SIXTH DIVISION
March 25, 2011

No. 1-10-0529

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GUDELIA CERVANTES, Plaintiff-Appellant, v. THE CITY OF CHICAGO DEPARTMENT OF ADMINISTRATIVE HEARINGS; THE CITY OF CHICAGO DEPARTMENT OF WATER MANAGEMENT; and THE CITY OF CHICAGO DEPARTMENT OF REVENUE, Defendants-Appellees.	) Appeal from) the Circuit Court) of Cook County)))) No. 09 M 1450109))) Honorable) Patrick T. Rogers,) Judge Presiding.

JUSTICE CAHILL delivered the judgment of the court.
Presiding Justice Garcia and Justice McBride concurred in the judgment.

O R D E R

Held: The administrative law officer's judgment in favor of the City was not against the manifest weight of the evidence. Plaintiff was not denied due process of law at her administrative hearing.

Plaintiff Gudelia Cervantes appeals the judgment of the trial court affirming the finding of an administrative law officer (ALO) in favor of defendants the City of Chicago Departments of Administrative Hearings, Water and Revenue (the City). The ALO found plaintiff liable for

past due debts arising out of water service provided to her property at 1147 West Erie Street in Chicago. Plaintiff contends that: (1) the ALO's determination that she was responsible for the amount of water registered by her water meter was against the manifest weight of the evidence; and (2) plaintiff was denied due process of law at the administrative hearing. We confirm.

On August 29, 2008, the City filed suit against plaintiff for $4,811 due on her water and sewer account, an administrative penalty of $1, $250 in attorney's fees and $25 in administrative costs.

At the administrative hearing, the City first presented the testimony of Connie Fabrizio. Fabrizio testified that as part of her employment with the City she integrates and ensures the accuracy of water records presented at administrative hearings. She said that plaintiff's original water meter had frozen and was removed on February 11, 2007. In its place, the City installed a "spread." A spread functions as a bypass pipe. This allowed the property to have unmetered water usage until May 4, 2007, when a new meter was installed. The record shows that on May 4, 2007, plaintiff's water meter began registering unusually high water consumption. Plaintiff typically consumed 7,480 gallons of water per month, but during the six-month period following the meter's installation, her water meter registered over 1.3 million gallons of water consumed. Tens of thousands of gallons were consumed in the following months. Fabrizio said that the first large bill covered the time period from May 4, 2007, to September 20, 2007.

Fabrizio said that in January 2008 the City's 311 system received a call indicating that there had been a loud noise at or under the meter vault at plaintiff's residence. The City responded by going to the property to assess responsibility. The City made a repair to a riser on

the City's side of the meter vault, but the City's employees reported that there was no visible leak in the meter vault. After the repair to the riser, the water meter continued to spin, which showed that water was being pulled through to the owner's side of the property and indicated that the riser was not the source of the high meter readings. Fabrizio said that the City's responsibility for leakage only extended to the meter.

Fabrizio testified that plumbing inspector John Sulla and a Spanish-speaking co-worker visited plaintiff's property on March 18, 2008. Sulla listened to plaintiff's pipes with a device known as an aquaphone. Using noise amplification, an aquaphone can measure the rate of water rushing through a pipe. Using the aquaphone, Sulla determined water was entering plaintiff's property at a rate of seven gallons every two minutes due to a leak. Plaintiff also listened through the aquaphone to the water running into her home. The report shows that Sulla was unable to gain access to an area of the basement where the water line was located.

Plaintiff testified that she received her first high water bill in September 2007 and called plumbers at that time. The plumbers told her they would charge her $4,500 but then said the problem was not inside her home, as the City had contended. She did not believe she had a "busted" pipe because she was still able to get water throughout her home. Six months after the billing period in question, an unidentified City employee came to her property and told her that the problem was not her fault.

On cross-examination, plaintiff said she never hired plumbers to do work on her property and did not have a written record of what the plumbers told her. She said the City's plumbing inspectors could not find the problem when they entered her home and did not tell her a leak was

coming from her basement.

At closing argument plaintiff's counsel summarized their case: "To me, there's overwhelming circumstantial evidence. It's not leaking. [Plaintiff] isn't using it, and so, the only conclusion is that when the City installed the meter on May 4th of 2007, something went wrong."

At the close of evidence, the ALO found that a leak on plaintiff's property had caused the high readings and entered judgment for the City in the amount of $5,187. The circuit court affirmed the ALO's judgment.

On appeal, plaintiff contends that the ALO's finding of a leak was against the manifest weight of the evidence.

In administrative law cases, we review the decision reached at the administrative hearing, not the decision of the circuit court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531, 870 N.E.2d 273 (2007). Judicial review of administrative law decisions extends to "all questions of law and fact presented by the entire record." 735 ILCS 5/3-110 (West 2008); *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 272, 917 N.E.2d 899 (2009). An administrative agency's findings of fact are held to be *prima facie* true and correct, and a reviewing court will overturn an ALO's finding of fact only where it is against the manifest weight of the evidence. *Marconi*, 225 Ill. 2d at 534. A decision is against the manifest weight of the evidence where the opposite conclusion is clearly evident. *Marconi*, 225 Ill. 2d at 534. " 'If the record contains *evidence* supporting the agency's decision, that decision should be affirmed.' " (Emphasis in original.) *Kramarski v. Board of Trustees of the Village of Orland Park Police Pension Fund*, 402 Ill. App. 3d 1040, 1047-48, 931 N.E.2d 851 (2010), quoting *Marconi*, 225 Ill.

2d at 534.

The ALO's finding that plaintiff had a leak on her property was not against the manifest weight of the evidence. The evidence shows a City plumber visited plaintiff's home where he listened to the pipes with an aquaphone. The aquaphone registered the water running into plaintiff's side of the meter at a rate of seven gallons every two minutes, indicating a leak on her property. This conclusion was bolstered by the continuous running of the meter after City employees fixed a broken riser in the meter vault, showing that the riser was not the cause of the large volume of water entering plaintiff's property.

Plaintiff provided little evidence to rebut the existence of a leak. Plaintiff testified that three plumbers and a city worker told her the leak was on the City's side but produced no documentation of these opinions. She offered anecdotal evidence that she still had water upstairs in her home, which she had not had with "busted" pipes in the past. This evidence was insufficient to compel the ALO to find in plaintiff's favor.

Plaintiff argues that if a leak had occurred on her property, then the City's plumbing inspectors would have noticed some evidence of a high volume of water. But, the aquaphone measurements demonstrated the existence of a leak, and the inspectors may not have seen the leak because they were unable to enter a part of the basement that contained the water line. The high volume of water registering on the meter may also have been caused by a number of small plumbing problems. See *Getto v. City of Chicago*, 392 Ill. App. 3d 232, 239, 913 N.E.2d 528 (2009) (finding that several small problems could have caused 14-unit apartment building to use approximately 54 million gallons of water over a seven year period).

Finally, that the high water registrations coincided with the installation of a new meter does not prove the property did not have a leak. The leak could have occurred at any time during the roughly four-month period when no water readings were taken. Given the totality of the evidence, the ALO's finding that plaintiff had a leak on her property was not against the manifest weight of the evidence.

Plaintiff next contends the ALO improperly applied the law because the City was required to provide evidence of the meter's accuracy to prevail in the administrative hearing.

The Chicago Municipal Code (Code) states that "City water *** through service pipes controlled by water meter shall be charged and paid for on the basis of the amount registered by such meter, except in cases where it shall be found that such meter is registering incorrectly, or has stopped registering." Chicago Municipal Code §11-12-320 (amended Dec. 4, 2002). The Code also provides that "[t]he amount of water registered by any meter *** shall be charged and paid for in full, irrespective of whether such water, after having been registered, was lost by leakage, accident or otherwise." Chicago Municipal Code §11-12-460 (amended Dec. 4, 2002).

Citing *Getto*, 392 Ill. App. 3d 232 and *Tepper v. County of Lake*, 233 Ill. App. 3d 80, 598 N.E.2d 361 (1992), plaintiff contends that where a consumer provides evidence that a meter is unreliable, the City must rebut that evidence by demonstrating the meter's accuracy.

In *Getto*, the court overturned a trial court ruling in favor of a trust beneficiary who owned a 14-unit apartment building that had accumulated a $120,019.49 water bill over a seven-year period. *Getto*, 392 Ill. App. 3d at 239, 241. In interpreting section 11-12-320 of the Code, the court said that the clear language of the Code requires a customer to pay for water that passes

through a meter unless the water meter was registering incorrectly or inaccurately. *Getto*, 392 Ill. App. 3d at 238. Because an inaccurate meter would excuse the plaintiff of liability, the court reasoned that liability for the bill turned on the accuracy of the meter. To dispute the meter's accuracy, the plaintiff provided expert testimony that only a catastrophic event could have resulted in the actual use of the 7.27 million cubic feet (roughly 54 million gallons) of water allegedly consumed, and no catastrophic event had occurred. In response, the city introduced evidence that small problems caused the high volume of water. The city provided results from two tests indicating the meter was 100% accurate and showed that plaintiff's expert had not inspected every unit in the building or measured the building's flow rate. The plaintiff did not directly challenge the accuracy of the meter, and the court held that "the evidence conclusively established that the water meter for the *** building registered at 100% accuracy." *Getto*, 392 Ill. App. 3d at 238, 241.

In *Tepper*, the court considered whether the plaintiff had made out a *prima facie* case that a large spike in his water bill was attributable to the defendant county's inaccurate water meter. 233 Ill. App. 3d at 81. The plaintiff offered evidence that he and his wife had used less water than in previous years, that all of their plumbing fixtures had been checked and no leaks were found, and that accuracy tests run on their water meter may have been improperly conducted. Because the plaintiff produced some credible evidence of the meter's inaccuracy, the court held that the county was required to show that the meter was accurate. *Tepper*, 233 Ill. App. 3d at 87.

Plaintiff's reliance on *Tepper* is misplaced. The court there was faced with deciding the narrow issue of whether the plaintiff had made a *prima facie* case, not the character of the

evidence necessary to sustain a verdict. *Tepper*, 233 Ill. App. 3d at 86. Although *Tepper* may stand for the proposition that water consumers can challenge the accuracy of their water meters, it does not require a municipality to introduce direct evidence of the meter's accuracy.

Further, the evidence offered by plaintiff here that her meter was inaccurate was far weaker than that produced in *Getto* and *Tepper*. Plaintiff offered evidence that her bills began to increase the same day that the new water meter was installed on her property and noted that the meter continued to spin even after the City fixed a broken riser on her meter. Plaintiff offered no expert testimony or direct evidence that the high volume registered by the meter was inaccurate. Compare *Getto*, 392 Ill. App. 3d at 238-41. While plaintiff testified that she had spoken with plumbers, she offered no tangible record of their opinions. The City rebutted the evidence offered by plaintiff by: (1) showing that it had not been metering plaintiff's property from February 2007 to May 2007, and a leak could have formed on the property at any time during those winter months; and (2) offering Fabrizio's testimony that the spinning of the meter was consistent with a high volume of water flowing onto plaintiff's property.

The City met its burden by rebutting the evidence that the meter was inaccurate and proved that a leak was the most likely cause of the high readings. See *Ramirez v. Andrade*, 372 Ill. App. 3d 68, 74, 865 N.E.2d 508 (2007) (petitioner at administrative hearing bears the burden of proof). There was no requirement for the City to introduce direct evidence of the accuracy of plaintiff's meter in response to her circumstantial evidence.

Finally, plaintiff argues that she was denied due process because there were no facts rationally supporting the ALO's decision, the ALO failed to explain her decision, and the ALO's

findings were against the manifest weight of the evidence.

The City contends that plaintiff waived her due process argument. Ordinarily, a constitutional issue is forfeited when it is not raised before an administrative agency, even when the agency lacks the authority to decide the issue. *Board of Education, Joliet Township High School District No. 204 v. Board of Education, Lincoln Way Community High School District No. 210*, 231 Ill. 2d 184, 205, 897 N.E.2d 756 (2008). However, this court may still review such an issue, even if it has been waived. *Carpetland U.S.A. Inc. v. Illinois Department of Employment Security*, 201 Ill. 2d 351, 397, 776 N.E.2d 166 (2002).

An administrative hearing comports with due process where the parties are given "the opportunity to be heard, the right to cross-examine adverse witnesses, and impartiality in ruling upon the evidence." *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 95, 606 N.E.2d 1111 (1992). In fashioning a decision, the "agency need not spell out every step in the reasoning, if it provides enough steps that the full course may be discerned." *Siddiqui v. Illinois Department of Professional Regulation*, 307 Ill. App. 3d 753, 759, 718 N.E.2d 217 (1999).

Here, plaintiff received due process of law at her hearing. She was given a full opportunity to challenge the evidence against her and to cross-examine the witnesses. The ALO indicated she understood plaintiff should prevail if the meter were faulty and recounted the key evidence leading to her decision that a leak was the most likely cause of the high readings. From these details, the full course of the ALO's reasoning could be discerned. In addition to being sufficiently explained, the ALO's findings were rationally related to the facts and were not

against the manifest weight of the evidence.

The decision of the administrative law officer is confirmed.

Confirmed.