughter lived. He provided DC Water with his daughter's address in Chicago however when his daughter moved, he did not update his contact information with the utility. With respect to his property in the District of Columbia, the customer was no longer receiving rent payment from his tenant as of December 2017. He testified that he gave the tenant forbearance based upon assertions by the tenant that he was going to improve the property and resume payment at an unspecified date. The property owner testified that he had no contact with the tenant after February 2018. The property owner came to the District of Columbia and went into his property in April 2018 and found the tenant gone and substantial water damage to the property due to busted pipes. The property owner hired a plumber who, among other things, repaired three (3) CPVC pipes.

Counsel for the property owner cites 21 DCMR §407.2 as basis for his client's request for an adjustment of his account. Counsel argued that his client's action, in having the leaks repaired, was done in a timely fashion after the property owner learned of the existence of the leaks and that a reduction is appropriate pursuant to the regulation.

Counsel's argument for reduction based upon 21 DCMR §407.2 is faulty. First, the regulation applies to underground leaks and leaks not visible to the naked eye. In this case, the plumber hired by the property owner failed to state that the busted pipes were not visible upon inspection and the property owner did not testify that the busted pipes were not visible to the naked eye. The sole description of the busted pipes by both the plumber and the property owner was that the pipes were in the entryway and in the bathroom. Second, even if one assumed that the busted pipes were not visible to the naked eye, adjustment of a customer's account is discretionary upon the General Manager of the utility. The regulation cites several factors for consideration in exercising the discretion of adjusting a customer's account and this property owner fails more than one factor of consideration besides failing to establish that the pipes were not visible. Here, the property owner failed to inspect his property and was unaware of the existence of pipes causing water loss. High water consumption occurred at the property between 12/21/2017 and 4/19/2018, yet, the property owner was neither in contact with the tenant over the four (4) months that water usage was excessive at the property nor did the property owner review the water and sewer bill(s) which were not only outstanding but excessive due to the condition of the property. The property owner admitted in his testimony that he missed receiving the water and sewer bills because his daughter moved and he did not give the utility his daughter's forwarding address. The property owner asserted that the utility had an email address and telephone number on file for him but neither line of communication relieves the property owner from his responsibility of knowing the condition of his property and paying the water and sewer charges incurred at the property. The property owner also asserted that the tenant was responsible for paying the water and sewer bill. Euclid Street LLC v. DC Water Authority, supra. settled the issue of whether a landlord can transfer responsibility for payment of the water and sewer bill to a tenant and the Court ruled that the water and sewer bill liability runs with the

property and the property owner is responsible for payment regardless of any landlord/tenant lease agreement. Thus, the property owner in this case was negligent in being cognizant not only of whether the water bill was being paid but also of the condition of his property and that water loss was occurring due to busted pipes for a period of four (4) months. The fact that the property owner had the repairs performed when he went to the property, does not excuse his negligence in allowing the prolonged water loss and accumulating an excessively high-water bill arrearage. The fact that the property owner requested an adjustment upon his discovery of the leaks, ignores the length of time elapsing that water was loss was occurring due to the negligence of the property owner.

Based upon the foregoing, the Hearing Officer finds no abuse of discretion in not granting an adjustment of the account based upon 21 DCMR §407

21 DCMR §406 bars adjustment of a customer's bill if excessive water consumption is the result of a leaking faucet, household fixtures, and similar leaks or the malfunctioning water-cooled air conditioning equipment.

In this case, the plumber repaired the busted pipes, as well as, installed a faucet and shower valve and unclogged a drain. Each defect was under the control of the tenant and, as such the property owner. In that the customer failed to establish qualification under 21 DCMR §407 for an adjustment, an adjustment is barred if excessive water consumption is the result of a leaking faucet, household fixture and similar leaks. Accordingly, the utility's determination that no adjustment was appropriate is determined to be correct under 21 DCMR §406, as well.

Lastly, the property owner argues that he did not receive bills for February and March 2018. The property owner found an outstanding bill statement in the property when he came in April 2018. DC Water had bill statements for February 2018 and two (2) statements generated in May 2018. The bill statements reflected that the water meter was read on 1/23/18, 2/28/18 and 5/15/18. Meters are to be read quarterly or at such other times as the General Manager shall determine. (21 DCMR §308.1) In this case, the utility complied with its regulations regarding the acceptable interval between meter readings. More importantly, however, the customer testified that he missed receiving bill statements because his daughter moved. Again, the property owner is attempting to shift responsibility to someone else for maintaining his property and seeing that the water and sewer bill is paid. He, first attempted to shift responsibility to his tenant and his argument that he did not receive bill statements for two (2) months, is an attempt to shift responsibility to the utility. As noted, the utility has properly read the water meter and billed the customer and a tenant is not the ultimate responsible party for paying the water and sewer bill, thus, efforts to shift responsibility from property owner to someone else fail.

The Hearing Officer finds no basis for an adjustment of the customer's account and, as such, the determination of DC Water that the charges are valid and no basis for adjustment of the account is warranted is hereby AFFIRMED.

By: Janet W. Blessingame
Janet W. Blessingame, Hearing Officer

Date: August 5, 2021

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